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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 28.04.2023
Pronounced on: 13.07.2023*

+ **MAC.APP. 518/2013**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate with
Ms. Sweta Sinha, proxy counsel

versus

LRS OF SUKHBIR SINGH Respondent

Through: Mr. S. N. Parashar, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

JUDGMENT

GAURANG KANTH, J.

1. The present appeal emanates from the Award dated 22.01.2013 (“*Impugned Award*”) passed by the learned Presiding Officer, Motor Accidents Claims Tribunal, Rohini Courts, New Delhi (“*Claims Tribunal*”) in MACT No. 201/11 titled as ‘*LRs of Sukhbir v. Nishant Narula*’ wherein the Respondents no.1, 2, 3, 4 (Claimants) were awarded an amount of Rs. 14,18,400/- towards the death of Late Sh. Sukhbir and Rs.17,38,424/- towards the death of Late Smt. Mithilesh



with an interest @ 7.5% per annum, from the date of filing of the Claim Petition till its realization.

2. The appellant company has preferred this appeal under Section 173 of the Motor Vehicles Act,1988 for modification/setting aside of the impugned Award with respect to the compensation awarded towards the death of Late Smt. Mithilesh.

FACTUAL MATRIX OF THE CASE

3. That on the fateful day of 18.04.2011, the offending vehicle bearing no. DL-2CP-5078, being driven by Respondent no.5, got involved in an accident near Main Burari Road, Delhi. Due to the collision, the offending vehicle rammed the motorcycles ahead of it, and consequently individuals, namely, Sukhbir Singh, Mithilesh, Shivani and one Tarun Lamba riding their respective motorcycles were grievously injured. Unfortunately, Smt. Mithilesh along with her husband Sh. Sukhbir Singh succumbed to the injuries attributable to the accident due to haemorrhage shock and cerebral damage as a result of the blunt force. First Information Report (F.I.R.) no. 146/11 was lodged in P.S. Mukherjee Nagar, Delhi. Appellant no.5 (driver of offending vehicle) was arrested on 19.04.2011 under Sections 279/337/304-A of the Indian Penal Code, 1860.
4. The offending vehicle was insured with the Appellant vide Policy no. 361003/31/10/6100003595 having validity period from 26.12.2010 to 25.12.2011 in the name of the father of Respondent no. 5.
5. The Appellant submitted a legal offer of Rs. 6,06,000/- qua deceased Smt. Mithilesh based on the investigations carried out by the Investigating Officer. However, the said legal offer was rejected by



the Claimants on the ground that the same was not in accordance with **Royal Sundaram Alliance Co Ltd v. Manmeet Singh** reported as **2012 ACJ 721**.

6. Learned Claims Tribunal vide impugned Award dated 22.01.2013 held that Late Sh. Sukhbir Singh and Late Smt. Mithilesh died due to rash and negligent driving of the offending vehicle being driven by Respondent no.5. Quantum of compensation was determined to be Rs. 14,18,400/- towards the death of Late Sh. Sukhbir Singh and Rs.17,38,424/- towards the death of Late Smt. Mithilesh.
7. Aggrieved by the aforesaid impugned Award, specifically with respect to Late Smt. Mithilesh ("*the deceased*"), the appellant company has filed the instant appeal for suitable modification of the quantum of compensation awarded to the claimants.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT COMPANY

8. Mr. Pradeep Gaur, learned counsel appearing for the appellant has contended that the compensation awarded while relying upon the case of **Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh** reported as **2012 SCC OnLine Del 583** by learned Claims Tribunal towards the death of the deceased is an inflated amount. Learned counsel has submitted that ratio of **Royal Sundaram Alliance Insurance case** (Supra) has been challenged in Hon'ble Supreme Court by way of SLP wherein the Hon'ble Apex Court was pleased to issue a notice. It is submitted that learned Claims Tribunal erroneously adopted the notional income of Late Smt. Mithilesh, who



was a homemaker with no income, based upon the minimum wages prescribed for a non-matriculate. Learned Claims Tribunal entirely ignored the fact that there existed neither any proof of employment/income nor of the educational qualification of the deceased. Learned counsel relied upon the judgement delivered in the case *Lata Wadhwa v. State of Bihar*, reported as (2001) 8 SCC 197 wherein Hon'ble Apex Court presumed the income of deceased, who happens to be homemaker, as Rs. 3,000/- per month and Rs.36,000/- per annum.

9. It is submitted that learned Claims Tribunal did not deduct any amount towards personal expenses and further added 25% towards assumed income for calculating future increase of income while calculating 'loss of dependency'. Loss of dependency is erroneously awarded as there is no proof that the Claimants were financially dependent on the earnings of the deceased. Learned counsel has submitted that in a recently pronounced judgement in *Rajendra Singh v. National Insurance Co. Ltd.* reported as (2020) 7 SCC 256, Hon'ble Supreme Court in a case of death of a homemaker assumed the notional income as Rs. 5,000/- per month. The Court also deducted 1/4th towards the personal expenses as per the judgment in the case of *National Insurance Co. Ltd. v. Pranay Sethi*, reported as (2017) 16 SCC 680. Learned counsel for the appellant submits that in light of these facts, compensation of Rs. 17,38,424/- awarded towards death of Late Smt. Mithilesh is highly unjust and unreasonable.



SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS/CLAIMANTS

10. Mr. S.N. Parashar, learned counsel appearing for Respondents no. 1 to 4 (claimants) has fairly acceded to the fact that the compensation towards the death of Late Smt. Mithilesh shall be computed as per the judgement delivered in the case of *Pranay Sethi* (Supra). Learned counsel has filed a computation sheet for calculating the compensation as per the case of *Pranay Sethi* (Supra) which comes up to Rs. 16,39,976/- (Sixteen Lakhs Thirty Nine Thousand Nine Hundred and Seventy Six Rupees).

LEGAL ANALYSIS

11. This Court has heard the arguments advanced by learned counsel for the parties and has perused the relevant documents and judgments with the assistance of the learned counsel for the parties.
12. The primary issue for consideration in this appeal is with respect to the computation of the compensation towards death of a motor accident victim who was a housewife/homemaker, with no substantive proof of income. The legal question pertaining to the assumption of the notional income of a homemaker in order to calculate 'loss of dependency' also demands this Court's judicial attention.
13. It is no more a *res integra* that compensation has to be awarded by the Tribunals and Courts towards the death of a homemaker in case of a motor vehicle accident. The observation of the Hon'ble Supreme



Court in the case of *Kirti v. Oriental Insurance Co. Ltd.* reported as **(2021) 2 SCC 166** holds a special relevance in the present matter at hand. Relevant extract of the aforesaid judgment has been reproduced below:

“21. In Arun Kumar Agrawal v. National Insurance Co. Ltd. [Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218: (2010) 3 SCC (Civ) 664 : (2010) 3 SCC (Cri) 1313], this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows: (SCC pp. 237-38, paras 26-27)

“26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc. but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of



the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

.....

30. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals."

14. As complex and uphill task as it can be, computation of an Award to compensate for death of a homemaker demands wider approach considering the multi-facet gratuitous services provided by a homemaker to her family. This Court is cognizant of the role played by a housewife as a wife, mother, daughter, daughter-in-law etc. which cannot be accurately quantified in terms of monetary form, no matter how skilfully Courts and Tribunal deal with the same. Monetary compensation can provide financial cushion to the bereaved family, but certainly cannot make up for love, care and warmth provided by a mother or a wife to her family. However, for the purpose of achieving the statutory aim of the Motor Vehicles Act, this Court must proceed ahead to compute the compensation towards the death of Late Smt. Mithilesh.



NOTIONAL INCOME OF THE DECEASED

15. Dealing with the issue of notional income of the deceased is imperative to determine the loss of dependency and overall quantum of the compensation towards death of the deceased. On perusal of the record, it was found that there exists no documentary evidence which establishes monthly income of the deceased or the nature of occupation undertaken by her. There is also no evidence with respect to the educational qualification of the deceased. The only evidence available on record is the testimony of PW1, Smt. Janki Devi who testified that the deceased was working along with her daughter in a tailoring shop. However, the said testimony is not supported with any documentary evidence.
16. Learned Claims Tribunal assumed income of the deceased as minimum wages for a non-matriculate worker, as per *Royal Sundaram Alliance Insurance Co. Ltd.* (Supra). It is a trite law that in absence of any evidence, documentary or otherwise, to establish the earnings of the injured, the Courts have to determine the income of the injured on the basis of the minimum wages notified under the Minimum Wages Act. In view of the same, learned Claims Tribunal rightly fixed the income of the deceased as Rs. 7,098/- as per the minimum wages Act.

QUANTUM OF THE COMPENSATION

17. At this juncture, it is relevant to highlight that the Motor Vehicles Act, 1988 (*“the Act”*) is a beneficial Legislation. The Hon’ble Supreme Court time and again has reiterated that the Act stipulates that there



should be grant of “just compensation”. Thus, it is crucial for the Courts to determine “just compensation” to ensure that it is not a bonanza or a windfall, and simultaneously, should not be a pittance. The Courts should pragmatically compute the loss sustained which has to be in the realm of realistic approximation.

18. The deceased was of the age of 35 years at the time of her premature death, therefore, an addition of 40% of the established income of the deceased has to be granted under the head “Future Prospects” instead of 25% as awarded by learned Claims Tribunal. The Hon’ble Apex Court in the case of ***Pranay Sethi (Supra)*** observed the following with regard to grant of compensation under the head “Future Prospects”:-

“57. ... The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

19. No deduction towards self-expense was made by learned Claims Tribunal. However, with regard to the deduction to be made towards “Personal and living Expenses”, the Hon’ble Supreme Court in ***Pranay Sethi (Supra)*** upholds the deduction ascertained in the case of ***Sarla Verma & Ors. v. DTC & Ors.*** reported as **(2009) 6 SCC 121**. As per the judgment passed by the Hon’ble Supreme Court in the case of ***Sarla Verma (Supra)*** deduction are to be calculated as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362] , the general



practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

20. Deceased has left behind three children and her mother-in-law. The Hon'ble Supreme Court in the case of Jayashree v. Cholamandalam MS General Insurance Company, Civil Appeal No. 6451/2021, held that mother-in-law is a legal representative and hence she can maintain a Claim Petition under Section 166 of the MV Act. Hence, it would be appropriate, as per the settled position of law, to deduct 1/4th of the income towards the personal expenditure as the deceased left behind four dependents.
21. Since the deceased was aged 35 years at the time of her untimely death, multiplier of 16 will be applied for calculating loss of dependency as stated in the case of *Sarla Verma* (Supra).
22. Further in the case of Pranay Sethi (Supra), the Hon'ble Supreme Court has held that for the conventional heads, namely, “Loss of Estate”, “Loss of Consortium” and “Funeral Expenses” amount of compensation is fixed as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of three years. Furthermore, three children of the deceased shall be entitled to a parental consortium of Rs. 44,000/- each.
23. Therefore, on basis of the above discussion, the compensation is quantified as below:



	HEAD	AMOUNT
A.	Loss of dependency a. Rs. 7098/- + 40% (Rs. 2839.2) = Rs. 9,937.2/- b. Rs. 9937.2/- minus 1/4 th of 9937.2/- (i.e. 2484.3) = Rs. 7,452.9/- c. Rs. 6,952.9/- X 12 X 16 = Rs. 14,30,956.8/-	Rs. 14,30,956.8/-
B.	Parental consortium (Rs. 44,000 X 3)	Rs. 1,32,000/-
C.	Loss of estate	Rs. 16,500/-
D.	Funeral Expenses	Rs. 16,500/-
E.	Love and Affection	Nil
	(A+B+C+D+E)	Rs. 15,95,956.8/- (rounded as 15,95,957/-

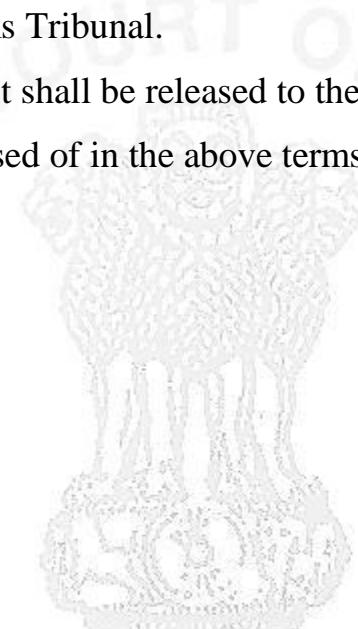
24. Accordingly, the compensation granted by the learned Claims Tribunal towards the death of Late Smt. Mithilesh is reduced from Rs.17,38,424/- to Rs. 15,95,957/-.
25. This Court, vide order dated 29.05.2013, directed the appellant to deposit the entire awarded amount along with the up-to-date interest accrued thereon with the Registrar General of this Court. Appellant Company deposited the awarded amount of Rs. 19,64,390/- in form of a cheque in favour of the Registrar general of this Court out of which 50%, i.e. Rs. 9,82,195/-, was released in favour of Respondents no. 1 to 4.



26. The Registrar General of this Court is directed to release the entire differential amount along with the accrued interest thereon in favour of Appellant Company and the balance amount with accrued interest thereon may be released to Respondents No. 1 to 4 as per the terms and conditions fixed by learned Claims Tribunal within a period of four weeks.
27. This Court is not inclined to interfere with the rate of interest awarded by the learned Claims Tribunal.
28. The Statutory deposit shall be released to the Appellant.
29. Appeal stands disposed of in the above terms. No order as to costs.

GAURANG KANTH, J.

JULY 13, 2023
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