

(2025) 02 DEL CK 1086

In the Delhi High Court

Case No : MAC.APP. 146 Of 2016, 874 Of 2018

United India Insurance Co Ltd

APPELLANT

Vs

Anju Gupta & Ors

RESPONDENT

Date of Decision : 10-02-2025

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2025) 02 DEL CK 1086

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Pradeep Gaur, Amit Gaur, Mansi, Anshuman Bal, Divya Saini

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J

1. The aforesaid two cross Appeals shall be decided together as they arise from the impugned Award dated 28.11.2015 vide which an amount of Rs.1,62,03,342/- with interest at the rate of 12% per annum has been granted to the Respondent Nos. 1 to 4/Claimants on account of death of Shri Sharad Kumar Gupta (hereinafter referred to as "deceased").

MAC.APP. 146/2016:

2. Briefly stated, on 24.02.2014 at about 12:30 P.M., the deceased was crossing the road at Main Wazirabad Road, in front of Nirmandhin Jail Gate, when a Motorcycle bearing Registration No. DL-7SX-1801 which was coming from Bhajanpura side, which was being driven by the Respondent No. 5/Radhey Shyam, at a high speed and in a rash and negligent manner, hit the deceased who fell and sustained injuries. The deceased was taken to GTB Hospital in PCR Van and thereafter, shifted to Pushpanjali Crosslay Hospital, Vaishali on the same day. On 01.03.2014, the deceased succumbed to the injuries in the Hospital.

3. An FIR No. 198/2014 under Sections 279/337/304A of the Indian Penal Code, 1860 was registered at Police Station Nand Nagari, Delhi.

4. The Claim Petition under Section 140 and 166 of the Motor Vehicles Act, 1988 was filed by the wife, mother and children of the deceased. The DAR was filed before the Ld. Tribunal.

5. The Appellant/Insurance Company has challenged the Award dated 28.11.2015, on the following grounds:

(i) that the wife of the deceased was a Lecturer in a Government Polytechnic, Kanpur, Uttar Pradesh and the mother was getting a pension being a retired Government Employee and they were not dependent, and the Loss of Dependency should not have been granted;

(ii) that 1/3rd instead of 1/4th should have been deducted;

(iii) that the loss of Love and Affection has been wrongly granted as Rs.4,00,000/-;

(iv) that the compensation for Loss of Estate and Funeral expenses in the sum of Rs.50,000/- each is liable to be reduced to Rs.15,000/-each;

(v) that the Expectancy of Life of Rs.50,000/- is required to be deleted; and

(vi) that the Interest granted @ 12% per annum should be reduced to 6% per annum as held by the Supreme Court in the case of Rajesh vs. Rajbir Singh (2013) 9 SCC 54 or at the rate of 7.5% per annum as has been granted by the High Court.

6. The learned counsel on behalf of the Respondent Nos. 1 to 4/Claimants has not raised any serious challenge to any of the grounds except that there was no evidence was led that the wife or the mother were working or getting any income. Therefore, the Loss of Dependency has been rightly calculated. Moreover, the family pension being received by the Claimants, cannot be deducted by calculating the compensation.

MAC.APP. 874/2018

7. The Appellants/Claimants have sought enhancement of the compensation on the following grounds: -

(i) that the learned Claim Tribunal has not calculated overall total payment made by the Employer to the deceased from 01.04.2013 to February, 2014 for the purpose of assessing his annual income. In fact, the income of the deceased was at least 25% more than what has been assessed.

(ii) After the demise, no Income Tax has been filed for the Financial Year 2013-14, but the income tax has been deducted while calculating the income of the deceased. Also, the statutory exemptions available to the deceased from the taxable annual income have also not been considered;

(ii) that the deceased had been contributing almost his entire salary to his family and the deduction towards his personal expenses has been made wrongly,

(iii) that 1/4th deduction towards personal and living expenditure of the deceased has been made by the learned Claim Tribunal, which is on the higher side, when, in fact, it should have been 1/5th of the total income of the deceased,

(iv) that the deceased was 42 years 9 months old and the retirement age of ex-DVB Employee in BSES YPL (Employer) was 60 years, but the Multiplier has been wrongly applied as 14 instead of 17.25;

(v) that the job of the deceased was subject to pay revision and incentive, dearness allowance, bonus and annual increment etc., which have not been considered while calculating the income of the deceased; and

(vi) that the future prospects have been wrongly determined as only 30%, when it should have been taken as 50%.

8. Thus, the Appellants/Claimants have sought enhancement of the compensation as granted by the learned Claim Tribunal.

MAC.APP. 146/2016 & MAC.APP. 874/2018:

Annual Income of the Deceased:

9. The first challenge raised by both the parties is in regard to the calculation of the annual income of the deceased and the deductions made towards the personal expenses.

10. The learned Claim Tribunal has observed that the gross salary of the deceased was Rs. 13,69,550/- per annum, out of which a sum of Rs. 2,30,111/- is deducted as tax at source. The net income of the deceased has been taken as Rs. 11,39,439/- per annum.

11. The Appellant/Insurance Company has claimed that the Respondent No. 1/ Anju Gupta, wife of the deceased, has been taken as a dependent, when, in fact, she in her evidence as PW2, had admitted during her cross-examination as she was a qualified B.Tech (Electrical Engineering) and working as a Lecturer in a Government Polytechnic, Kanpur, Uttar Pradesh and her two children were studying in Kanpur. She also stated that she is getting a pension of Rs. 29,000/- per month on account of demise of her husband. She further stated that her mother-in-law (Respondent No. 4) herself is a retired as a Staff Nurse from Government Hospital, Uttarakhand, and was drawing a pension of Rs. 9,000/- per month. It is asserted that these factors have not been taken into account while calculating the Loss of Dependency.

12. It is further asserted that since Respondent No. 1/Anju Gupta was working and having a regular monthly income and the Respondent No. 4, mother-in-law was getting a monthly pension of Rs. 9,000/-, the deduction should have been made as 1/3rd instead of 1/4th.

13. PW2/Anju Gupta in her Affidavit of Evidence had deposed that her husband at the time of demise was working in BSES Yamuna Power Limited and was drawing a salary of Rs. 1,35,000/- per month.

14. The income of the deceased has also been proved by PW1/Rajeev Kwatra, Manager, BSES Yamuna Power Limited, who had deposed that the last drawn net salary of deceased was Rs. 68,196/- per month. His Salary Slips for the month of January and February 2014 are collectively Ex. PW1/2.

15. The Salary Slip of the deceased for the month of February 2014 reads as under: -

BSES Yamuna Power Ltd.

(A Joint Venture of Reliance Infrastructure Limited with Govt. of NCT, Delhi)

SALARY MONTH: February 2014

EMPLOYEE	NO:	40136514	NAME:	SH.	SHARAD	KUMAR
GUPTA			PAYSLIP NO. 1			

BANK: ICICI BANK LTD.

C BANK A/C NO.: 629401124129

DEPARTMENT:	PLANNING & ENGINEERING (EHV)	DESIGNATION:	ASST.
VICE PRESIDENT	TMENT CODE:		

EARNINGS

This month (Rs)

Arrears

DEDUCTIONS

This month (Rs)

Arrears (Rs)

Basic

40,570.00

Income Tax

22,593.00

House Rent Allowance

14,841.00

Recovery of round off amt

0.38-

Variable Dearness

Allow	
44,523.00	
Rounding off adjustment	
0.38-	
Special Pay (Allowance)	
1,000.00	
GPF	
25,000.00	
Electricity Allowance	
895.00	
Death Relief Fund	
15.00	
Newspaper Allowance	
375.00	
Shahdarn Society	
500.00	
Own Car Aid & MTC	
5,500.00	
DVB Engineers Ben Fund	
100.00	
Grade Pay	
8,900.00	
New Group Insuran Scheme	
200.00	
116,604.00	
GROSS EARNINGS	
1,16,604.00	
TOTAL DEDUCTIONS	
48,408.00	
48,408.00	

NET PAY

68,196.00

Date of next increment :00.00.0000

Tax Payable: 252,704.00

Tax paid Upto curr. Month: 230,111.00

Tax Bal.Upto curr. Month: 22,593.00

GPG Deduction during current year: 245,000.00

GPF Balance as on 01.04.2013: 759,271.00

Pan No: ABLPG6958P

Housing Loan Balance: 0.00

Housing Int. Loan Bal: 0.00

Vehicle Loan Balance: 0.00

Vehicle Int. Loan Bal: 0.00

Computer Loan Balance: 0.00

Computer Int. Loan Bal: 0.00

16. In the Salary Slip, it is clearly reflected that gross salary of the deceased was Rs. 1,16,604/-, from which there was an Income Tax deduction of Rs. 22,593/-, thereby the net salary of deceased was Rs. 68,196/-. The gross salary included Special Pay (Allowance) of Rs. 1,000/-, Electricity Concession of Rs. 895/-, Newspaper Allowance of Rs. 375/- and Own Car Aid & MTC of Rs. 5,500/-, totalling to Rs. 7,700/-. These are the perks and allowances which the Petitioner was enjoying during his lifetime.

17. In the case of Oriental Insurance Company v. Jashuben and Ors (2008) 4 SCC 162, the Apex Court has discussed the aspect of inclusion of allowances and has observed that the amounts which were paid to the deceased as perks, should be included for computation of his monthly income as the same would have constituted a part of his monthly income by way of contribution to the family. However, the allowances which were for personal benefit, were liable to be deducted.

18. Relying upon the above judgment, a Co-ordinate Bench of this Court has observed in the case of Ram Charan & Ors. vs The New India Assurance Co. Ltd. & Ors., MAC.APP. 433/2013 decided on 18.10.2022, that including all Incentives, Bonus or Allowances to the income would be of inconsistent logic as even during the lifetime of the deceased, these allowances were being consumed by him and were not enuring to the benefit of the Legal Heirs.

19. Thus, evaluating the nature of the allowance/perk becomes a decisive factor for determining whether such allowance/perk would constitute a part of the actual income of the deceased

20. Therefore, perks in the amount of Rs. 7,700/-, were the consumable perks in the nature of reimbursements, the benefits of which were reaped by the employee individually and was thus, liable to be deducted from the income of the deceased.

21. PW1/Rajeev Kwatra, Manager, BSES Yamuna Power Limited, in his cross-examination further explained that the Bonus and Incentive are given as per Office Circular, Ex. PW1/5 to the employees, around the time of Deepwali, but the same had not been given to the deceased for the Financial Year 2013-14.

22. This Office Circular Ex.PW1/5 in regard to grant of Bonus/ex-gratia for the year 2013-14, observed that because of the commitment of the competent force, the Management had decided to grant bonus/ex-gratia of Rs. 3,500/-, apart from ex-gratia of Rs. 33,500/- i.e., total a sum of Rs. 37,000/-, or proportionately to each eligible Team BSES employee of BYPL. It further stated that because BYPL had not achieved its AT&C Loss reduction to the desired level, a Special Payout of Rs. 10,000/- was being made. However, for the Financial Year 2014-15, an encouraging Incentive Scheme has already been released, each employee is expected to put in their best efforts towards reduction of AT&C losses during the Financial Year 2014-15. The components taken together come to Rs. 47,000/- (ex-gratia/bonus Rs. 3,500/- + ex-gratia Rs. 33,500/- + Special Payout of Rs. 10,000/-). The actual disbursement shall be made before Diwali and shall be subject to usual terms and conditions.

23. Though this Office Circular has been produced by PW1/Rajeev Kwatra, but the Circular itself shows that the ex-gratia payment is subject to the performance in achievement of AT&C loss reduction. This Circular itself states that this ex-gratia bonus is dependent upon the performance of the employees and is not a fixed bonus, to which every employee is entitled annually. In fact, it is a variable amount which depends upon the profits being made by the Employer. Moreover, though this Circular has been produced but PW1/Rajeev Kwatra himself has admitted that no ex-gratia payments towards Incentive have been made for the Financial Year 2013-14, for which there is no explanation.

24. Pertinently, the incentives for the previous years have also not been proved from where an assessment could be made if there was a consistent amount being paid annually on account of incentives. Therefore, the incentives as claimed by the Respondent Nos. 1 to 4/Claimants, cannot form part of the annual income of the deceased.

25. Connected to this, learned counsel for the Appellant/Insurance Company has contended that because PW2/Anju Gupta herself was employed as a Lecturer in a Government Polytechnic, Kanpur, Uttar Pradesh and getting a regular salary and the mother-in-law also was getting a pension of Rs. 9,000/- per month, they

cannot be considered as dependent upon the deceased. Therefore, the deduction of 1/3rd towards Personal Expenses of the deceased should have been made, instead of 1/4th deductions.

26. In the case of Dinesh Adhlak vs Pritam Singh & Ors. 2010 SCC OnLine Del 165 it was observed that when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each by the fact of sharing, is conferring a benefit on the other. This results in higher savings; in addition, each spouse loses the benefit of services rendered by the other in managing the household. In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency and loss to estate.

27. The support a husband/son would have provided in the times of need to his wife and mother cannot be measured in money. Thus, while deciding the entitlement of Loss of Dependency, one has to keep in mind emotional or caregiving support as well as situations where the Claimants still relies on the deceased's income for any substantial expenses of their life which could include a contribution towards the standard of living or even financial support if the claimant is in a lower-paying job.

28. Thus, merely because PW2/Anju Gupta, wife of deceased and the mother of deceased are having their own independent resources of income because of their own efforts, it cannot be taken into consideration while calculating the Loss of Dependency because it is, in fact, the loss of the Income of the deceased which has been caused to PW2/Anju Gupta and the mother. Therefore, merely because the mother and the wife are earning because of their personal efforts, it cannot be concluded that they have not been deprived of the financial resources.

29. Thus, the income of the deceased is calculated as Rs. 87,183.5/-per month or Rs. 10,46,199/- per annum.

Deductions Towards Personal Expenses:

30. The Apex Court in the case of Sarla Verma v. DTC (2009) 6 SCC 121 has settled that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-fourth (1/4th) where the number of dependent family members is 4 to 6.

31. Admittedly, the deceased was survived by his mother, wife and two children, deduction of 1/4th towards the Personal Expenses of the deceased has been rightly made and the same does not merit any interference.

Multiplier:

32. In the Cross-Appeal, the Claimants have sought enhancement on the ground that the Multiplier has been wrongly applied as 14 instead of 17.25 as the deceased was 42 years 9 months old and as per the retirement age of ex-DVB

Employee in BSES YPL (Employer) was 60 years. However, in the case of Sarla Verma v. DTC, (2009) 6 SCC 121 the Apex Court has held that the multiplier of 14 would be applicable for 41 to 45 years. Therefore, multiplier has been applied correctly and warrants no interference.

33. The Claimants have further sought enhancement on the ground that future prospects have been wrongly determined as only 30%, when it should have been taken as 50% as per National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 addition should be 30%, if the age of the deceased was between 40 to 50 years.

34. In the present case, the deceased was 42 years 9 months old and therefore, the Ld. Tribunal has correctly granted future prospects as 30%.

Non-Pecuniary Heads:

35. The next contention that has been raised is in regard to the grant of Rs. 4,00,000/- towards Loss of Love and Affection. Rs. 50,000/- towards Loss of Estate and Rs. 50,000/- towards Funeral Expenses and Transport Expenses.

36. In the case of United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur AIR 2020 SC 3076, the Apex Court observed that Loss of Consortium subsumes Loss of Love and Affection. Therefore, the compensation need not be granted separately for Loss of Love and Affection and Loss of Consortium.

37. In terms of National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, each of the Claimants is entitled to Rs. 40,000/- i.e., Rs. 1,60,000/- as Loss of Consortium. Accordingly, the amount is revised.

38. Likewise, the Loss of Estate and Funeral Expenses, the amount should be Rs. 15,000/- respectively as per Pranay Sethi (supra).

Loss of Expectancy of Life:

39. The compensation of Rs. 50,000/- has been granted towards the Loss of Expectancy of Life. However, while computing the compensation on account of demise of a person this head is not applicable. Therefore, the amount of Rs. 50,000/- under this Head, needs to be reduced.

Rate of Interest:

40. The interest has been granted @ 12% per annum. Considering the accident had taken place in 2014 and considering the prevailing rate of interest in 2014, the rate of interest is reduced to 9% per annum.

Relief:-

41. Accordingly, the Compensation Amount is re-calculated as under:

S. No.

Name of Heads

Amount given by Tribunal

Amount

modified by this Court

1.

Income of Deceased (A)

less tax

94,953.25

Rs. 87,183.5/-

2.

Add-Future Prospects (B)

30%

30% (same)

3.

Less-Personal Expenses

of Deceased (C)

1/4

1/4 (same)

4.

Monthly loss of Dependency

Rs. 92,579.951

Rs. 85,003.67

5.

Annual loss of Dependency

Rs. 11,10,959.42

Rs. 10,20,044

6.

Multiplier (E)

14

14 (same)

7.

Total Loss of Dependency

Rs. 1,55,53,432/-

Rs. 1,42,80,616/-

8.

Loss of Consortium

Rs. 1,00,000/-

Rs. 1,60,000/-

(40,000 x 4)

9.

Loss of Love and Affection

Rs. 4,00,000/- (Rs. 1 Lakh each Claimant)

NIL

10.

Loss of Estate

Rs. 50,000/-

Rs. 15,000/-

11.

Loss of Expectancy of Life

Rs. 50,000/-

NIL

12.

Funeral and Transportation Expenses

Rs. 50,000/-

Rs. 15,000/-

13.

Interest

12%

9%

TOTAL

Rs. 1,62,03,3452/-

Rs. 1,44,70,616/-

42. In view of above, the Award dated 28.11.2015 is modified to Rs. 1,44,70,616/- along with upto date interest @ 9% per annum till the date of deposit. The Appellant/Insurance Company is directed to deposit the award amount with the learned Claim Tribunal within four weeks, which shall be disbursed in terms of the Award. The excess amount, if any be returned to the Insurance Company, along with the Statutory deposit.

43. Accordingly, the Appeals and the pending Applications, are disposed of in the above terms.