

(2025) 03 DEL CK 0969

In the Delhi High Court

Case No : MAC.APP. No. 369 Of 2022 & Civil Miscellaneous Petition No. 31056 Of 2024

Oriental Insurance Co Ltd

APPELLANT

Vs

Sushila & Ors

RESPONDENT

Date of Decision : 04-03-2025

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337
Motor Vehicles Act, 1988 — Section 140, 163A, 166, 173
Income Tax Act, 1961 — Section 48

Citation : (2025) 03 DEL CK 0969

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Ravi Sabharwal, Anshuman Bal

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J

1. Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the Appellant-Insurance Company challenging the Award dated 05.09.2022 granting a compensation in the sum of Rs. 9,79,760/-along with interest @ 7% per annum, on account of death of an 11 years old child, in a road accident on 01.10.2015.

2. Briefly stated, on 01.10.2015 at about 9:30 p.m., Komal, aged 11 years (hereinafter referred to as "deceased") was walking alongside the Bypass Road, Santosh Nagar, Faridabad with her Aunt-Hasmukhi, when she and her Aunt were hit by a car bearing No. DL4CAL4907 (hereinafter referred to as "offending vehicle"). Both the child and her Aunt were taken to Sarvodaya Hospital, Faridabad for medical treatment, wherefrom the deceased was referred to Safdarjung Hospital, Delhi where she expired on 04.10.2015 during the course of treatment.

3. The FIR No. 523/2015 was registered at PS Sarai Khawaja, Faridabad at the instance of one, Tek Ram. After investigation, Chargesheet was filed Section 279/337/304-A of the Indian Penal Code, 1860.

4. The Claim Petition was filed by the parents of the deceased under Section 166 read with Section 140 of the Motor Vehicle Act, 1988. After trial, the Claimants were granted a compensation of Rs. 9,79,760/- along with interest @ 7% per annum on account of death of their child, Komal in the road accident.

5. The learned Tribunal has granted recovery rights to the Insurance Company as the driver of the Offending Vehicle did not have a valid driving license.

6. The Appellant/Insurance Company has challenged the Award on the following ground:

(ii) that the compensation should have been calculated on the basis of Notional Income, for which reliance has been placed on the decision in Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & Ors. decided vide Special Leave Petition (Civil) No. 5345/2019, Kurvan Ansari Alias Kurvan Ali & Anr. vs. Shyam Kishore Murmu & Anr., decided vide Civil Appeal No. 6902/2021 and Rajendra Singh and Others vs. National Insurance Company Limited and Others, (2020) 7 SCC 256.

7. Learned counsel for the Respondents-Claimants have filed their Cross-Objections to the Appeal and have submitted that the compensation should have been calculated at Minimum Wages and the interest should be enhanced from @ 7% per annum to @ 9% per annum.

8. Submissions heard and record perused.

Loss of Dependency:-

Calculation of Loss of Income:-

9. The Appellant/Insurance Company has challenged the Loss of Income of the deceased by the learned Tribunal, which has been determined on the basis of the "inflation correction method/formula" by taking the Notional Income of the deceased as Rs.15,000/- in terms of the Second Schedule of the MV Act, 1988, as prescribed in the case of Chetan Malhotra (supra).

10. The core issue is what should be the principle for determination of Loss of Income in case of demise of the child in a road accident.

11. In the landmark judgment of R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1, the Apex Court, while considering the Claims arising on account of demise of 29 children in a road accident in November 1997, deemed it appropriate to refer to the notional income mentioned in the Second Schedule to determine the pecuniary loss of the claimants/dependants.

12. Thus, traditionally, in the case of death of a child upto 15 years, it was the notional income of Rs. 15,000/- in terms of Second Schedule to Section 163-A of

the Motor Vehicle Act, 1988, was being adopted which was from time to time corrected by taking into consideration the cost inflation index.

13. In *Kishan Gopal vs. Lala*, (2014) 1 SCC 244, involving the demise of a child, aged ten years, determined the notional income as Rs. 30,000/- p.a., by rationalizing the Notional Income of Rs. 15,000/- by applying the Cost Inflation Index.

14. Likewise, in the case of *Chetan Malhotra vs. Lala Ram*, MAC. APP. 554/2010, decided on 13.05.2016, the Coordinate Bench of this Court while deciding the Claim Petitions arising out of death of 15 children, observed that the notional income specified in the Second Schedule in November 1994, needs to be corrected as the amount specified therein, cannot hold good even after elapse of more than two decades because the value of money stands eroded on account of the effect of inflation. Thus, on the basis of inflation correction method, the method of Calculation was defined thus:

"71. Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :-

(i)....., for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (`15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation-corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997- 1998 shall be treated as the "base year" and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :- $15,000/- \times A \div 331$ [wherein the figure of ``15,000/-' represents the notional income specified in the second schedule requiring inflation-correction; 'A' represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of '331' represents the CII for the 'base year']

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv).....

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii)."

15. The Apex Court, in *Rajendra Singh vs. National Insurance Company Ltd.*,

2020 SCC OnLine SC 521 in regard to accident prior to 2019, decided the Notional Income of a 12-year-old child (deceased), as Rs. 36,000/- p.a., by observing that the structured formula provided in the Second Schedule was inadequate to assess the compensation.

16. Similarly, in *Kurvan Ansari*, (supra), the Apex Court assessed the notional income of deceased 7-year-old victim as Rs. 25,000/- p.a. considering the devaluation of the Rupee since the Schedule's introduction. Relying on this judgment, the Apex Court, in *Meena Devi vs. Nunu Chand Mahto & Ors.*, decided on October 13, 2022, observed that for the 12-year-old (deceased) victim, the appropriate Notional Income would be Rs. 30,000/-.

17. The general trend which thus, emerges from the above Judgments was to take the base of notional income as per the Second Schedule which was time to time adjusted by taking into consideration the Cost Inflation Index.

18. The Second Schedule however, was deleted w.e.f. 01.09.2019. Thus, the question as to what would should the basis of assessing the notional income of a child i.e. a non-earning member below 15 years of age, who is a victim of a motor vehicle accident, became a subject of extensive judicial discourse.

19. A definitive change of Principle of determination of the income of a deceased/disabled Child from Notional income with its correction on the basis of Cost Inflation Index to Minimum Wages was reflected in *Kajal vs. Jagdish Chand & Ors.*, (2020) 4 SCC 413, wherein while computing the Loss of earning for calculating compensation to be granted to an injured girl child aged around 12 years, who suffered permanent disability, the Supreme Court observed that the Courts have erred in taking notional income of Rs 15,000 p.a. as the girl was a young child of 12 years and held that this was not a proper way of assessing the future loss of income, because after studying, the child could have worked and would have earned much more than Rs.15,000 p.a. Hence, the Supreme Court assessed the notional income on the basis of the Minimum Wages payable to a skilled workman and opined that the same would be reflective of the minimum amount which she would have earned on becoming major.

20. Subsequently, in *Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd.*, (2022) 7 SCC 738, the Apex Court while considering the grant of compensation to the parents on account of injuries suffered by a five-year-old child, relied upon *Kajal* (Supra) and observed that the Notional Income should be calculated on the basis of Minimum Wages payable to a skilled worker.

21. The principle of Minimum Wages for skilled Worker has been adopted as the principle to calculate the Income of a deceased child by the Co-ordinate Bench of this Court in *United India Insurance Company Ltd. vs. Jamaluddin Khan & Ors.*, NC No. 2023:DHC:6242; *Om Prakash vs. Reliance Gen Ins Co. Ltd. and Ors.*, 2023 SCC OnLine Del 6526 and *Oriental Insurance vs. Reena Raghav*, 2023 SCC OnLine Del 6695.

22. The Minimum Wage criteria has also been adopted by Supreme Court in the recent judgment of Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr., SLP (C) No. 10996/2018, wherein the Apex Court applied the approach taken in Kajal (supra) and Master Ayush (supra) and ascertained the notional income of a 7-year-old injured child on the basis of the 'Minimum Wages paid to a skilled worker on a fulltime basis'.

23. In light of the aforementioned Judgements, it emerges that the shift now is to determine compensation on the basis of Minimum Wage criteria which guarantees a dignified and a uniform standard for compensation calculation.

24. The compensation in the present case, thus, has to be re-calculated on the basis of Minimum Wages of a Skilled Person in Haryana in 2015, i.e. Rs.8,797.95/- p.m.

Future Prospects: -

25. The learned Tribunal has placed reliance on the "Inflation Correction Method" to calculate the compensation towards pecuniary heads, but has not granted any amount towards Future Prospects of the deceased child.

26. In the case of Master Ayush, (supra), it was observed that in addition to the Minimum Wages for skilled worker, the Claimants would also be entitled to 40% for future prospects in view of the judgment of National Insurance Company Limited v. Pranay Sethi & Ors; (2017) 16 SCC 680.

27. Thus, in the present case, the deceased is held entitled to 40% Future Prospects as per Pranay Sethi (supra).

Deduction of personal expenses:-

28. The learned Tribunal has deducted 1/3rd of the Notional Income towards personal living expenses of the deceased. However, in light of the judgment of the Supreme Court in Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, and United India Insurance Co. Ltd. vs. Satinder Kaur alias Satwinder Kaur & Ors., (2021) 11 SCC 780, out of the above-amount so assessed for income of the deceased, 50% have to be deducted on account of personal and living expenses for a bachelor.

Multiplier:-

29. The learned Tribunal has computed the compensation by applying a Multiplier of 15, considering the age of the deceased.

30. The Apex Court in the case of Sarla Verma, (supra) gave the Multiplier to be applied for the various age groups starting from 15 years but is silent on the Multiplier to be used for the victims under 15 years of age. This incongruity in the matter of selection of multiplier in the case of persons in the age group up to 15 years was noted in by the Apex the case of Divya vs. National Insurance Company Ltd., Civil Appeal No. 7605/2022.

31. In the most recent judgment of the Supreme Court in Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr., SLP (C) No. 10996/2018, while referring to the judgments of Kajal (supra) and Master Ayush (supra), the Apex Court has applied the multiplier of 18 for a minor.

32. Thus, in light of the above judgments, this Court deems it appropriate to ascertain the Multiplier as '18' to calculate the loss of dependency.

33. The Loss of Dependency is calculated as under: -

i. Rs. 8797.95/- p.m. + 40% (Future Prospects) = Rs. 12,318/- p.m.

ii. Rs. 12,318 - 50% (personal expenses) = Rs.6,159/- p.m.

iii. Rs. 6,159 x 12 x 18 = Rs. 13,30,344/-.

34. Therefore, the total Loss of Dependency is determined as Rs. 13,30,344/-.

Non-Pecuniary Heads:-

35. The learned Tribunal relied on the case of Chetan Malhotra (supra) to award compensation for Non-Pecuniary Heads, granting an amount equivalent to that calculated for pecuniary head, thereby granted an amount to the tune of Rs. 4,89,880/-.

36. In the case of National Insurance Company Limited vs. Pranay Sethi And Others, (2017) 16 SCC 680 it was held that in the case of death, Rs.15,000/- each is liable to be paid towards the Loss of Estate and Funeral Expenses, while Rs.40,000/- was payable towards the Loss of Consortium to each legal heir and the same may be enhanced by 10% every three years.

37. In the present case, the accident is of 2015. There are two legal heirs of the deceased child i.e. her father and mother.

38. Thus, Rs. 40,000/- (enhanced by 10% every three years) each is granted to the father and mother i.e. total of Rs. 40,000 + [(10% of 40,000) x 2] = Rs.48,000 x 2 = Rs. 96,000/- towards Loss of Consortium.

39. An amount of Rs. 15,000/- (enhanced by 10% every three years) each is granted towards the Loss of Estate and Funeral Charges i.e. total of Rs.15,000 + [(10% of 15,000) x 2] = Rs. 18,000/- each.

40. The total compensation towards the non-pecuniary heads is thus re-calculated as under: -

i. Loss of Consortium: Rs. 40,000 + [(10% of 40,000) x 2] = Rs. 48,000/- to each Claimant i.e. total of Rs. 96,000/-.

ii. Loss of Estate: Rs.15,000 + [(10% of 15,000) x 2] = Rs. 18,000/-

iii. Funeral Charges: Rs.15,000 + [(10% of 15,000) x 2] = Rs. 18,000/-.

41. Therefore, the total compensation towards the non-pecuniary heads comes

to Rs. 1,32,000/-.

Rate of Interest:-

42. The Respondents-Claimants have contended that the interest should be enhanced from @ 7% per annum to @ 9% per annum.

43. In the case of National Insurance Co. Ltd. vs. Yad Ram, 2023 SCC OnLine Del 1849, this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

44. In the facts of the present case, the rate of interest awarded by the learned Tribunal is reasonable and does not warrant any interference.

Conclusion:-

45. In view of the above observations, the modified final amount of compensation, is encapsulated in the tabular chart as under:-

S. No.

Heads

Compensation granted by the Tribunal

Final Amount / Enhanced Compensation

Pecuniary Heads

1.

Income of Deceased

Rs.15,000/- p.a.

Rs. 8797.95/- p.m.

2.

Add-Future

Prospects

-

40%

3.

Less-Personal Expenses of Deceased

1/3

1/2

4.

Monthly loss of Dependency

-

Rs. 6,159/-

5.

Annual loss of Dependency

-

Rs. 73,908/-

6.

Multiplier

15

18

7.

Total loss of Dependency

Rs.4,89,880/-

[Reliance placed on the principle of Cost Inflation Index method as per Chetan Malhotra (supra)]

Rs.13,30,344/-

8.

Medical Expenses

Nil.

Nil.

Non - Pecuniary Heads

9.

Compensation for loss of Consortium

Rs.4,89,880/-

(equivalent amount added towards composite non-pecuniary damages)

Rs. 96,000/-

(Rs.48,000/- to each Claimant)

10.

Compensation for

loss of Estate

Rs. 36,000/-

(Rs.18,000 each)

11.

Compensation towards funeral expenses

12.

TOTAL COMPENSATION

Rs. 9,79,760/-

Rs, 14,62,344/-

(rounded off to Rs.14,63,000/-)

Relief:-

46. Thus, the total compensation granted to the Claimants is revised as Rs.14,63,000/- along with interest @ 7% per annum from the date of the Claim till deposit of the amount, to be disbursed in terms of the Impugned Award dated 05.09.2022.

47. The additional amount be deposited within three months, to be disbursed in terms of the Award dated 05.09.2022. The statutory deposit be returned to the Insurance Company in accordance with law.

48. The Appeal is accordingly disposed of along with the pending Application(s), if any.