

Rajwati @ Rajjo vs United India Insurance Company Limited on 9 December, 2022

Author: Krishna Murari

Bench: S. Ravindra Bhat, Krishna Murari

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8179 OF 2022

[Arising out of Special Leave Petition (C) No. 30754 of 2019]

RAJWATI @ RAJJO & ORS.

... APPELLANT(S)

VERSUS

UNITED INDIA INSURANCE COMPANY LTD. & ORS.

... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 8180 OF 2022

[Arising out of Special Leave Petition (C) No. 30755 of 2019]

SEEMA & ORS.

... APPELLANT(S)

VERSUS

UNITED INDIA INSURANCE COMPANY LTD. & ORS.

... RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

These two appeals are directed against the final orders dated 29.04.2019 passed by the High Court of Judicature for Rajasthan, Jaipur Bench (hereinafter referred to as 'High Court') in two Miscellaneous Appeals (being S.B.Misc. Appeal No. 441/2019 and S.B. Misc. Appeal No. 561/2019) filed by Respondent No. 1 herein, seeking to set aside the judgment and award dated 26.10.2018 passed by the Motor Accident Claim Tribunal/Additional District and Sessions Judge, Kaman,

District Bharatpur (hereinafter referred to as 'Learned Tribunal') in Misc. Civil (M.A.C.) No. 18/2016 (13/2014) and Misc. Civil (M.A.C.) No. 14/2014. Both these appeals arise out of the same accident. Hence, they have been clubbed together and are being decided by this common judgment.

2. In both the matters, the High Court allowed the appeal of Respondent No.1 herein and modified the award passed by the Learned Tribunal, and reduced the compensation awarded to the Claimants/Appellants. CIVIL APPEAL No. 8179 OF 2022

3. The Appellants are the heirs and dependents of Ghasita Ram (hereinafter referred to as 'deceased'), who died on 29.10.2013 as a result of a motor accident. The deceased was working as a driver in PNC Infratech Ltd. On 29.10.2013, at around about 8:00 PM, the deceased (along with his co-worker Kanti Lal) was riding a motorcycle while returning home from work, when he was hit from behind by a truck being driven by Respondent No. 3 in a rash and negligent manner. The deceased and his co-worker were severely injured and died on the spot. The deceased has left behind five dependents who are the Appellants before this Court.

4. The Appellants filed a claim petition [being Misc. Civil (M.A.C.) No. 18/2016 (13/2014)] under Section 166 of the Motor Vehicles Act, 1988 before the Learned Tribunal, seeking compensation amounting to Rs.91,46,000/- along with interest. Vide Judgment and Award dated 26.10.2018, the Learned Tribunal awarded a compensation of Rs.19,64,218.75/- along with interest @ 7% per annum from the date of filing of the claim petition till the realization of the decretal amount.

5. The Learned Tribunal held that the deceased died as a result of the injuries suffered in the accident caused due to rash and negligent driving of Respondent No. 3 herein. The deceased's age at the time of the accident was 41 years, and the same was ascertained by the Learned Tribunal on the basis of his driving license (Exhibit-A1) which recorded his date of birth as 25.08.1972. Exhibit-19 (Salary Certificate) and Exhibit-20 (Pay Slip) were produced. On the basis of pay slip, the Learned Tribunal assessed the income of the deceased at Rs.11,225/- per month. To this, 25% was added towards future prospects bringing his monthly income to Rs.14,031.25/-. The Learned Tribunal added a multiplier of 15, thereby calculating the compensation to be Rs.25,25,635/- (Rs.14,031.25 x 12 x 15). After deducting 1/4 th of the total income towards personal expenses (amounting to Rs.6,31,406.25/-), the Learned Tribunal arrived at a compensation of Rs.18,94,218.75/-. Further, the Learned Tribunal awarded Rs.40,000 towards loss of consortium, Rs.15,000/- towards loss of estate, and Rs.15,000/- towards funeral expenses.

6. Thus, the compensation awarded by the Learned Tribunal to the Appellants under various heads was as under:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	Rs. 18,94,218.75/-
2	Loss of consortium	Rs. 40,000/-
3	Loss of estate	Rs. 15,000/-
4	Funeral expenses	Rs. 15,000/-
	TOTAL	Rs. 19,64,218.75/-

The Learned Tribunal calculated the rate of interest at 7% per annum from the date of filing of the claim petition till the realisation of the decretal amount. The Respondents were held jointly or severally liable to pay the said amount.

7. Being aggrieved, Respondent No. 1 filed an appeal before the High Court. Vide judgment and final order dated 29.04.2019, the High Court held that the Learned Tribunal erred in relying on the salary certificate (Exhibit-19) and pay slip (Exhibit-20) to ascertain the income of the deceased at Rs.11,225/- per month, as the person who issued the said documents was not examined before the Learned Tribunal. Accordingly, the High Court assessed the income at Rs. 4,836/- per month in view of the minimum wages fixed by the State at the relevant time. Out of this, 1/4 th amount was deducted towards personal expenses of the deceased, bringing the figure to Rs.3,627/-. To this, a multiplier of 14 was added, and the compensation arrived at, was Rs.6,09,336/- (Rs.3,627/- x 12 x 14). Further, 25% was awarded towards future prospects (amounting to Rs.1,52,334/-). Thus, the loss of dependency was calculated at Rs.7,61,670/- (Rs.6,09,336/- + Rs.1,52,334/-). The High Court further awarded Rs.40,000/- towards loss of consortium, and Rs.15,000/- towards funeral expenses. Therefore, a total compensation of Rs.8,16,670/- (Rs.6,09,336/- + Rs.1,52,334/- + Rs.40,000/- + Rs.15,000/-) was awarded by the High Court. The remaining terms and conditions of the original award passed by the Learned Tribunal were affirmed.

8. Thus, the compensation awarded by the High Court under various heads is mentioned as under:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	Rs. 7,61,670/-
2	Loss of consortium	Rs. 40,000/-
3	Funeral expenses	Rs. 15,000/-
	TOTAL	Rs. 8,16,670/- @ 7% interest per annum

9. We have heard the learned counsel for the parties.

10. Mr. Anuj Bhandari, Learned Counsel appearing on behalf of the Appellants argued that the High Court was not justifying in rejecting the pay slip and salary certificate of the deceased by holding that the person issuing the said documents was not examined. It was contended that the deceased's wife (Appellant No. 1 herein) had testified before the Learned Tribunal that the deceased was earning around Rs.17,000/- from his employment as a driver and also by doing agricultural work. The same had been testified by his co-workers (who were also eye-witnesses to the accident) as well. It was further contended that Appellant No. 1's evidence with regard to the salary of the deceased was corroborated by the salary certificate and pay slip of the deceased. There was no occasion for the High Court to set aside the Learned Tribunal's order with respect to a pure finding of fact and re-appreciate the entire evidence. It was also mentioned that the Appellants could not inadvertently produce the pass- book of the deceased (reflecting his salary as Rs.12,000/- per month) before the

Learned Tribunal, and copies of the same have been filed before this Court.

11. To support the aforesaid contentions, learned counsel for the Appellants placed reliance on the judgment of this Court in the case of United India Insurance Co. Ltd. vs Shila Datta & Ors.¹ 1 (2011) 10 SCC 509

12. Reliance was also placed on the judgment of this Court in the case of Ramachanrappa Vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.²

13. It was next contended that the amount of Rs.40,000/- awarded towards loss of consortium to five dependents is too meager and each dependent is entitled to receive a sum of Rs.40,000/- under the said head. Reliance to support the aforesaid contention has been made to the judgment of this Court in the case of Magma General Insurance Co. Ltd. vs Nanu Ram & Ors.³

14. Per contra, Mr. Varinder Kumar Sharma and Ms. Nidhi, Learned Counsel for the Respondent Nos. 1 and 2, respectively, argued that the salary certificate and pay slip of the deceased could not be proved either before the Learned Tribunal or before the High Court, and as such, grant of compensation awarded by the High Court is just, fair and reasonable and requires no interference by this Court.

15. We have carefully considered the rival contentions of the learned counsel appearing for the parties and perused the entire records.

16. In the case of Shila Datta (Supra), this Court held as under :-

2 (2011) 13 SCC 236 3 (2018) 18 SCC 130 “10. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members) before the Motor Accident Claims Learned Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceeding in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following significant aspects in regard to the Learned Tribunals and determination of compensation by Learned Tribunals:

...

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Learned Tribunal.

...

(vi) The Learned Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters

relevant to inquiry, to the assist it in holding the enquiry (vide Section 169 of the Act).”

17. Reference in this connection may also be made to the observations made by this Court in the case of Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Ors.⁴, wherein it was observed as under :-

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of 4 (2020) 13 SCC 486 probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

18. Similarly, in the case of Kusum Lata & Ors. Vs. Satbir & Ors. ⁵, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal’s role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, “the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases”.

20. In view of the above, we do not agree with the view taken by the High Court while rejecting the salary certificate (Exhibit 19) and pay slip (Exhibit 20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Learned Tribunal. The 5 (2011) 3 SCC 646 said documents are conclusive proof of the income of the deceased and were also corroborated by the statements of the deceased’s wife (Appellant No. 1 herein) and his co-workers. As such, the High Court was not justified in assessing the income of the deceased at Rs.4,836/- per month on the basis of minimum wages fixed by the State at the relevant time. Resultantly, we affirm the findings of the Learned Tribunal so far as they relate to assessing the deceased’s income at Rs.11,225/- per month on the basis of aforementioned two documents. Annual income of the deceased, therefore, amounts to, Rs.11,225/- x 12 = Rs.1,34,700/-.

21. As far as the age of the deceased is concerned, the view of the Learned Tribunal in ascertaining the same as 41 years on the basis of the driving license of the deceased (Exhibit A1) was correct, and the same is hereby affirmed. However, the award of future prospects at 25% needs to be interfered with. In view of the law laid down by a five-Judge Bench of this Court in National Insurance

Company Limited vs Pranay Sethi & Ors. 6, we are inclined to assess the future prospects of the deceased, considering his age, at 30% of his annual income (Rs.1,34,700/-), which works out to be Rs.40,410/-. Therefore, annual income accounting for future prospects is Rs.1,34,700/- + Rs.40,410/- = Rs.1,75,110. In view of Sarla Verma & Ors. vs Delhi Transport Corporation & 6 (2017) 16 SCC 680 Anr.7, 1/4th of the said amount would be deducted towards the deceased's personal expenses as he was married and had 5 dependants. 1/4th of Rs.1,75,110/- is Rs.43,777.5/-. Rs.1,75,110/- - Rs.43,777.5/- = Rs.1,31,332.5/-. Accordingly, after applying the multiplier of 14 (as the deceased was aged between 40 to 50 years), the loss of dependency would be assessed at, Rs.1,31,332.5/- x 14 = Rs.18,38,655/-.

22. The deceased left behind five dependants, i.e., the present Appellants. In view of this, the grant of Rs.40,000/- by the Learned Tribunal towards loss of consortium is insufficient in our view, and deserves interference. A three Judge Bench of this Court in United India Insurance Co. Ltd vs Satinder Kaur @ Satwinder Kaur & Ors.8, has awarded spousal consortium at the rate of Rs.40,000/- and towards loss of parental consortium to each child at the rate of Rs.40,000/-. The compensation under these heads also needs to be increased by 10% after every three years. Accordingly, the grant of Rs.40,000/- towards loss of consortium is increased to Rs.44,000/- to each Appellant, amounting to a total of Rs.2,20,000/-. Along with this, Rs.15,000/- each for the heads of 'funeral expenses' and 'loss of estate' is also very meagre. In our considered opinion, an amount of Rs.20,000/- is liable to be paid towards funeral expenses. 7 (2009) 6 SCC 121 8 (2021) 11 SCC 780 Similarly, award of Rs.15,000/- towards 'loss of estate' is liable to be increased to Rs.20,000/-.

23. Hence, the total compensation payable to the Appellants under various heads on the basis of the deceased's income as ascertained by the Learned Tribunal would be:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	Rs.18,38,655/-
2	Loss of consortium	Rs.2,20,000/-
3	Loss of estate	Rs.20,000/-
4	Funeral expenses	Rs.20,000/-
	TOTAL	Rs.20,98,655/-

24. In view of the facts and circumstances of the case, the rate of interest payable on the total compensation awarded is liable to be calculated at 9% per annum, from the date of filing of the claim petition before the Learned Tribunal till the date of realisation.

CIVIL APPEAL No. 8180 OF 2022

25. The connected Civil Appeal No. 8180 of 2022 (Seema & Ors. Vs. United India Insurance Company Ltd. & Ors.) is arising out of the same motor accident, and is based on the same set of facts and circumstances, the only difference being the age of the deceased Kanti Lal which was 38 years at

the time of his death. The Learned Tribunal assessed the monthly income at Rs.11,225/-, and awarded 40% towards future prospects bringing his monthly income to Rs.15,715/-. To this, the Tribunal added a multiplier of 15, thereby calculating the compensation to be Rs.28,28,700/- (Rs.15,715/- x 12 x 15). After deducting 1/4th of the total income towards personal expenses (amounting to Rs.7,07,175/-), the Tribunal arrived at a compensation of Rs.21,21,525/-. Further, the Tribunal awarded Rs.40,000 towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

26. Thus, the compensation awarded by the Learned Tribunal to the Appellants under various heads was as under:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	Rs.21,21,525/-
2	Loss of consortium	Rs.40,000/-
3	Loss of estate	Rs.15,000/-
4	Funeral expenses	Rs.15,000/-
	TOTAL	Rs.21,91,525/-

The Learned Tribunal calculated the rate interest at 7% per annum from the date of filing of the claim petition till the realisation of the decretal amount. The Respondents were held jointly or severally liable to pay the said amount.

27. On appeal filed by Respondent No. 1 herein, the High Court vide judgment and final order dated 29.04.2019, held that the Tribunal erred in relying on the salary certificate (Exhibit-17) and pay slip (Exhibit-18) to ascertain the income of the deceased at Rs.11,225/- per month, as the person who issued the said documents was not examined before the Tribunal. Accordingly, the High Court assessed the income at Rs.4,836/- per month in view of the minimum wages fixed by the State at the relevant time. Out of this, 1/4th amount was deducted towards personal expenses of the deceased, bringing the figure to Rs.3,627/-. To this, a multiplier of 15 was added, and the compensation arrived at, was Rs.6,52,860/- (Rs.3,627/- x 12 x 15). Further, 40% was awarded towards future prospects (amounting to Rs.2,61,144/-), Rs.40,000/- towards loss of consortium, and Rs.15,000/- towards funeral expenses.

28. Thus, the compensation awarded by the High Court under various heads is mentioned as under:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	of Rs.9,14,004/-
2	Loss of consortium	of Rs.40,000/-
3	Funeral expenses	Rs.15,000/-
	TOTAL	Rs.9,69,004/- @ 7% interest per annum

The remaining terms and conditions of the original award passed by the Tribunal were affirmed.

29. Applying the same reasoning as in the case of Rajwati @ Rajjo & Ors. Vs United India Insurance Company Ltd. & Ors. (connected Civil Appeal No. 8179 of 2022), we are of the opinion that the Tribunal has correctly determined the deceased's monthly income as Rs.11,225/- while placing reliance on documentary evidence adduced in this regard, viz, the salary certificate (Exhibit-17) and pay slip (Exhibit-18), as well as the statements of the deceased's wife and his co-workers. We do not agree with the view taken by the High Court while holding that since the person issuing the two aforementioned documents was not examined before the Tribunal the income of the deceased was assessed at Rs.4,836/- per month in view of the minimum wages fixed by the State at the relevant time. Resultantly, we affirm the findings of the Tribunal so far as they relate to assessing the deceased's income at Rs.11,225/- per month. Annual income of the deceased, therefore, amounts to Rs.11,225/- x 12 = Rs.1,34,700/-.

30. As far as the age of the deceased is concerned, the view of the Tribunal in ascertaining the same as 38 years on the basis of the driving license of the deceased (Exhibit A2) was correct, and the same is hereby affirmed. However, the award of future prospects at 40% needs to be interfered with. In view of the law laid down by a five-Judge Bench of this Court in Pranay Sethi (Supra), we are inclined to assess the future prospects of the deceased, considering his age, at 50% of his annual income (Rs.1,34,700/-), which works out to be Rs.67,350/-. Therefore, annual income accounting for future prospects is Rs.1,34,700/- + Rs.67,350/- = Rs.2,02,050/-. In view of Sarla Verma (Supra), 1/4th of the said amount would be deducted towards the deceased's personal expenses as he was married and had 4 dependants. Hence, 1/4 th of Rs.2,02,050/- is Rs.50,512.5/-, Rs.2,02,050/- – Rs.50,512.5/- = Rs.1,51,537.5/-. Accordingly, after applying the multiplier of 15 (as the deceased was aged between 36 to 40 years), the loss of dependency would be assessed at, Rs.1,51,537.5/- x 15 = Rs.22,73,062.5/-.

31. The deceased left behind four dependants, i.e., the present Appellants. In view of this, the grant of Rs.40,000/- by the Tribunal towards loss of consortium is insufficient in our view, and deserves interference. Placing reliance on the Satinder Kaur @ Satwinder Kaur (Supra), the grant of Rs.40,000/- towards loss of consortium is increased to Rs.44,000/- to each Appellant, amounting to a total of Rs.1,76,000/-. Along with this, Rs.15,000/- each for the heads of 'funeral expenses' and 'loss of estate' is also increased to Rs.20,000/- each.

32. Hence, the total compensation payable to the Appellants under various heads on the basis of the deceased's income as ascertained by the Learned Tribunal would be:

Sl. No.	HEAD	AMOUNT PAYABLE
1	Loss of dependency	Rs.22,73,062.5/-
2	Loss of consortium	Rs.1,76,000/-
3	Loss of estate	Rs.20,000/-

4	Funeral expenses	Rs . 20 , 000 / -
	TOTAL	Rs . 24 , 89 , 062 . 5 / -

33. In view of the facts and circumstances of the case, the rate of interest payable on the total compensation awarded is liable to be calculated at 9% per annum, from the date of filing of the claim petition before the Learned Tribunal till the date of realisation.

34. As a result, the impugned judgments of the High Court dated 29.04.2019 in both the appeals are hereby set aside.

35. Accordingly, both the appeals stand allowed.

.....,J.

(KRISHNA MURARI)J.

(S. RAVINDRA BHAT) NEW DELHI;

09TH DECEMBER, 2022