National Insurance Company Ltd. vs Mannat Johal on 23 April, 2019

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Bench: Dinesh Maheshwari, Abhay Manohar Sapre

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4079-4081 OF 2019
(Arising out of SLP (C) Nos. 742-744 OF 2019)

NATIONAL INSURANCE COMPANY LTD. .....AP

VS.

MANNAT JOHAL & ORS. ETC. ETC. .....RESP

WITH

CIVIL APPEAL NO.4082-4083 OF 2019 @ SLP (CIVIL) NO.10371-10372 OF 2019 @ DIARY NO. 9529 OF 2019

JUDGMENT

Dinesh Maheshwari, J.

1. The application for substitution of legal representatives in the petition filed on behalf of the claimants is allowed; the named legal representative shall stand substituted in the both the petitions. Delay condoned in the petition filed on behalf of the claimants.

1.1. Leave granted in the both the petitions.

2. These cross-appeals relating to the vehicular accident compensation claims, respectively by the insurer of the offending vehicle and by the claimants, are directed against the common judgment and order dated 06.07.2018, as passed in FAO No. 1136 of 2000 (O & M) and connected matters, whereby the High Court of Punjab and Haryana has allowed the appeal for enhancement of compensation filed by the claimants and has modified the common award dated 27.01.2000 as made by the Motor Accident Claims Tribunal, Chandigarh in MACT Case Nos. 80 of 1996 and 84 of 1996 that were filed respectively by the parents and by the wife and children of the deceased Shri Rajpal Singh Johal.

3. In the impugned judgment and order dated 06.07.2018, the High Court has made upward revision of the amount of compensation awarded by the Tribunal and, in place of the amount of Rs. 37,71,000/- together with interest @ 12% p.a. as awarded by the Tribunal, the High Court has awarded a sum of Rs. 48,00,000/- together with interest @ 7.5% p.a. from the date of filing of the claim petition till the date of realisation. The High Court has allowed this enhancement essentially with reference to the principles enunciated by this Court in National Insurance Company Ltd. v. Pranay Sethi & Ors.: 2017 ACJ 2700 (SC) and in Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.: 2009 ACJ 1298 (SC).

4. In these appeals, on one hand, the insurer of the offending vehicle has questioned the quantum of compensation so awarded, basically on the ground that while making assessment of pecuniary loss, the ex gratia amount received by the claimants from the employer of the deceased deserves to be deducted while, on the other hand, the claimants have questioned the reduction of the rate of interest by the High Court.

4.1. Therefore, the basic question for consideration in these appeals is as to whether the amount of compensation as awarded by the High Court is that of just compensation or the same calls for any modification?

5. The background aspects of the matter, so far relevant for the question at hand, may be noticed, in brief, as follows:

> 5.1. The vehicular accident in question occurred on 30.12.1995, at about 1 p.m., near the police out post Bagari (Assam), when the deceased Shri Rajpal Singh Johal was driving a car, taking his wife and children along, from Kaziranga to Guwahati. The offending vehicle, being an oil tanker bearing registration No. AS-01-9526, rammed into the car driven by the deceased while coming from the opposite direction. The deceased succumbed to the injuries sustained in this accident while his wife was also injured and their two children suffered severe shock.
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> 5.2. On account of demise of the victim Shri Rajpal Singh Johal due to the injuries sustained in the accident aforesaid, two claim applications came to be made before the Motor Accident Claims Tribunal, Chandigarh: one on 14.05.1996 by the parents of deceased, being MACT Case No. 80 of 1996; and another on 22.05.1996 by the wife and minor children of the deceased, being MACT Case No. 84 of 1996. The sum and

> substance of the allegations in claim applications had been that the deceased met with his untimely end for the accident in question that occurred due to rash and negligent driving of the oil tanker in question. It was asserted that the deceased was 38 years of age; was working as General Manager (Marketing) with Punjab Wireless System Limited, Mohali; was drawing gross annual salary of Rs. 3,21,801.60 with perks just prior to the accident; and he was due to be promoted as the Associate Vice President in January 1996 whereby, his annual salary would have been enhanced to Rs.

3,50,000/-. While asserting their dependency on the deceased, the claimants i.e., the parents, wife and children of the deceased claimed compensation against the driver, owner and insurer of the offending vehicle. The cause of action being the same, these two claim petitions were consolidated, and were tried and decided together by way of the common award dated 27.01.2000. 5.3. Before the Tribunal, driver of the offending vehicle remained ex parte while its owner denied any negligence on part of the driver and rather alleged that the accident occured due to rash and negligent driving by the deceased. On the other hand, insurer of the offending vehicle denied the factum of the accident and also alleged that the driver of the offending vehicle did not possess a valid driving license.

5.4. On the pleadings, the Tribunal framed as many as 9 issues. After taking evidence, the Tribunal proceeded to determine the relevant issues in its impugned award dated 27.01.2000. The Tribunal decided the basic issues relating to the factum of accident and the responsibility for the same against the non-applicants while holding that the accident in question occurred due to rash and negligent driving of the offending oil tanker. The Tribunal also held that the wife and children of the deceased were dependent on him and further that the parents were marginally dependent on him.

5.5. On the question of quantification of compensation, the Tribunal took note of the evidence led by the claimants as regards emoluments of the deceased as on 01.12.1995; the fact that his colleagues were promoted as Associate Vice President in the year 1995; that he too had the prospects of such promotion; and that emoluments of the Associate Vice President were revised with effect from the month of December 1996. Therefore, the Tribunal considered it just and reasonable to assess the income of the deceased at Rs. 3,51,000/- p.a., as per the revised emoluments for the post of Associate Vice President in the employer company. Then, the Tribunal proceeded to deduct one-third towards personal expenses of the deceased and in this manner, took the annual loss of dependency at Rs. 2,34,000/- and, after applying the multiplier of 16, assessed the pecuniary loss of the claimants at Rs. 37,44,000/-. The Tribunal further awarded Rs. 25,000/- towards transportation of dead-body and Rs. 2,000/- towards other expenses and thus, finally awarded a sum of Rs. 37,71,000/- to the claimants. The Tribunal also allowed interest at the rate of 12% p.a. from the date of filing of claim application No. 80 of 1996. The Tribunal allowed a sum of Rs. 1,00,000/- each to the mother and father of the deceased while observing that they were in the age group of 78 years and were only marginally dependent on the deceased; and apportioned the remaining amount amongst the wife and children of the deceased.

5.6. Against the award so made by the Tribunal, the claimants in MACT Case No. 84 of 1996 preferred an appeal before the High Court of Punjab and Haryana, seeking enhancement of the

amount of compensation, while the insurance company preferred two separate appeals questioning the findings in the award and seeking reduction of the amount of compensation. 5.7. The High Court, in its impugned judgment dated 06.07.2018, in the first place rejected the contentions urged on behalf of the insurer as regards the factum and cause of accident and affirmed the findings of the Tribunal. As regards quantum of compensation, the High Court proceeded to make enhancement over the amount awarded by the Tribunal with reference to the decisions in Pranay Sethi and Sarla Verma (supra). The High Court did not accept the basis of assessment of loss of income with reference to the likely enhanced emoluments of deceased on his expected promotion and subsequent revision of pay-scale in the year 1996. The High Court, therefore, took the base annual emoluments at Rs. 3,21,801.60 and, while deducting Rs. 20,000/- towards income-tax, rounded off the figure to Rs. 3,00,000/-. The High Court, thereafter, provided for enhancement of 40% towards future prospects and then, looking to five number of dependents, deducted one-fourth towards personal expenses of the deceased. In this manner, the High Court arrived at the multiplicand of Rs. 3,15,000/- and, while applying the multiplier of 15 in view of the age of the deceased at 38 years, worked out the pecuniary loss at Rs. 47,25,000/-. The High Court further awarded Rs. 40,000/- towards loss of consortium, Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss to estate. Accordingly, the High Court assessed the total compensation at Rs, 47,95,000/- and rounded it up to Rs. 48,00,000/-. The High Court, however, allowed interest at the rate of 7.5% p.a., while holding that the respondents related with the offending vehicle were liable to make payment of compensation. As regards apportionment, the High Court allowed a sum of Rs. 26,00,000/- to the wife of the deceased; Rs. 8,00,000/- to the son of the deceased; Rs. 10,00,000/- to the daughter of the deceased; and Rs. 2,00,000/- each to the mother and father of the deceased.

6. Assailing the impugned judgment of the High Court, learned counsel for the insurer has strenuously argued that the High Court has erred in not considering and applying the principles enunciated in Reliance General Insurance Company Ltd. v. Shashi Sharma & Ors.: 2016 ACJ 2723 (SC) and in not deducting the ex gratia amount received by the claimants from the employer of the deceased. Learned counsel has also attempted to argue that the High Court has taken into consideration certain payments like conveyance allowance, performance linked special pay and company lease accommodation while making the calculation of total annual gross salary, though such allowances ought to have been deducted. Per contra, learned counsel for the claimants would submit that a clear case for enhancement over the modified award of the High Court is made out, particularly when the High Court reduced the annual income figure of the deceased from Rs. 3,51,000/- to Rs. 3,21,801.60 and further slashed it to Rs. 3,00,000/- and then, reduced the rate of interest at 7.5% p.a. as against the rate allowed by the Tribunal at 12% p.a. According to the learned counsel, the rate of interest as allowed by the Tribunal was in conformity with the lending rates at the time of accident in the year 1995 and should not have been reduced. The learned counsel has also argued that a few components of allowances and benefits as taken into consideration for assessment of the annual income had been the part of composite pay packet of the deceased and the claimants were also the beneficiaries of such allowances while being dependent on the deceased. The learned counsel for the claimant has also countered the submissions as regards the ex gratia payment made by the employer with the contentions that such an amount is not required to be deducted from the total compensation, while relying on the decision in Sebastiani Lakra & Ors. v. National Insurance Company Ltd. & Ors. : 2019 ACJ 34 (SC).

7. Having given anxious consideration to the rival submissions and having examined the record, we are clearly of the view that the modified award made by the High Court in this case remains that of just compensation and no case for interference is made out in either of these appeals.

8. It remains trite, and need not be over-emphasised, that while dealing with the question of quantification in a claim for compensation under the Motor Vehicles Act, 1988 ('the Act of 1988'), the endeavor has to be to ensure awarding of just compensation to the claimant/s. In Shashi Sharma (supra), this Court reiterated on the basics regarding meaning of the expression "just" in the context of the Act of 1988 in the following:-

> "17. ..... the term "compensation" has not been defined in the 1988 Act. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the 1988 Act makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means—fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. In para 7 of State of Haryana v. Jasbir Kaur, it has been held that the expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of Sarla Verma v. DTC, this Court has observed that the compensation "is not intended to be a bonanza, largesse or source of profit". That, however, may depend upon the facts and circumstances of each case, as to what amount would be a just compensation."

9. In a case like the present one, relating to the death of the vehicular accident victim, any process of awarding "just" compensation involves assessment of such amount of pecuniary loss which could be reasonably taken as the loss of dependency suffered by the claimants due to the demise of the victim. In other words, such a process, by its very nature, involves the assessment of monetary contribution that the claimants were likely to receive from the deceased had he not met with the untimely end due to the accident. For the purpose of such an assessment, while some of the basic facts, like the age, job and income of the deceased and the number of dependents with extent of their dependency, could be reasonably ascertained from the evidence on record, yet, several uncertain factors also, per force, come into play, like the future prospects of the deceased coupled with various imponderables related with a human life. As the process, by its very nature, involves a substantial deal of guess-work, this Court, over the years, has evolved and applied several principles so as to ensure that as far as possible, the methods for assessment remain uniform, curbing against disparity in the amount of compensation to be awarded in similarly circumstanced cases. It is not necessary for the present purpose to traverse through the large number of past decisions, particularly for the reason that the basic parameters stand explained and standardised with the larger Bench decision in Pranay Sethi (supra), wherein this Court has partly modulated the parameters enunciated in the

two-Judge Bench decision in Sarla Verma (supra), and has laid down the principles as follows:-

> "59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
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> 59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
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> 59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced hereinbefore.
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> 59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment. 59.7. The age of the deceased should be the basis for applying the multiplier.
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> 59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

9.1. For completion of the principles above-quoted, appropriate would it to be to take note of paragraphs 30 to 32 as also paragraph 42 in Sarla Verma (supra) which read as under:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one- third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.
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> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is

> deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.
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> 32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.
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> ***** ***** *****
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> 42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table, which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

10. Applying the principles aforesaid to the present case, we find that the award made by the Tribunal suffered from a few fundamental errors and shortcomings as regards the assessment of multiplicand. The Tribunal, instead of taking the last drawn emoluments of the deceased, chose to proceed on his enhanced projected emoluments after the expected promotion and pay revision. However, thereafter, the Tribunal did not provide for any further future prospects. The Tribunal also did not make any deduction towards the tax component. Moreover, the Tribunal deducted one-third towards personal expenses of the deceased though he had had five dependents. Then, the Tribunal applied the multiplier of 16. Apparently, the assessment made by the Tribunal could not have been countenanced, for being not in conformity with the principles in Pranay Sethi (supra).

11. The High Court, on the other hand, took the figure of the last drawn emoluments of the deceased and made the deduction towards income-tax. Thereafter, the High Court provided for future prospects at 40% and made the deduction of one-fourth towards personal expenses. In this manner, the High Court arrived at the figure of multiplicand at Rs. 3,15,000/-. On this multiplicand, the High Court applied the multiplier of 15 in view of the age of deceased at 38 years and hence, worked out the pecuniary loss at Rs. 47,25,000/-. As noticed, the High Court further awarded Rs. 40,000/-

towards loss of consortium, Rs. 15,000/- towards funeral expenses, and Rs. 15,000/- towards loss to estate; and finally assessed the total compensation at Rs, 47,95,000/-, rounded up to Rs. 48,00,000/-.

11.1. The assessment so made by the High Court stands more or less in conformity with the principles enunciated in Pranay Sethi (supra). The only doubtful area is that the High Court provided for enhancement towards future prospects only at 40% on the last drawn emoluments of the deceased and not at 50% though he was shown to be in a settled employment with future chances of promotion as also pay revision. However, on the facts and in the circumstances of the present case, we are not considering any modification in the amount awarded by the High Court for a variety of factors, as indicated infra.

12. Taking up the question of ex gratia payment received by the claimants from the employer of the deceased, it is noticed that an amount of Rs. 3,21,801/- was paid by the employer to the claimants, being one year's gross salary of the deceased. While relying on the decision in Shashi Sharma, it is contended on behalf of the insurer that the ex gratia amount so received by the claimants is required to be deducted. Noticeable it is that in Shashi Sharma's case, a three-Judge Bench of this Court was dealing with the payment received by the legal heirs of the deceased in terms of Rule 5 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 ('Rules of 2006') whereunder, on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods specified in the Rules and after the said period, the family would be entitled to receive family pension. The family would also be entitled to retain the government accommodation for a period of one year in addition to payment of Rs. 25,000/- as ex gratia1. 1 Rule 5 of the Rules of 2006 taken into consideration in Shashi Sharma's case had been as under:

> “5. Criteria for financial assistance.—(1) On the death of any government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim—
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> (a)for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;
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> (b) for a period of twelve years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;
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> (c) for a period of seven years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased government employee who was in occupation of a government residence would continue to retain the residence on payment of normal rent/licence fee for a period of one year from the date of death of the employee.

12.1. The aforesaid decision in Shashi Sharma has been explained and distinguished by another three-Judge Bench of this Court in Sebastiani Lakra (supra) in the following:-

“10. In Shashi Sharma's case, 2016 ACJ 2723 (SC), this court was dealing with the payments made to the legal heirs of the deceased in terms of rule 5(1) of the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (for short 'the said Rules’). Under rule 5 of the said Rules on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the Government accommodation for a period of one year in addition to payment of Rs. 25,000 as ex gratia. In this case, the three-Judge Bench adverted to the principles laid down in Helen C. Rebello's case 1999 ACJ 10 (SC), followed in Patricia Jean Mahajan's case 2002 ACJ 1441 (SC), and came to the conclusion that the decision in Vimal Kanwar's case 2013 ACJ 1441 (SC), did not take a view contrary to Helen C. Rebello or Patricia Jean Mahajan cases (supra). The following observations are relevant:

"(12) The principle expounded in this decision in Helen C. Rebello's case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the 'pecuniary advantage' from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Contd..

...contd.

(4) Within fifteen days from the date of death of a government employee, an ex gratia assistance of twenty-five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House rent allowance shall not be a part of allowance for the purposes of calculation of assistance.” Vehicles Act, 1988. This principle has been re-

stated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC), to reject the argument of the insurance company to deduct the amount receivable by the dependants of the deceased by way of 'social security compensation' and 'life insurance policy'."

However, while dealing with the scheme the court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the head of 'pay and other allowances' last drawn by the employee. We may note that on principle this court has not disagreed with the proposition laid down in Helen C. Rebello or in Patricia Jean Mahajan (supra), but while arriving at a just compensation, it had ordered the deduction of the salary received under the statutory Rules." 12.2. In the present case too, it has not been shown if the ex gratia amount received by the claimants had been under any Rules of service and would be of continuous assistance, as had been the case in Shashi Sharma (supra) as per the Rules of 2006 considered therein. In an overall analysis and with reference to the decision in Sebastiani Lakra (supra), we are clearly of the view that the decision in Shashi Sharma would not apply to the facts of the present case and no deduction in the amount awarded by the High Court appears necessary. 12.3 Apart from the above, as noticed, the High Court has even otherwise provided for enhancement towards future prospects only at 40% though the deceased was in a settled job and was not self-employed or on fixed salary. If at all an assertion is made that the assistance received by the claimants or a part of allowances received by the deceased need to be taken into consideration for making certain deductions, the enhancement by way of future prospects at 50% would be effectively setting off any such proposed deduction. In other words, in the ultimate analysis, the amount of pecuniary loss as assessed by the High Court remains reasonable and cannot be said to be either exorbitant or too low so as to call for any interference.

13. The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court.

14. The upshot of the discussion aforesaid is that in our view, the amount ultimately receivable by the claimants in terms of the judgment of the High Court remains that of just compensation and no case for interference is made out.

15. Accordingly, both these appeals fail, and are dismissed.

.....J. (ABHAY MANOHAR SAPRE) .....J. (DINESH MAHESHWARI) New Delhi, Date: 23rd April, 2019.