

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 413/2012

Reserved on : 21.09.2021

Pronounced on : 29.09.2021

Adarsh Gupta and others

.....Appellant(s)/Petitioner

Through: Mr.Vishnu Gupta, Advocate

versus

National Insurance Co. Ltd. and others

..... Respondent(s)

Through: Mr. Suneel Malhotra, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. This Judgment shall dispose of MA No. 413/2012 which arises out of impugned award dated 09.05.2012 passed by learned Motor Accidents Claims Tribunal, Rajouri, (*for short* MACT, Rajouri) whereby an amount of Rs.6,39,000 was awarded in favour of claimant/appellant No.1 alongwith interest @ 6% per annum from the date of filing of claim petition till its realization.

2. Factual matrix of this case, as gathered from the impugned award, is that on 08.08.2007, a young man lost his life in a tragic road accident in the prime of his youth when he was travelling in a Maruti Car bearing Registration No.JK02V/4099. The vehicle was being driven by respondent No. 2 herein in a rash and negligent manner and when the vehicle reached near Sujanpur (Punjab), the driver lost control over the vehicle after which the vehicle collided with an Eucalyptus tree, as a result thereof deceased died on spot. The deceased, Dr. Abhinav Gupta was Final Year MBBS student in Acharya Shri Chander College

of Medical Sciences & Hospital Jammu, and had taken his final year examination about 2/3 days before the unfortunate accident.

3. Claimants filed a claim petition before the learned MACT, Rajouri for claiming compensation on account of death of the deceased. National Insurance Company Ltd. contested the claim petition and following issues came to be framed:

- 1) Whether on 08.08.2007 the driver of vehicle No.JK02-V/4099 (Maruti Car) was driving the car rashly, negligently and recklessly on Jammu-Pathankote Road and when it reached near Sujampur (Punjab) the driver of the offending vehicle lost control over the vehicle and collided against an Eucalyptus tree and thereby caused accident as a result of which Dr. Abhinav Gupta son of petitioners No.1 & 2 sustained severe injuries resulting into his death on spot? OPP.
- 2) In case issue no.1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? OPP.
- 3) Whether the driver of the offending vehicle was not holding a valid driving licence, therefore the respondent No.3 is not liable to pay compensation? OPR-3.
- 4) Whether the offending vehicle was being driven against the terms & conditions of insurance policy, if so, what is its effect? OPR-3.

4. The Tribunal after examining the entire record and on the basis of the evidence led awarded Rs.6,39,000/- alongwith interest @ 6% per annum in favour of claimant/appellant No.1 herein. Being not satisfied with the awarded amount, claimants have filed this MA No.413/12 for enhancement of the award.

5. The appellants have preferred this appeal mainly on the ground that the learned Tribunal has failed in its duty to award just and reasonable compensation and the act of the learned Tribunal in assessing income of the deceased at

Rs.10000/- per month is too low and disproportionate to the qualification and keeping in view the profession of the deceased. The other ground *inter alia* taken by the appellants in this appeal is that the learned Tribunal was duty bound to enhance the income of the deceased by at least 50% towards the future prospects. The appellants are also aggrieved of the Multiplier applied by the learned Tribunal while calculating the compensation.

6. Mr. Sunil Malhotra, learned counsel appearing for the Insurance Company submitted that the award passed by the learned Tribunal is appropriate and in consonance with the law laid down by the Hon'ble Supreme Court and, thus, needs no interference from this Court.

7. I have heard learned counsel appearing for the parties and also perused the memo of appeal as well as record of the Tribunal.

8. Admittedly, the insurance company has not disputed the age of the deceased nor his qualification. Otherwise too, it is borne out from the record that the deceased was a final year MBBS student in Acharya Shri Chander College of Medical Sciences & Hospital Jammu, and had taken his final year examination about 2/3 days before the unfortunate accident.

9. The grievance of claimants 1 & 2 is that they have lost their brilliant son at such a tender age of 26 years, who had a bright future ahead because of his professional qualification. However, the learned Tribunal fell in error while computing his income at the rate of Rs.5000/- per month after slashing 50% of the amount towards his personal expenses, which is not a matter of humiliation for the claimants only, but for the deceased also who was having such a brilliant future ahead because of the profession to which he belonged. Learned counsel

appearing for appellants also argued that even a constable or a clerk having simple qualification would be earning much more than Rs.20,000/- per month.

10. I find force in the arguments of learned counsel for appellants that the learned Tribunal did not take the prospective income of the deceased in its right perspective, thus has failed in awarding just and fair compensation. The Tribunal was required to consider the career prospects of the deceased and the likely earning of deceased in future. What is held by the Apex Court in paragraph 23(i) of the case, titled as, **M.R. Krishna Murthi versus New India Assurance Co. Ltd., reported as, 2020 ACJ 2870**, is reproduced hereunder:

“In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the power would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.”

11. Now the question arises for consideration is what can be the appropriate income of the deceased to be taken for assessing just and fair compensation.

12. The same question arose before the Apex Court in the case, titled as, **Ashvinbhai Jayantilal Modi versus Ramkaran Ramchandra Sharma, reported as, 2014 (8) Supreme 60**. It would be appropriate to reproduce the relevant portion of paragraph-9 of the said judgment hereunder:

“9.The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs.18,000/- per month, which in our view is too less for a medical graduate these days.

Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a

diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding profession. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs.25,000/- p.m. i.e. Rs.3,00,000/- p.a.”

13. The above observations made by the Apex Court squarely apply to the case in hand. Though the said judgment came to be delivered in the year 2014 and now 2021 is running and the inflation has certainly soared many fold, yet I take the monthly income of the deceased to be Rs.25,000/- per month. Further, enactment of Motor Vehicles Act is welfare legislation with an objective to give financial aid to the victims of motor vehicular accidents and also to the dependants of the deceased persons. This legislation aids such victims or their dependants to lead a respectable life. Thus, the interpretation of various sections of Motor Vehicles Act shall be towards the fulfillment of these objectives and not to block the compensation on non-sustainable grounds.

14. The next ground urged by the learned counsel for appellants is that the learned Tribunal has failed to enhance the prospective income of deceased on account of future prospects.

15. The law on future prospects is no more *res integra*. A Constitution Bench of the Hon'ble Supreme Court in case, titled as, **National Insurance Company Ltd. Vs Pranay Sethi,(2017) 16 SCC 680**, has held in paragraph-61(iv) that while determining income, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the present appeal, since the deceased was 26 years of age and had taken his final year examination about 2/3 days before the unfortunate accident, therefore, learned

Tribunal committed error while not adding anything towards the future prospects of deceased as there should have been an addition of 40% of actual salary towards future prospects in view of Pranay Sethi's case (*supra*).

16. The another legal issue this Court came across is regarding the propriety of the multiplier as it is held by the Constitution Bench in **National insurance company Limited Vs. Pranay Sethi (*supra*)** and reiterated in **Royal Sundaram Alliance Insurance Company Ltd. Vs Mandala Yadagiri Goud and Ors., AIR 2019 SC 1825**, relevant paragraph-13 whereof is reproduced hereunder:

“13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”

17. Thus, it is clear that the Learned Tribunal fell in error while calculating the multiplier while taking the age of mother/dependant into account instead of the deceased.

18. In view of the above discussion, the income of the deceased is accepted as Rs.25,000/- per month. The annual income of the deceased comes to Rs.3,00,000/- and after deducting the aggregate income tax approximately at the rate of Rs.5000/- per annum taking different slabs for different financial years, the net annual income comes to Rs.2,95,000/-. In **Pranay Sethi (*supra*)**, the Apex Court held that while determining the income of the deceased, 40% of the actual salary of the deceased is taken towards future prospects where the deceased was on a fixed salary or self employed and was below the age of 40 years. Therefore, 40% is to be added towards the future prospects of deceased,

i.e., Rs.2,95,000/- + 1,18,000/- = Rs.4,13,000/- per annum would be the income of the deceased.

19. The deceased was survived by his parents and his brother, thus, keeping in view the judgment of the Apex Court in “*Sarla Verma & ors. vs. Delhi Transport Corporation & anr. AIR 2009 SC 3104*”, wherein it has been held in para 15 as under:

“15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

20. Since the deceased was a bachelor of 26 years of age and claimants are parents and brother of the deceased, 50% of the income of the deceased is to be deducted as his personal and living expenses. After deducting 50% of the income towards personal and living expenses of the deceased, the net income would be (50% of Rs. 4,13,000/-) = Rs.2,06,500/-.

21. The age of the deceased at the time of death was 26 years, therefore, in terms of **Sarla Verma case (supra)**, the appropriate multiplier in this case

would be 17, thus the loss of dependency of the claimants would be Rs.2,06,500 × 17 = Rs.35,10,500/-.

22. In view of the judgment of **Pranay Sethi (supra)**, the claimants are also entitled to Rs.15,000/- as Funeral Expenses, Rs.15,000/- as Loss of Estate. Further, the Apex Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram and others in Civil Appeal No. 9581 of 2018** has held that the loss of consortium includes filial consortium, that is the right of the parents to be compensated in case of the death of the child. The amount awarded to the parents is compensation for loss of love, affection, care and companionship of the deceased child. Thus both the parents are entitled to Rs. 40,000/- each on loss of love and affection. Thus, the claimants are entitled to the total compensation as follows:-

- i. Loss of Dependency Rs.35,10,500/-.
- ii. Loss of Consortium Rs. 80000/- (4000 each)
- iii. Funeral Expenses Rs. 15,000/-
- iv. Loss of Estate Rs. 15,000/-

Total Rs.36,20,500/-

23. This amount is held to be just compensation to the claimants and out of this awarded amount, a sum of Rs.40,000/- only shall be paid to the father of the deceased as in view of Sarla Verma's case (supra), wherein it is held that subject to the evidence to the contrary the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as dependent. Therefore, rest of the amount to the tune of Rs.35,80,500/- shall be paid to the mother of the deceased. The insurance company shall pay the compensation directed above together with interest at the rate of 7.5% per

annum from the date of filing of the claim petition till its realization after proper verification and identification.

24. With the abovesaid modification in the amount of compensation, present appeal is **allowed** in the aforesaid terms.

25. Registrar (Judicial) is also directed to circulate this judgment to all the Presiding Officers of the Motor Accidents Claims Tribunals in the UT of J&K and UT of Ladakh dealing with such cases regarding compensation on account of death of the deceased person.

26. Send down the record along with a copy of this judgment.

Jammu:
29.09.2021
(Anil Sanhotra)

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes
Yes