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KUNJAN SADANA & ANR.

v.

MAHESH KUMAR & ORS

(Civil Appeal No. 9312 of 2019)

B

DECEMBER 10, 2019

**[S. ABDUL NAZEER AND SANJIV KHANNA, JJ.]**

*Motor Vehicles Act, 1988:*

*Fatal accident – Of a 19 years old bachelor – Caused by*

- C *motor vehicle – Claim for compensation by mother and brother of deceased – Compensation awarded by Tribunal and High Court by using multiplier of 15 on the basis of the age of claimant/mother – Appeal to Supreme Court – Held: Multiplier of 15 was wrongly applied by adopting the age of the defendant and not the deceased*
- D *– High Court was also wrong in not considering future prospects of the deceased – In view of the age of the deceased, an additional 40% of the established income must be added while computing the compensation – Thus, taking the multiplier of 18, considering the future prospects of the deceased, and granting further amount under conventional heads, the compensation amount is further enhanced.*

**Partly allowing the appeal, the Court**

**HELD: 1. The High Court while enhancing the compensation, did not consider the future prospects of the deceased.**

- F *The material on record makes it evident that the deceased was self-employed. As the deceased was aged 19 years, an additional 40% of the established income must be added while computing the compensation. In addition, 50% of the said amount has to be deducted in lieu of his personal expenses that he would have incurred to maintain himself as a bachelor, had he been alive. [Paras 8 and 9] [1131-B-C-E]*

*National Insurance Company Limited v. Pranay Sethi and Others (2017) 16 SCC 680 – followed.*

**2. The High Court has rightly determined monthly salary**

- H *of the deceased at Rs. 3,918. In addition, 40% of the actual*

salary income of the deceased has to be added towards the future prospects of the deceased, as his age was less than 40 years. [Para 12] [1133-E] A

3. The High Court applied the multiplier at '15', as it took the age of the mother into consideration, and not that of the deceased. Even if the deceased is a bachelor, his age has to be taken into account to adopt a multiplier. [Para 10] [1131-F-G] B

*Royal Sundaram Alliance Insurance Company Limited v. Mandala Yadagari Goud and Others (2019) 5 SCC 554-* relied on.

4. Since the deceased was a bachelor, 50% of his gross income must be deducted towards personal living expenses. Thus, the compensation payable to the claimants towards loss of dependency is Rs. 5,92,488/- (Rs. 2,743 x 12 x 18 = Rs. 5,92,488/-). In addition, the claimants are also entitled for a sum of Rs. 70,000/- under the conventional heads. Thus, the total compensation payable to the claimants comes to Rs. 6,62,448/. The amount of Rs. 5,02,620/- awarded by the High Court, has to be deducted from the aforesaid amount, therefore, the balance compensation payable to the claimants comes to Rs. 1,59,868/-, which is rounded off to Rs. 1,60,000/-. The third respondent/insurance company is directed to deposit a sum of Rs. 1,60,000/- with simple interest at the rate of 7% per annum from the date of the claim petition till the date of deposit. [Paras 12-14] [1132-F-H; 1133-A-B] C D E

#### Case Law Reference

<b>(2017) 16 SCC 680</b>	<b>followed</b>	<b>Para 8</b>	<b>F</b>
<b>(2019) 5 SCC 554</b>	<b>relied on</b>	<b>Para 10</b>	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9312 of 2019.

From the Judgment and Order dated 08.08.2017 of the High Court of Delhi at New Delhi in MAC. Appeal No. 479 of 2009 G

Rahul Mohod, Raju Sonkar, Sanjay Saini, Shekhar Aggarwal, Karunakar Mahalik, Advs. for the Appellants.

Dr. Anand Vardhan Sharma, Amit Tyagi, V.K. Vashudev, Kailash Prashad Pandey, Advs. for the Respondents. H

- A      The Judgment of the Court was delivered by  
**S. ABDUL NAZEER, J.**  
 1. Delay condoned.  
 2. Leave granted.
- B      3. The instant appeal has been filed by the claimants challenging the judgment and order dated 08.08.2017 of the High Court of Delhi, in MAC Appeal No.479 of 2009 wherein the High Court has partly allowed the appeal and consequently enhanced the amount of compensation from Rs 3,72,620/- to Rs 5,02,620/. The appellants have filed this appeal, seeking further enhancement of the compensation.
- C      4. The appellants are the widowed mother and the younger brother (a minor) of the deceased. The deceased namely, Shri Yitesh Sadana alias Prince, a bachelor, aged 19 years, succumbed to injuries that he sustained in a motor vehicle accident that occurred on 18.04.2007, which was caused due to the negligence of the driver of a
- D      bus, bearing registration No DL-1PA-4403. It is admitted that the offending vehicle was insured with New India Assurance Co Ltd, the third respondent herein, for third party risk. As mentioned above, the claim petition was allowed in part, by the Tribunal by Award dated 06.06.2009. Thereafter, the appeal filed by the appellants was partly allowed by the High Court.
- E      5. It is contended by the learned counsel for the appellants that the deceased was aged 19 years, therefore, the multiplier applicable for this age group is '18'. However, the Tribunal and the High Court have adopted the multiplier '15', on the basis of the age of the mother of the deceased. In addition, it is also submitted that the High Court
- F      failed to consider the future prospects, while awarding the compensation. The learned counsel appearing for the insurer has sought to justify the impugned judgment and order herein.
- G      6. Summary of the compensation awarded by the Tribunal: -
- | <b>SI No:</b> | <b>Details</b>                      | <b>Amount</b>         |
|---------------|-------------------------------------|-----------------------|
| 1             | Loss of Dependency                  | Rs.3,52,620.00        |
| 2             | Funeral Expenses                    | Rs. 5,000.00          |
| 3             | Loss of Estate,<br>Love & Affection | Rs.15,000.00          |
| <b>TOTAL</b>  |                                     | <b>Rs.3,72,620.00</b> |
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7. While calculating the loss of dependency at Rs. 3,52,620/-, the Tribunal considered the income of the deceased at Rs. 3,918/- per month. The age of the mother i.e. 42 years was considered, in order to apply the multiplier '15'. In addition, as the deceased was a bachelor, the Tribunal has reduced 50% of his salary in lieu of his personal expenses. The High Court had enhanced the award to Rs. 5,02,610/-.

8. The High Court while enhancing the compensation, did not consider the future prospects of the deceased. The material on record makes it evident that the deceased was self-employed. The Constitution Bench of this Court in **National Insurance Company Limited v. Pranay Sethi and Others<sup>1</sup>**, has considered the issue in relation to future prospects, while granting the compensation. It was held as under:-

**“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.”

(emphasis supplied)

9. In the instant case, as the deceased was aged 19 years, an additional 40% of the established income must be added while computation of the compensation. In addition, 50% of the said amount has to be deducted in lieu of his personal expenses, that he would have incurred to maintain himself as a bachelor, had he been alive.

10. Further, the High Court applied the multiplier at '15', as it took the age of the mother into consideration, and not that of the deceased. A three-Judge Bench of this Court, in **Royal Sundaram Alliance Insurance Company Limited v. Mandala Yadagari Goud and Others<sup>2</sup>**, held that even if the deceased is a bachelor, his age has to be taken into account to adopt a multiplier. The question for consideration in this case was as under:

“The only legal issue canvassed before us in these matters, which are in the nature of cross-appeals, is that in the case of a motor

<sup>1</sup> (2017) 16 SCC 680

<sup>2</sup> (2019) 5 SCC 554

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- A accident where there is death of a person, who is a bachelor, whether the age of the deceased or the age of the dependents would be taken into account for calculating the multiplier.”

This question was answered in the following terms:

- B “**12.** We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three-Judge Benches and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”

- C 11. The Constitution Bench in **Pranay Sethi** (supra) has also awarded compensation under the conventional heads as under: -

- D “**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.”

- E 12. We are of the view that the High Court has rightly determined monthly salary of the deceased at Rs. 3,918. In addition, 40% of the actual salary income of the deceased has to be added towards the future prospects of the deceased, as his age was less than 40 years. Therefore, the gross income of the deceased must be calculated as:

- a. Before Deducting the personal living expenses:

$$\text{Rs. } 3,918 + (40\% \text{ of the monthly income i.e. } \text{Rs. } 1567/-) = \text{Rs. } 5,485/-$$

- F Since the deceased was a bachelor, 50% of his gross income must be deducted towards personal living expenses which must be calculated as:

$$\text{b. } \text{Rs.} 5,485 - (50\% \text{ of } 5485) = \text{Rs. } 2,743/-$$

- G Thus, the compensation payable to the claimants towards loss of dependency is Rs. 5,92,488/- ( $\text{Rs. } 2,743 \times 12 \times 18 = \text{Rs. } 5,92,488/-$ ). In addition, the claimants are also entitled for a sum of Rs.70,000/- under the conventional heads. Thus, the total compensation payable to the claimants comes to Rs. 6,62,448/-.

- H 13. The amount of Rs. 5,02,620/- awarded by the High Court, has to be deducted from the aforesaid amount, therefore, the balance

compensation payable to the claimants comes to Rs. 1,59,868/-, which A is rounded off to Rs. 1,60,000/-.

14. As a result, the appeal succeeds and is partly allowed. The third respondent/insurance company is directed to deposit a sum of Rs. 1,60,000/- with simple interest at the rate of 7% per annum from the date of the claim petition till the date of deposit. The respondent/ insurance company is further directed to deposit the aforesaid amount before the Tribunal within a period of two months from the date of receipt of the copy of this judgment. The first appellant is permitted to withdraw the said amount. B

15. There will be no orders as to costs. C

Kalpana K. Tripathy

Appeal partly allowed.