
(2025) 04 DEL CK 1065

In the Delhi High Court

Case No : Review Petition No.122 Of 2024 & Civil Miscellaneous Application No. 9536 Of 2025 In MAC. APP. 492 Of 2016

M/s New India Assurance Co Ltd

APPELLANT

Vs

Sukhpal Kaur & Ors

RESPONDENT

Date of Decision : 24-04-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 47 Rule 1

Motor Vehicles Act, 1988 — Section 169

Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 — Section 3

Citation : (2025) 04 DEL CK 1065

Hon'ble Judges : Dharmesh Sharma, J

Bench : Single Bench

Advocate : Navdeep Singh, Subhash Singh, Sanjay Dewan, Anish Dewan, Yash Yadav, Garima Verma, Aayush D, Shruti Jain, Kashish Jain, Chitranshi, Yangtsapila Sangtam, Sanjeev Kumar Baliyan, Nirbhay Sharma, Yuvraj Sharma, Pankaj Seth

Final Decision : Dismissed

Judgement

Dharmesh Sharma

REVIEW PET. 122/2024 & CM. APPL. 9536/2025 in MAC. APP. 492/2016

1. The present review petition has been preferred by respondents No. 1 to 4/ claimants, being the wife and children of the deceased, Late Sh. Iqbal Singh Dosanjh, seeking review of the judgment dated 29.02.2024 passed by this Court vide which the appeal preferred by the appellant/Insurance Company against the judgment-cum-award dated 21.03.2016, passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, New Delhi 'MACT', was partly allowed, thereby reducing the compensation amount from Rs. 2,23,34,350/- to Rs. 49,29,860/-, which was directed to be paid to the widow of the deceased along with interest at the rate of 12% per annum from the date of filing of the petition, i.e., 07.04.2010, till the date of realisation.

2. Learned counsel for the respondent Nos 1 to 4/claimants submitted that the impugned judgment has been assailed on the ground that this Court did not consider that the Income Tax Return 'ITR' for the year 2007 clearly reflected the deceased's annual income as US \$97,500, which had been appropriately relied upon by the learned MACT while determining the quantum of compensation. It is further contended that the ITRs for the years 2006, 2007, and 2008, which were placed on record, were never disputed or challenged by the appellant/Insurance Company before the learned Tribunal.

3. It is additionally submitted that the impugned judgment erroneously concluded that the ITRs had not been proved in accordance with law, nor were they authenticated through the Indian Embassy or Consulate, and that the documents were not certified downloads from the official website of the United States Internal Revenue Service. The respondents No. 1 to 4/claimants assert, however, that the said ITRs, as filed before the learned MACT, were duly exhibited, having been notarized and stamped by the competent authorities in the United States, as is evident from the documents filed on record. It is further urged that the appellant/Insurance Company neither raised any objection to the admissibility of the said documents nor subjected them to cross-examination. Consequently, the ITRs remained unchallenged and unrebutted on record, and the learned MACT rightly relied upon the same to assess the annual income of the deceased as US \$97,500.

4. It is further submitted by the respondents No. 1 to 4/claimants that this Court, while passing the impugned judgment, appears to have inadvertently proceeded on the basis of an annual income of US \$28,000 for the deceased. The respondents No. 1 to 4/claimants submit that the income of the deceased was duly proved on record by way of exhibited Income Tax Returns, which were neither disputed nor subjected to cross-examination by the appellant/Insurance Company, and thus remained unrebutted. Support in this regard is drawn from the judgment of the Supreme Court in Anjali and Ors. vs. Lokendra Rathod and Ors. 2022 SCC OnLine SC 1683.

5. It is further submitted that the deceased was not solely employed with McClatchy Newspaper but was also working with Stanislaus Food Products Company, in addition to running his own trucking business under the name Paneela Truck LLC. The respondents No. 1 to 4/claimants respectfully submit that the income from these multiple sources, as reflected in the ITR for the year 2006, appears not to have been fully taken into account by this Court. The Profit and Loss Statement for the said year records a business income of US \$85,205/-, and the ITR for 2007 reflects an income of US \$45,805/-. However, it appears that only the income from McClatchy Newspaper was considered in the impugned judgment. It is submitted that the ITR for the year 2007, which was duly exhibited, reflects the total combined wages and self-employment income subject to social security as US \$97,500/-, which was rightly relied upon by the learned MACT in assessing the annual income of the deceased.

6. Per contra, learned counsel for the appellant/Insurance Company questions the maintainability of the review petition. It was submitted that the applicant claimants wish this Court to pass a fresh judgment is impermissible in law. Learned Counsel for the appellant/Insurance company has relied upon the judgment in *S. Murali Sundaram v. Jothibai Kannan & Ors.* (2023) 13 SCC 515, wherein it was held that an erroneous order is subject to appeal before a higher forum and cannot form the basis for review under Order XLVII Rule 1 of the CPC 'Code of Civil Procedure, 1908'. It is submitted that the Tribunal erred in treating US \$97,500 as the income of the deceased based on a form downloaded from the U.S. Internal Revenue Service website, which merely reflects the maximum income subject to social security for that year—not the actual income earned. The ITRs filed were joint returns of the deceased and his spouse, and no effort was made to segregate the individual income of the deceased.

7. Reference is made to financial transcripts filed on record: for the year ending 31.12.2006, gross joint income is shown as US \$28,593 with taxable income of US \$1,815; for 2005, adjusted gross income is US \$26,065 and taxable income US \$4,871; and for 2007, adjusted gross income is US \$28,268 and taxable income US \$288. The 2005 return reflects wages and salary as US \$11,403 and total income as US \$27,100. It is thus submitted that there is no document on record establishing the individual income of the deceased as US \$97,500. The Self-Employment Tax Form for 2007 only indicates US \$97,500 as the ceiling for income subject to social security, not as proof of the deceased's earnings. Accordingly, the respondents No. 1 to 4/claimants have failed to substantiate the claimed income with credible, segregated evidence.

8. Learned counsel for the appellant/Insurance Company refutes the contention raised by respondents No. 1 to 4/claimants that the Income Tax Returns for the years 2006, 2007, and 2008 were not challenged or disputed. The claimants have placed on record copies of the said ITRs, purportedly certified by a Notary Public in California; however, it is submitted that these documents are not admissible in evidence as they have not been duly authenticated or countersigned by a consular officer, as required under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, which stipulates: -

"3. Powers as to oaths and notarial acts abroad. —

(1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within [a State]; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in [a State].

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or

done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person."

ANALYSIS AND DECISION

9. Upon hearing the learned counsels for the parties and on perusal of the record, this Court has no hesitation in holding that the present petition seeking review of the judgment dated 29.02.2024 passed by this Court is bereft of any merits.

10. This Court vide the aforesaid judgment held that there was no foundation for the assumption made by the learned MACT that the maximum amount of combined wages and earnings from self-employment of the deceased and his wife were subject to social security @ \$ 97,500. In fact, no documentary evidence was placed on record to establish that the deceased was receiving any social security allowance, and even if that were the case, it would have been co-terminus with his death.

11. Furthermore, although ITRs (Ex.PW-1/8) had not been proved in accordance with law, this Court, bearing in mind that proceedings before the learned MACT are summary in nature by virtue of Section 169 of the Motor Vehicles Act, 1988, proceeded to calculate the wages being earned by the deceased for the relevant period, as well as the Adjusted Gross Income, as under:-

Wages

2005

2006

2007

2008

11,403

11,923

15,971

14,454

CORRESPONDING FIGURES

Adjusted

2005

2006

2007

2008

Gross Income (in USD)

26,065

28,593

28,268

15,034

12. It is pertinent to mention here that, based on the aforesaid figures emanating from the ITRs (Ex.PW-1/8), it was found that the income reflected therein was not the combined income of the deceased and his wife, but the sole income of the deceased. Accordingly, this Court held as under: -

"17. Based on the aforesaid data that is deciphered from the ITRs (Ex. PW-1/8), it is clear that it was not the combined income, but sole income of the deceased. It would be just and reasonable to assume that the deceased was earning about \$28,000 p.a. Therefore, 1/2 is deducted towards personal use and expenses of the deceased and the loss of dependency comes to \$14,000/-. Taking into consideration the rupee-dollars currency conversion rate @ Rs.48.57 prevalent at that time, the amount comes to \$6,79,980/-. Further, adopting the multiplier of '7' as per the decision in the case of Sarla Verma v. DTC (2009) 6 SCC 121, total loss of financial dependency comes to Rs. 47,59,860/-. As the deceased was 64 years of age, no loss of future prospects is to be reckoned in terms of the decision in National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680. Lastly, taking into consideration the loss of estate @ Rs.15,000/-, loss of consortium @ Rs.40,000/- and funeral expenses @ Rs.15,000/- as per Pranay Sethi (supra) and loss of love and affection @ Rs.1,00,000/-, the total amount of compensation comes to Rs. 49,29,860/- (Forty Eight Lacs Twenty Nine Thousand Eight Hundred Sixty Only).

Heads under Compensation

Amount (In Rupees)

Total loss of financial dependency

47,59,860/-

Loss of consortium

40,000/-

Loss of estate

15,000/-

Funeral expenses

15,000/-

Loss of love and affection

1,00,000/-

Total Compensation

49,29,860/-

18. A careful perusal of the record shows that the present appeal was filed on 11.07.2016 and the operation of the impugned judgment had been stayed. Therefore, in the totality of the facts and circumstances of the case, this Court finds that there are no grounds made out to interfere with the directions of the learned MACT to make payment of the compensation @ 12% p.a.”

13. The plea of the learned counsel for respondents No. 1 to 4/claimants, that the income of the deceased should have been reckoned @ \$ 97,500. is without any foundation. This Court has correctly taken into account the net earnings of the deceased from his business. It is pertinent to mention that during the course of arguments on the present review petition, a question was posed to the learned counsel for the parties that assuming the social security allowance was payable @ \$ 97,500, in a case where an individual was earning less than the said amount, would there be any replenishment by the US Government? The answer was given in the negative.

14. In view of the aforesaid discussion, there is demonstrated no error apparent on the face of the record. Hence, the present petition, seeking review of the impugned judgment dated 29.02.2024, passed by this Court, is hereby dismissed. The parties are left to bear their own costs.

15. It was stated by the learned counsel for the appellant insurance company during the course of arguments that the entire amount of compensation, along with interest, in terms of the judgment of this Court, has already been deposited with the learned MACT.

16. Hence, the respondent No. 1 /claimant shall be entitled to realisation of the said amount in her favour, in accordance with the law, without any further delay.

17. The pending application also stands disposed of.