

HIGH COURT OF DELHI

BENCH : HON'BLE MR. JUSTICE DHARMESH SHARMA

Date of Decision: April 15, 2024

MAC. APP. 826/2017 & CM APPL. 33443/2017

RELIANCE GENERAL INSURANCE CO LTD. Appellant

VERSUS

JAGDISH PRASAD AGGARWAL & ORS. Respondents

Legislation:

Section 173 of the Motor Vehicles Act, 1988

Section 166 read with Section 140 of the Motor Vehicles Act, 1988

Subject: Motor accident claims appeal concerning the assessment and quantum of compensation awarded by the Motor Accident Claims Tribunal - The appellant challenges the amount awarded as exaggerated and contends the learned Tribunal erred in its appreciation of evidence regarding the income and dependency calculations of the deceased.

Headnotes:

Factual and Procedural Background – Victim hit by vehicle; compensation awarded by Tribunal; Insurance company appeals the quantum, disputing calculations related to dependency and other allowances – Respondent No.6 held guilty of negligent driving; compensation awarded for various losses including consortium and affection - [Paras 1-3]

Insurance Appeal – Challenged Tribunal’s calculation; error in accounting remarriage of the deceased's spouse and adoption of a child post father's death - Dispute over income assessment of deceased based on tax returns and business income; argued reduced dependency calculation due to remarriage and existing income sources - [Paras 4-5]

Tribunal's Assessment Reviewed – Detailed review of the Tribunal's methodology in assessing compensation; key issues involve recalculating based on correct income figures, reducing awards for non-compensable claims, and adjusting for remarriage and personal expenses - Relied on judgments for setting standards of compensation for loss of consortium and funeral expenses - [Paras 7-10]

Decision – Modified compensation calculations based on adjusted income figures and legal precedents - Ruling includes revised awards for funeral expenses, loss of consortium, and overall dependency calculations - Application of a standard deduction and adjustment for future prospects in dependency calculation - Interest rate on compensation reduced from 9% to 7.5% per annum; directive for timely payment by insurance with penalties for delays - [Paras 11-16]

Referred Cases:

- National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680
- V. Subbulakshmi v. S. Lakshmi (2008) 4 SCC 224
- Rani Gupta v. United India Insurance Co. Ltd. (2009) 13 SCC 498
- The Oriental Insurance Co. Ltd. v. Sohan Lal 2024 SCC OnLine Del 1966

Representing Advocates:

For Appellant: Ms. Prerna Mehta

For Respondents: Mr. Somnath Parashar

JUDGMENT

1. This appeal is preferred by the appellant/insurance company in terms of Section 173¹ of the Motor Vehicles Act, 1988², assailing the impugned judgment-cum-award dated 29.07.2017 passed by the learned ADJ-cum-Presiding Officer, Motor Accident Claims Tribunal³, North-West District, Rohini, Delhi, whereby compensation

¹ 173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.

² Act

³ Tribunal

in the sum of Rs.28,94,000/- with interest @ 9% per annum from the date of filing of DAR/Claim petition till realization has been awarded in favour of respondents No.1 to 5. The appellant/insurance company has primarily challenged the quantum of compensation on the ground that the compensation is highly exaggerated based on erroneous appreciation of evidence on the record by the learned Tribunal.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, victim/Sanjay Aggarwal, aged about 31 years, was hit by the offending vehicle bearing registration No. DL-5CQ-0030 on 03.06.2008, while crossing the road near his house. The vehicle was being driven by respondent No.6/Gaurav Pahwa and the vehicle was registered in the name of respondent No.7/Ajay Viurmani. The victim succumbed to his injuries and the claimants being his parents, wife, and two minor children (one

of whom, a girl child who is respondent No.5 in the present appeal, was born after the death of her father in December, 2008) instituted a claim petition under Section 166 read with Section 140 of the Act seeking compensation.

3. Avoiding unnecessary narrative of the proceedings before the learned Tribunal, suffice to state that evidently, the offending vehicle was insured for third party risks and respondent No.6 was holding a valid Driving Licence, and therefore, there was no violation of any terms and conditions of the policy of the insurance. The learned Tribunal while determining the culpability with respect to the motor accident *vide* issue no. 1, passed a detailed order holding that respondent No.6 was guilty of rash and negligent driving of the offending vehicle, and thereby, causing the death of the deceased/Sanjay Aggarwal. This finding has not been assailed by the appellant insurance company.

LEGAL SUBMISSIONS:

4. Learned counsel for the appellant/insurance company has vehemently urged that the learned Tribunal failed to take into consideration the fact that the wife of the deceased had remarried after the death of her husband in the motor accident and respondent No.5 was adopted by her grandparents, and therefore, there was no ground to award a sum of Rs.1,50,000/- towards loss of love and affection as well as an additional amount of Rs.1,50,000/- towards loss of consortium to the claimants. Further, alluding to the evidence in the nature of income tax returns of the deceased for the financial years 2007-08, 2008-09 and 2009-10, it was contended that the learned Tribunal failed to appreciate that the deceased had a permanent rental income, which would have continued posthumously, and the evidence led by the claimants to the effect that the deceased was running a Hindu Undivided Family (HUF) business would also lead to an inference that the said business continued even after his death, and therefore, the assessment of loss of financial dependency by the learned Tribunal was totally flawed.

5. Relying on a decision in **V. Subbulakshmi v. S. Lakshmi**, it was vehemently urged that the income tax returns could not have been relied upon by the learned Tribunal since the same were filed after the death of the deceased. It was further canvassed that since the wife had got remarried after the death of her husband on 16.05.2010 (as testified by PW-4/wife in her testimony), the deduction towards personal use and living expenses should have been 1/3rd whereas, 1/4th was deducted, for which, reliance is placed upon the decision in the case of **Rani Gupta v. United India Insurance Co. Ltd.**

6. *Per contra*, learned counsel for the claimant vehemently urged that the deceased hailed from a financially well-established family and was running his own business and the learned Tribunal rather failed to appreciate that Rs.1 lac had been deducted towards standard deduction from the total annual income and the learned Tribunal erroneously reckoned only the average annual taxable income of Rs.1,39,920/- based on the income tax returns filed by the deceased whereas, it should have been the annual aggregate income Rs. 2,39,920/- minus income tax component.

ANALYSIS AND DECISION:

7. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties and I have perused the relevant records of the case. It would be apposite to reproduce the reasons given by the learned Tribunal while deciding the quantum of compensation, which read as under:

“22. The petitioners have claimed that deceased Sh. Sanjay Aggarwal was aged about 31 years at the time of the accident and to prove the same petitioner has placed on record the copy of the Pan Card in which the date of birth is mentioned as 25.08.1976.

23. That the petitioner has also placed on record the income tax return of the financial year 2007-2008, 2008-09, 2009-2010 and the same has been proved by PW-1 official from the income tax department and the deceased as mentioned his taxable income as 1,39,920 per annum and the deceased was also doing the business as proprietor M/S Perfect Metal Industries and was died at the age of 31 years of his age and there shall be addition of 50% for the purpose of the future prospects.

24. In the given facts and circumstances, the deceased was an income tax payee and was having the fixed income and there shall be addition of 50% of his income for the purpose of the future prospects. Reliance is placed upon *Rajesh & Ors. Vs. Rajbir Singh & Ors.* 2013 ACJ 1403, decided by three bench judge of the Hon'ble Supreme Court decided on 12.04.2013.

25. When, the accident took place, the age of the deceased was 31 years. Therefore, the multiplier of 16 would be applicable by taking the age of the deceased, Reliance is placed upon *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors.* 2009 A.C.J 1298 SC.

26. It is pertinent to mention that, at the time of the death of Sanjay Aggarwal, he left behind his wife, Smt. Anju Aggarwal, one daughter

Ms. Kritka Aggarwal, his father Sh. Jagdish Parsad Aggarwal and his mother Smt. Deoki Aggaral and there were four dependents upon the deceased Sh. Sanjay Aggarwal at the time of the accident and there shall be deduction of the monthly income of the deceased Sanjay Aggarwal. Reliance is placed upon Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors.

27. It is worth mentioning that after the death of four months of Sh. Sanjay Aggarwal, his wife Smt. Anju Aggarwal gave birth to another girl child Kumari Nandani. And Smt. Anju Aggarwal got re- marriage with Sh. Naresh Chaudhary and residing with him alongwith her elder daughter Kurmari Kritka and another daughter Kumari Nandani is residing with her grand parents (parents of the deceased).

28. That, the calculation of just compensation is as under:-
1,39,920+50%/(Future Prospects) Rs.1,39,920+ Rs.69,960
 $2,09,880 \times 16 \times 3/4 = 25,18,560/-$ (Rupees Twenty Five Lacs Eighteen Thousand Five Hundred and Sixty Only) is awarded just compensation (Reliance is placed upon KEITH ROWE Vs.Prashant Sagar & Ors., MACP, APP NO. 601/07 DECIDED ON 15.01.2010 by Hon'ble High Court of Delhi and A. Manavalagan Vs. A. Krishnamurthy & Ors. Reported at 1 (2005) ACC 304. 29. Apart from above, a sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) is also awarded towards funeral expenses, under this head. Reliance is placed upon Shri Ram General Insurance Ltd. Vs. Usha decided by Hon'ble Delhi High Court on dated 05.05.2016.

30. Nevertheless, the petitioner is also entitled to compensation on account of loss of love and affection as deceased died leaving behind his wife, one daughter and his parents, As already discussed above, deceased was aged around 31 years old at the time of his death and he died at a very younger age and his wife, one daughter and their parents have been deprived for love and affection. Although, no amount of money can compensate for the loss of love and affection of petitioners towards deceased, but keeping in view the facts and circumstances of the case. Including the young age of deceased, it cannot be overlooked that he was a ray of hope for the petitioners that deceased would provide great financial, moral and physical support to his wife and one daughter and their parents. Thus, I hereby an award a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only). Reliance is placed upon JIJU Kuruvila

& Ors. Vs. Kunjamma Mohan & Ors. Decided by Hon'ble Supreme Court in Civil Appeal No. 4945-4598 decided on 02.07.2013.

31. That the petitioner is also entitled for compensation on account of consortium. Therefore, this tribunal also hereby award a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) under this head.
32. That the petitioner is also entitled under the head of loss of estate. Therefore, Rs. 50,000/- (Rupees Fifty Thousand Only) is awarded under this head. Reliance is placed upon Shri Ram General Insurance Ltd. Vs. Usha decided by Hon'ble Delhi High Court on dated 05.05.2016.
33. Thus, the total compensation is assessed as under:

1.	Compensation	Rs.25,18,560/-
2.	Funeral expenses	Rs.25,000/-
3.	Loss of love and affection	Rs.1,50,000/-
4.	Consortium	Rs.1,50,000/-
5.	Loss of estate	Rs.50,000/-
	Total	Rs.28,83,560/-
	Rounded off	Rs.28,94,000/-

Issue No.2 is decided accordingly.”

8. At the outset, the aforesaid reasons including assessment of compensation are flawed. First things first, certainly, in view of the decision in the case of **National Insurance Co. Ltd. v. Pranay Sethi**, the compensation towards loss of love and affection has to be done away with. Insofar as the loss of consortium is concerned, evidently, there were four legal survivors at the time of the death of the deceased and one child was born afterwards, but to my mind there is no reason to deny compensation under such head to the child born posthumously. We need to appreciate that the child had lost the love and affection and comfort of her father even before she was born, which is a kind of loss that cannot be compensated in terms of money but could only be a token amount of Rs.40,000/-.

9. Therefore, in terms of the decision in **Pranay Sethi (supra)**, the compensation towards loss of consortium for five members of the family should be Rs.40,000/- per head, totalling to Rs.2,00,000/-. The compensation towards loss of estate @ Rs.50,000/- also has to go away, which, as per the decision in **Pranay Sethi** could only be Rs.15,000/- besides bringing down

the amount of compensation towards funeral expenses from Rs.25,000/- to Rs.15,000/-.

10. Insofar as that determination of compensation for the loss of financial dependency is concerned, evidently, the deceased was 31 years of age and he was self-employed. It may be recalled that the death of deceased occurred on 03.06.2008 and the claimants during the course of proceedings examined PW-1/Puneet Kumar Gupta, Inspector from Income Tax Department, Ward No.25, New Delhi, who produced the assessment record for the year 2007-08, which was filed on 15.02.2008 i.e., prior to the date of the accident and death; for the assessment year 2008-09, which was filed on 14.11.2008 and lastly, assessment for the year 2009-10, which was filed on 30.10.2009, which are collectively exhibited as Ex.PW-1/A. Further, the income tax records of Mr. Sanjay Aggarwal (HUF) for the assessment year 2007-08 was produced, which was filed on 03.07.2007 besides assessment year 2008-09, which was filed on 30.07.2008. Likewise, the record was produced for the assessment year 2009-10, which was filed on 31.07.2009 and for the assessment year 2010-11, which was filed on 22.06.2010 and the same was marked collectively as Ex.PW-1/B. Insofar as the individual income assessment for income tax record is concerned, the income statement of the deceased would come as under:

Assessment year	Income Tax from Property	Income from Other Resources	Aggregate Income	Standard Deduction	Taxable Income
2007-2008	Rs. 71,400/- (Filed on 15.02.2008)	Rs. 1,76,690/-	Rs. 2,48,090/-	Rs. 1,00,000/-	Rs. 1,48,090/-
2008-2009	Rs. 71,400/- (Filed on	Rs. 2,06,070/-	Rs. 2,77,470/-	Rs. 1,00,000/-	Rs. 1,77,470/-

	14.11.2008)				
2009-2010	Rs. 71,400/- (Filed on 31.10.2009)	Rs. 1,29,482/-	Rs. 2,00,882/-	Rs. 1,00,000/-	Rs. 1,00,882/-
Total Taxable Income					Rs. 4,26,442/-
Aggregate of three years taxable income					Rs.1,42,147/-

11. Unhesitatingly, the decision in the case of **V. Subbulakshmi (supra)** cited by learned counsel for the appellant has no application since in the said case, there was only one income tax return, which was filed long after the death of the deceased, whereas in the instant matter, the deceased had filed the return on 15.02.2018, much prior to his death and in so far as the income tax return for the subsequent years are concerned, there is a visible pattern and apparently there are no fictitious entries with regard to “income from other sources” and the learned Tribunal very rightly found that the average taxable income of the last three years in question came to be Rs.1,39,920/-.

12. However, as regards the aspect of earnings from Sanjay Aggarwal (HUF) business is concerned, the evidence on record is quite shaky and even PW-2, who is the father of the deceased, had not cared to lead any evidence in this regard. Evidently, the father was also self-reliant and engaged in business probably with the elder brother of the deceased. There was no ground to assume any further earning of the deceased, other than what has been laid before the learned Tribunal in terms of the aforesaid income tax returns.

13. All said and done, I find that there is substance in the plea by the learned counsel for the claimants that the learned Tribunal should have reckoned the average of the aggregate annual income including the deduction towards standard deduction and for the sake of accounting convenience, should have kept aside and deducted at least 33% of the taxable income towards income tax liability. Viewed with such perspective,

the aggregate income should be reckoned to be Rs.2,39,920/- minus the amount of rental income of Rs.71,400/- that obviously continued even after his death. Hence, the aggregate annual income would be Rs.1,68,520/-. Further, keeping aside the permissible amount of standard deduction of Rs.1,00,000/-, 1/3rd of the balance Rs.68,520/- can be kept apart towards income tax, which comes to Rs.22,840 /-. Thus, the income for the purposes of reckoning the annual loss of financial dependency comes to Rs.1,45,680/- . Further, 50% is added towards future prospectus, which totals to Rs.2,18,520/-. 14. Keeping in mind that the wife got remarried after the accident, and the father of the deceased was probably engaged in business too, it would be appropriate that 1/3rd be deducted towards personal use and living expenses, and therefore, the loss of dependency comes to Rs.1,45,680 /- to which the multiplier of „16“ is applied and therefore, the total compensation towards loss of dependency comes to Rs.23,30,880/-.

15. In view of the foregoing discussion, a total compensation of Rs.25,60,880/- {23,30,880+2,00,000+15,000+15,000} (Rupees twenty-five lacs sixty thousand eight hundred and eighty only) is hereby awarded. However, there is warranted interference as regards the rate of interest @ 9% per annum granted from the date of filing of DAR/petition till the date of realisation. This Court invites reference to a decision of this court in the case of **The Oriental Insurance Co. Ltd. v. Sohan Lal**, wherein it was reiterated that ordinarily, the *pendente lite* interest should be reckoned @ 7.5%. The DAR/claim petition was filed on 03.01.2009 and it is apparent from the record that the long delay in concluding the trial occurred primarily on account of the claimants not being able to lead evidence in a timely manner. Further, since there is no exceptional circumstance to award interest @ 9% per annum, the same is reduced to 7.5% per annum.

16. Accordingly, the present appeal is dismissed and the impugned judgment-cum-award dated 29.07.2017 is hereby *suo motu* modified thereby awarding a total compensation of Rs.25,60,880/- with interest @ 7.5% per annum from the date of filing of DAR/claim petition till realisation.

17. The amount of compensation be deposited within four weeks from today, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum till realization. It is further directed that the amount of compensation be released to the claimants/respondents in the proportions as indicated by the learned Tribunal i.e. 10% and 20% to the father and mother of the deceased respectively; 10% in favour of the wife of the deceased and 30% each to the two daughters with other stipulations as

regards the investments of such funds in fixed deposit or other financial deposit.

18. The pending application also stands disposed of.

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