
(2025) 02 DEL CK 1067

In the Delhi High Court

Case No : MAC APPL. No. 540 Of 2018 & Civil Miscellaneous Petition No. 23941 Of 2018

National Insurance Co. Ltd

APPELLANT

Vs

Naresh Gupta

RESPONDENT

Date of Decision : 03-02-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 02 DEL CK 1067

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Arihant Jain, Mayank Ranjan Yadav, Himanshu Jawa

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J.

1. An Appeal bearing MAC. APP. 540/2018 under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the Insurance Company to challenge the Award dated 08.03.2018 vide which a compensation in the sum of Rs.8,45,517/- along with interest @ 9% has been granted to the Claimants on account of the demise of Smt. Geeta Devi, aged 64 years old, in a road accident, on 15.11.2013.

2. Briefly stated, on 15.11.2013 at about 09:00 A.M. deceased Smt. Geeta Devi along with Harish, Abhishek, Shreya, Sonia and Santosh were travelling in Santro Car which was being driven by Shri Manish. When the car reached Sampla, Jhajjar, Haryana, a Tralla bearing registration No.RJ-36GA-2321 which was being driven by its driver Bhola Ram, came from the opposite side and hit the car. Consequently, Smt. Geeta Devi, Manish and Sonia died on the spot, while Harish, Abhishek, Shreya and Santosh suffered grievous injuries. Smt. Geeta Devi was admitted in the hospital, however, during her treatment, she died on 21.11.2013.

3. FIR No.749/2013 u/s. 279/337/304A IPC 1860 was registered at PS Jhajjar,

Haryana, against the Driver/ Sh. Bhola Ram.

4. The Claim Petition u/s. 166 and 140 of Motor Vehicles Act, 1988 was filed by the Claimants i.e. the two major sons and married daughter of the deceased seeking compensation on account of demise of their mother /Smt Geeta Devi in the road accident dated 15.11.2013.

5. The Ld. Tribunal awarded compensation in the sum of Rs. Rs.8,45,517/- along with interest @ 9% vide the Impugned Award dated 08.03.2018.

6. The Insurance Company has challenged the Award on the following grounds:

i. that the claimants are the two major sons and married daughter of the deceased and were not dependent upon the deceased; and

ii. that the deduction on account of personal expenses should have been as 50%, while no amount has been deducted.

7. Learned counsel on behalf of the respondents/Claimants has contended that even though the sons were major, but it cannot be said that they had no dependency on their mother. Moreover, the compensation stands correctly assessed and the Award does not merit any interference.

8. The Cross-Objections vide the Appeal bearing MAC. APP. 91/2020, have also been filed on behalf of the Claimants, who have asserted that they are entitled to enhanced compensation on the following grounds:-

i. that the total bills qua medical treatment amounted to Rs. 2 lakhs, but has only awarded Rs.1,36,293/-;

ii. nothing has been provided for loss of love and affection; and

iii. interest rate of only 9% has been awarded but should be 18%.

9. Submissions heard and record perused.

Quantum of Compensation : -

10. The Learned Tribunal assessed the Income of the deceased, a house wife, as Rs. 8086/- per month and has granted a sum of Rs. 6,79,224/-under the head of "Just Compensation" as under: -

" JUST COMPENSATION

18. That, the petitioners have claimed that the deceased Smt. Geeta Devi was a house wife and no income proof has been placed on record of deceased Smt. Geeta Devi. However, the monthly income of the deceased is assessed as minimum wages on the date of the accident i.e. 15.11.2013 and that was Rs. 8086/-per month.

That, the deceased Smt. Geeta Devi died leaving behind one married daughter and married two sons and none of them was dependent upon the deceased.

That, age of the deceased Smt. Geeta was 64 years at the time of the accident as mentioned in the Election I-card and according the age of the deceased, the multiplier of 7 would be applicable. Reliance is placed upon National Insurance Co. Ltd. Vs. Paraney Sethi decided by Five Judge bench of Hon'ble Supreme Court of India on 31.10.2017. Therefore, just compensation is assessed as under:- $8086 \times 12 \times 7 = 6,79,224/-$. Therefore, a sum of Rs. 6,79,224/- (Rupees Six Lakh Seventy Nine Thousand Two Hundred Twenty Four Only) is awarded as compensation under this head."

11. Evidently, the Learned Tribunal has erred in not applying the correct method to ascertain whether there were any Dependents and they suffered pecuniary loss and has not made any additions towards Future Prospects or deductions towards personal and living expenses.

12. Thus, the entire compensation needs to be revised in accordance with the settled principles of law.

Loss of Dependency:-

13. PW-1/Shri Naresh, son of the deceased Mrs Geeta, aged 64 years, deposed that he was about 48 years old and his father had already expired. His mother, the deceased was a housewife at the time of the accident and was survived by Two son and one married daughter, who are the claimants were dependent upon her gratuitous services. He had further deposed that they have suffered Pain, Agony, Mental torture and shock, Loss of Love and Affection and company of their mother, Loss of Enjoyment of Life, Loss of Future Prospects and Loss of Future Pecuniary Benefit, on account of demise of their mother which cannot be compensated in terms of money. In the cross examination dated 08.05.2017, he denied the suggestion that the Claimants were not dependent upon the deceased mother and had also denied that their mother was residing separately.

14. The second son Ajay Gupta, in his statement recorded before the Tribunal on 06.11.2017, stated that his monthly expenses were Rs.25,000/-per month and that he needs money for his daily expenses. He has also placed on record his proof of residence i.e. Election Id. Ex. PW1/2, which has his address same as that of the deceased.

15. Statement of Smt. Santosh Garg, married daughter of the deceased was also recorded before the Tribunal on 06.11.2017, wherein she deposed that she was a housewife and was residing with her husband and her two major sons.

Assessment of the Income of the Deceased:

16. The first aspect for determination is the principle for assessment of the income of the deceased housewife.

17. In the case of A. Rajam v. M. Manikya Reddy 1989 ACJ 542 the scope of the term 'services' was broadened to include services rendered by the mother/wife in the household, in cases relating to grant of compensation on account of

demise of a wife/mother. It was observed that: -

"The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.

While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

18. In the case of *Lata Wadhwa v. State of Bihar*, (2001) 8 SCC 197 while addressing the issue of payment of compensation on account of demise of victim housewives in a fire accident, the Apex Court acknowledged that the services rendered by them in the household need to be quantified and the compensation was granted accordingly.

19. While referring to the above judgment, the Apex Court in *Arun Kumar Agrawal v. National Insurance Co. Ltd.*, (2010) 9 SCC 218, while emphasising upon the crucial role of a housewife in managing the household, observed:-

"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.....

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."

20. In the Landmark Judgment of Kirti & Anr. v. Oriental Insurance Company Ltd., (2021) 2 SCC 166, Justice N.V. Ramana, opined that there are two categories of cases wherein the Court usually determines notional income of a victim- first category of cases where the victim was employed, but the claimants are not able to prove her actual income; and the second category of cases, wherein the Court has to determine the income of a non-earning victim, such as a child, a student or a homemaker.

21. While emphasizing upon the contribution made by a homemaker and the services rendered by a woman in a household, the Apex court observed that there can be no exact calculation or formula that can ascertain the actual value provided by an individual gratuitously. Thus, to streamline the calculation of notional income for homemakers and the grant of future prospects with respect to them for the purposes of grant of compensation, the following general principles were laid: -

"a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all;

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case;

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation."

22. In the case of Rajendra Singh and Ors. v. National Insurance Company Ltd. and ors. (2020) 7 SCC 256, the Apex Court ascertained the Notional Income of the deceased housewife, who expired in a motor vehicle accident dated 25.12.2012, as Rs. 5,000/-.

23. Recently, in the judgment of Arvind Kumar Pandey and Ors. v. Girish Pandey, Civil Appeal No. 2515 of 2024, decided on 16.02.2024, the Apex Court has settled that the direct or indirect income of a homemaker cannot be less than the prevailing Minimum Wages of the State at the time of the accident.

24. Similar view was taken by the Coordinate Benches of this Court in the judgments of National Insurance Co. Ltd. v. LRs of Sukhbir Singh, MAC APP

518/2013 decided on 13.07.2023 and Oriental Insurance Company Ltd. v. Sandeep Kumar and ors. MAC APP 246/2022 decided on 01.08.2023 that the Minimum Wages of an unskilled worker, of the State where the deceased homemaker was residing, can be used to determine the notional income.

25. It is therefore, now well established that notional income of the deceased housewife, who has been rendering gratuitous services to the household, may be taken not less than prevailing Minimum Wages as notified by the State, depending upon the facts and circumstances of the case.

26. Thus, in the present case, in absence of any evidence regarding the educational qualification and the contribution of the deceased/Smt. Geeta Devi in the household, the Minimum wages prevailing at the time of the accident notified by the State, would be the appropriate method to assess the pecuniary loss of the Claimants.

27. Therefore, the Ld. Tribunal has rightly assessed the income of the deceased as Rs. 8086/- per month, on the basis of the Minimum Wages on the date of the accident.

Future Prospects and Multiplier:

28. The next aspect for consideration is the addition towards future Prospects. The law settled in the judgment of Kirti (Supra) and National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680, is applicable to the case under consideration. Since the deceased was 64 years old on the date of the accident as per the Election card – Ex. PW1/2, the deceased is entitled to 10% addition towards future prospects and the multiplier of 7 would be applicable.

Whether Major Sons and Daughter can be considered as Dependants and Deduction towards Personal Expenses:-

29. The next aspect for consideration would be whether the two sons and married daughter can be considered as dependants upon their deceased mother and the deduction towards personal expenses. It has been challenged that the deceased was survived by her two major sons and one married daughter, who cannot be considered as financially dependent upon the deceased mother, who was a housewife.

30. The Apex Court in National Insurance Company Ltd. vs Birender AIR 2020 SC 434 while examining this issue, held that the legal representatives of the deceased have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider their Application irrespective of the fact whether the legal representative was fully dependant on the deceased and not limit the Claim to the conventional heads only.

31. The Madras High in the case of Branch Manager, ICICI Lombard General Ins. Co Ltd. v. Kaliyamoorthy, 2018 KHC 5479 (2020) 11 SCC 356, observed that a mother can continuously render her valuable service to her daughter, even if the

daughter is married and a married daughter would still continue to assist her mother, or father, in the case of need. Thus, the compensation can also be determined on the basis of the invaluable and gratuitous service rendered by the mother or the wife as the case may be. Thus, this contribution by means of service or income, both can be taken into account to determine the quantum of compensation.

32. This judgment was relied upon by the Kerala High Court in *United India Insurance Co. Ltd v. Shalumol* in MACA No. 1768 of 2021, wherein the Court expanded the scope of "Loss of Dependency" and observed that financial dependency is not the 'ark of the covenant' and the term dependency also includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money.

33. Applying the above principles in the present case, it cannot be overlooked that the only witness who has appeared in support of the Claim Petition was PW1-Shri Naresh Gupta, who deposed that the Claimants were dependent upon the gratuitous services rendered by their deceased mother. From the Election ID/Address proof of both the brothers, it emerges that they were residing together at H. No. 108, Rajinder Park Extension Nangloi Delhi. Thus, PW-1/Sh. Naresh and Sh. Ajay Gupta, continued to be the dependent on the deceased mother as a mother's role extends far beyond mere financial considerations, involving invaluable gratuitous services like managing household affairs, offering emotional stability, providing psychological comfort, etc..

34. However, the sister Smt. Santosh has not claimed that she was dependent upon her deceased mother for gratuitous services and has not appeared as a witness. Rather she made a statement in the Court on 06.11.2017 that she was married and has been residing separately with her husband and children in the matrimonial home. She did not claim herself to be dependant upon the services of the mother in any manner.

35. In the absence of any evidence to establish that the married daughter was dependant upon services of Mother, it is held that PW-1/Sh. Naresh and Sh. Ajay Gupta, who were residing with the mother, were dependent upon the gratuitous services the deceased.

36. Therefore, in light of the judgment of *Sarla Verma v. DTC*, (2009) 6 SCC 121, 1/3rd deduction was liable to be made on account of the personal expenses of the deceased.

37. Thus, the Total Loss of Dependency is re-calculated as under: -

- a. Rs. 8,060 + Rs. 806(10% Income) =Rs, 8,866/-p.m.;
- b. Rs. 8,866 – 1/3rd towards personal expenses = Rs. 5,910.66/-p.m.;
- c. Rs. 5910.66 x 12 X 7 = Rs. 4,96,496/- .

38. In view of the above, the Total Loss of Dependency to the family of the deceased comes to Rs. 4,96,496 which is rounded off to Rs 5,00,000/-.

Reimbursement of Medical Bills:-

39. It is asserted by the Claimants that the Id. Tribunal has erred in awarding only Rs.1,36,293/- towards medical bills, when the Claimants had claimed Rs. 2,00,000/- towards medical expenses.

40. The Id. Tribunal has awarded the compensation of medical expenditure on the basis of the bills adduced by the Claimants. There is no evidence of additional expenditure.

41. Thus, the compensation awarded under the head of Medical Bills does not warrant any interference.

Non-Pecuniary Losses: -

42. Id. Tribunal had not awarded any compensation for either Loss of Consortium or Love and Affection.

43. In the case of United India Insurance Co. Ltd. vs. Satinder Kaur, 2020 SCC OnLine SC 410, it was observed that the judgment of Pranay Sethi (Supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. Thus, the Apex Court after taking note of the fact that several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection, directed the Tribunals and High Courts to award compensation only for loss of consortium, which is a legitimate conventional head.

44. Thus, it is evident that loss of love and affection is encompassed in loss of consortium.

45. In the present case, the claimants are the two major sons and one married daughter of the deceased, and each is entitled to Rs. 40,000/- i.e. total Rs. 1,20,000/- towards compensation of Loss

Rate of Interest:-

46. The last ground of challenge relates to the interest awarded by the Id. Tribunal which is claimed to be on the lower side. The Id. Tribunal has awarded 9% interest rate on the compensation, while the Claimants have claimed 18% p.a.

47. While relying upon the judgment of the Apex Court in Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in Reena Raghav (Supra) refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal in the Impugned Award and also observed that the Appellant/Insurance Company had only orally made a submission claiming

the prevalent rate of interest to be 7.5% p.a. that too, on the basis of Google search while no document had been placed to support the plea of interest being too high.

48. The Appellant has not produced any document to show the rate of interest that was prevailing in the year 2013-14. In the absence of any evidence there is no reason to interfere with the rate of interest awarded, @ 9% p.a., by the learned Tribunal.

Relief:-

49. The total compensation thus, is recalculated as:

Sr. No.

Head of Compensation

Compensation Awarded by the Tribunal

Compensation Awarded/Modified by this Court

1.

Medical Expenses

Rs. 1,36,293/-

Rs.1,36,293/-

2.

Just Compensation (loss of dependency)

Rs. 6,79,224/-

Rs. 5,00,000/-

3.

Funeral expenses and Loss of Estate

Rs. 30,0000/-

Rs.30,000/-

4.

Loss of Consortium

NIL

Rs. 1,20,000/-

TOTAL COMPENSATION

Rs.8,45,517/-

Rs. 7,86,293/-

Rounded off to

Rs. 7,90,000/-

50. Thus, the total compensation granted to the Claimants is re-calculated as Rs. 7,90,000/- along with interest @9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 08.03.2018 of the learned Tribunal.

51. The excess amount, if any and the statutory deposit be returned to the Insurance Company.

52. The Appeal MAC. APP. 540/2018 of the Insurance Company is allowed.

53. The Cross-objection in MAC. APP. 91/2020 filed on behalf of the Claimants, is dismissed.

54. Both the Appeals are accordingly disposed of along with the pending Application(s), if any.