

A                   S. CHANDRASEKHARAN & ORS.

v.

M. DINAKAR & ANR.

(Civil Appeal Nos. 4688-4689 of 2022)

B                   JULY 11, 2022

**[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]**

- Motor Vehicles Act, 1988 – s. 166, 168 – Compensation – Enhancement of – Accident occurred which resulted into death of wife of appellant – Claim was lodged by the appellant before the Tribunal – Tribunal awarded compensation of Rs. 36,92,350/- and as at the time of accident the deceased was unemployed, the monthly income of deceased was calculated on basis of her husband's income (following the judgment of Arun Kumar Agrawal and others) – However, the High Court considered the deceased's salary in a job where she was engaged three years prior to the accident as the basis for quantifying the pecuniary loss to be awarded and reduced the amount of compensation to Rs. 32,82,090/- – On appeal, held: There is a long time gap between the time she was in employment and the occurrence of the accident thus her salary would be an unreliable guide for fixing her notional income – The Tribunal had rightly followed the course laid down in the case of Arun Kumar Agrawal – Deduction in pecuniary loss by the High Court not correct – The deduction of 1/3rd of determined income of the deceased towards personal expenses is valid on the basis of the decision of Supreme Court in the case of Sarla Verma – Loss of future prospect was not considered by the Tribunal and the High Court to arrive at the quantum of pecuniary loss – Further, loss of love and affection is comprehended in the loss of consortium, High Court not justified to award compensation towards loss of love and affection as a separate head – Considering the aforementioned factors, the compensation was set to Rs. 46,17,350/- – Appeals allowed.*

*Arun Kumar Agrawal and Another v. National Insurance Company Ltd. and Others. [(2010) 9 SCC 218 : [2010] 9 SCR 303 – relied on.*

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*Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another (2009) 6 SCC 121; Rajendra Singh and Others v. National Insurance Company Limited and Others [(2020) 7 SCC 256 : [2020] 6 SCR 579 – referred to.*

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<u>Case Law Reference</u>		
[2010] 9 SCR 303	relied on	Para 4
[2020] 6 SCR 579	referred to	Para 14

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4688-4689 of 2022.

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From the Judgment and Order dated 27.02.2012 of the High Court of Judicature at Madras in CMA Nos. 3017 of 2014 and cross appeal CMA No. 3313 of 2014.

P. B. Suresh, Vipin Nair, Arindam Ghosh, Karthik Jayshankar, Prakash Baghel, Advs. for the Appellants.

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Amit Kumar Singh, Mrs. K. Enatoli Sema, Ms. Chubalemla Chang, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ANIRUDDHA BOSE, J.**

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Leave granted.

2. The appellants before us are the claimants in an action for compensation under the Motor Vehicles Act, 1988 (1988 Act). An accident had occurred on 28<sup>th</sup> February 2011 at about 10:45 A.M., which resulted in death of one Bala Babitha, a 37 year old lady, and caused injuries to her husband and her minor daughter. The first appellant is the husband of the deceased. The second and the third appellants are their children, who were minors by age at the point of time the accident occurred. The fourth appellant is the mother of the deceased. The first appellant and the third appellant alongwith the deceased were travelling in an auto rickshaw from Velachery to Adambakkam in the city of Chennai, which was hit by a vehicle (bearing registration no. TN- 04-W-6189). The respondent no. 1 was the owner of that vehicle. The second respondent is the insurance company, whose policy covered the offending vehicle.

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- A        3. Claim was lodged by the appellants under Section 166 of the 1988 Act before the Motor Accident Claims Tribunal, Chennai (the Tribunal). Before the Tribunal, rash and negligent driving of the offending vehicle was proved, and that finding was not upset in appeal by the High Court of Judicature at Madras in its judgment delivered on 27<sup>th</sup> February 2018. The present appeals arise from that judgment. The Tribunal awarded compensation in favour of the appellant no.1 for a sum of Rs.4,77,100/- . The minor daughter (appellant no.3) of the deceased and the first appellant was awarded compensation of Rs.2,06,000/- . The quantum of compensation on account of death of said Bala Babitha was computed by the Tribunal to be of Rs.36,92,350/- . Monthly income of C the deceased was calculated as one-third of her husband's income. The Tribunal found the husband's income to be Rs.78,700/- per month. This finding of monthly income of the husband was not disturbed by the High Court. The compensation amount was to carry an interest of 7.5% per annum from the date of filing of the claim, till the date of deposit. D Deposit of the awarded sum was directed to be made within two months from the date of the award.
4. Both the insurance company and the appellants preferred separate appeals in respect of sums awarded as compensation in relation to the deceased and the injured victims. The High Court reduced the sum awarded as compensation in respect of the first appellant to E Rs.3,41,000/- . As regards the third appellant, award of Rs.2,06,000/- as compensation was retained. Compensation awarded to the family of the deceased victim was modified and reduced to Rs.32,82,090/- by the High Court. The Tribunal had quantified compensation for the surviving members of the family of deceased on her notional income calculated F on the basis of her husband's income, following a judgment of this Court delivered in the case of **Arun Kumar Agrawal And Another vs. National Insurance Company Ltd. And Others** . [(2010) 9 SCC 218]. The High Court, however, considered her salary in a job she was engaged in three years back to be the basis for quantifying the pecuniary loss to be awarded to the surviving members of her family. Both the Tribunal G and the High Court had applied the multiplier principle to arrive at the figure of pecuniary loss. Before us, arguments have been advanced on the point of reduction of compensation to the family of the deceased victim and we shall confine our judgment to that issue only.
5. The heads under which award was made by the Tribunal H quantifying the compensation to be paid on account of the deceased victim were:-

Pecuniary Loss	:	Rs.31,50,000
Loss of consortium	:	Rs. 1,00,000
Funeral expenses	:	Rs. 25,000
Loss of love and affection	:	Rs.4,00,000
Medical expenses	:	Rs.17,350
Total		Rs.36,92,350/-

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6. While modifying the award, the High Court computed the compensation under the following heads:-

Pecuniary loss	Rs.30,94,740.00
Loss of consortium	Rs.40,000.00
Funeral Expenses	Rs.15,000.00
Loss of Love and affection to the claimants-Rs.25,000	Rs.1,00,000.00
Loss of Estate	Rs.15,000.00
Medical Expenses	Rs.17,350.00
Total	Rs.32,82,090.00

7. We are to address now as to whether the pecuniary loss which had occurred on account of death of the victim has to be computed on pegging it on her personal income she earned from her employment approximately three years back or it should be relatable to the income of her surviving husband. This question arises as there was evidence before the Tribunal that the deceased was a graduate with B. Com. degree and was employed till the year 2008 in a company earning monthly salary of Rs.34,385/- At the time of the accident, however, the deceased was not employed. The Tribunal determined the compensation relying on the case of **Arun Kumar Agrawal** (supra). It has been held in this judgment:-

*“35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a regular income,*

- A *by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000 per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation."*
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- D 8. The High Court, on the other hand, proceeded on the basis that it would be appropriate to fix the sum of Rs.34,385/- as the monthly income of the deceased to arrive at just and fair compensation in quantifying pecuniary loss. Reasoning of the High Court on this aspect was:-

*"Though at the time of death, the deceased Bala Babitha was a housewife, earlier she was working in a private company and earning a sum of Rs.34,385/- per month, which is evident from Ex.Ps.23 & 24. Hence, it would be appropriate to fix the sum of Rs.34,385/- as monthly income of the deceased to arrive at a just and proper compensation under the head of pecuniary loss. If a sum of Rs.34,385/- is taken as monthly income of the deceased, 50% amount has to be deducted towards personal expenses and if so deducted, the monthly contribution to the family works out to Rs.17,193/. The deceased was aged 37 years at the time of accident; hence, the correct multiplier that has to be applied in this case is 15. If the multiplier 15 is applied, the total pecuniary loss works out to Rs.30,94,740/- (17,193 x 12 x 15). Consequently, the sum of Rs.31,50,000/- awarded by the Tribunal under the head Pecuniary Loss is hereby modified and reduced to Rs.30,94,740/-."*

**(quoted verbatim from the paperbook)**

- H 9. In our opinion, the judgment of the High Court on this point suffers from error on two counts. At the time of her death, the deceased was not in employment. She was a homemaker. It was not a case where

the deceased at the time of accident had just left her job. If that was the case, her last drawn salary might have had given reliable guidance for computing her monthly income at that point of time. Here the deceased remained without employment for a period of approximately three years and what she earned prior to that ought not to have been treated to be her monthly income to arrive at just and proper compensation under the head of pecuniary loss, as has been held by the High Court. There is a long time gap between the time she was in employment and the occurrence of the accident. Her monthly salary approximately three years back thus would be an unreliable guide for fixing her notional income when she succumbed to her injuries caused by the accident. Moreover, at the time of the accident, she was a homemaker providing care and support to her family. In this context, in our opinion, the computation methodology prescribed in the case of **Arun Kumar Agrawal** (supra) would be more appropriate to apply, which was done by the Tribunal.

10. Plea has been taken before us on behalf of the insurance company that the appellants could not take a stand for computing the income of the deceased in the manner held in the case of **Arun Kumar Agrawal** (supra), since before the High Court, they had run a case that the pecuniary loss ought to be computed on the basis of her last drawn salary. Just because the appellants urged their claim based on the last drawn salary of the deceased before the High Court, this Court ought not to anchor its decision on that argument alone. It remains open to this Court to examine the nature of the claim and compute the compensation on a different criterion applying a different parameter. This is more so, because such compensation figure could be arrived at on the basis of materials on record, that includes evidence on monthly earning of the husband of the deceased and the applied parameter stands judicially recognised as a legitimate mode for computing pecuniary loss. Further, in this case, plea was made in the claim petition for compensation calculated on the basis of one-third of the husband's income. In the petition for special leave to appeals also, one of the points formulated is as to whether compensation on account of death of Bala Babitha would be calculated on the basis of her last drawn salary or her husband's income.

11. Section 168 of the Motor Vehicles Act, 1988 stipulates:-

**"168. Award of the Claims Tribunal.—On receipt of an application for compensation made under section 166, the**

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- A      *Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 163 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:*
- B      *.....*
- C      *(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.*
- D      *(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."*
- E      12. The aforesaid provision vests the Tribunal with the power and jurisdiction to make an inquiry into claims arising out of deaths and injuries caused from an accident and make award determining the compensation which appears to it to be just. It would defeat the legislative purpose in the event the Tribunal or the Appellate Forum is made to confine its inquiry to the plea of the claimant as regards the factors which ought to be taken into consideration for determining the compensation amount. Power to hold an inquiry under the aforesaid provision cannot be construed in such a restrictive manner. If the factors on which quantification of claim is asked for cannot be established, the adjudicatory forum under the 1988 Act would stand divested of its power to arrive at just compensation even if in course of the proceeding, materials disclosed could justify award of compensation based on certain criteria other than those on which the claim is founded. In the instant case, we find that the Tribunal, while proceeding to award compensation to the appellants/claimants had relied on the principle laid down by
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this Court in the case of **Arun Kumar Agrawal** (supra) and there was evidence before the Tribunal to assess the income of the husband of the deceased. In fact, the first appellant's compensation was quantified taking into consideration his own income at the material point of time. In our opinion, the High Court ought not to have proceeded on the basis of the income drawn by the deceased victim approximately three years before the accident ended her life. The Tribunal did not indulge in pure guesswork in pegging the notional income of the deceased to her husband's income. As we have already observed, in the claim petition itself, against the column "Occupation of the deceased"- income calculation of the deceased was contemplated on the basis of her husband's income. The Tribunal had rightly followed the course laid down in the case of **Arun Kumar Agrawal** (supra), which in the given facts, constituted, a more definitive and reliable methodology for quantifying pecuniary loss.

13. So far as deduction on account of personal expenses of the deceased, following the case of **Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another** [(2009) 6 SCC 121], the Tribunal directed deduction of 1/3<sup>rd</sup> of the earning of the deceased, the latter being determined on the income of her spouse. That was, in our view, the proper course. We hold so because, even if we leave out the husband of the deceased from being treated as a dependent, there were two minor children at the material point of time who ought to have been treated as dependent family members. At that point of time the second appellant was twelve years old and the age of injured daughter was three years. In the case of **Sarla Verma** (supra) the deduction has been held to be valid in a case where there were dependent family members. We should not restrict the expression "dependent" to mean those financially dependent only. Minor children are emotionally dependent on the mother. They lost care and guidance of their mother at a very young age. While arriving at just compensation, the Tribunal ought to factor in the loss of dependency in these terms.

14. The High Court did not give any reason for deducting 50% in computing pecuniary loss and we do not think this was the correct view. We are of the view that deduction of 1/3<sup>rd</sup> of determined income of the deceased towards personal expenses is valid on the basis of the decision of this Court in the case of **Sarla Verma** (supra). We also find that neither the Tribunal nor the High Court had considered loss of future

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- A prospect to arrive at the quantum of pecuniary loss. In the case of **Rajendra Singh and Others vs. National Insurance Company Limited and Others** [(2020) 7 SCC 256], addition of loss of future prospects has been held to be a factor for determining compensation under the head of pecuniary loss even in a case where the income of deceased is arrived at on a notional basis. In this judgment it has been held:-
- "11. The notional income of the first deceased is therefore held to be Rs 5000 per month at the time of death. The compensation on that basis with a deduction of 1/4th i.e. Rs. 15,000 towards personal expenses with a multiplier of 17 is assessed at Rs 7,65,000. If the deceased had survived, in view of observations in Lata Wadhwa [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197], her skills as a matured and skilled housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and for which reason we hold that the appellants shall be entitled to future prospects @ 40% in addition to the loss of consortium and future expenses already granted. We therefore assess the total compensation payable to the appellants in the first appeal at Rs 11,96,000."*
- E 15. The deceased was 37 years old at the time of her death. Hence, there ought to be an addition of 40% to the notional income of the deceased towards future prospects as she was below 40 years of age. In the present case, it is not in dispute that multiplier of 15 ought to be applied. In these circumstances, the total entitlement of the appellants under the head of pecuniary loss would thus be:-

G	Monthly income of the deceased	Rs.26,250/-
	future prospects @ 40% of the income (notional)	$\begin{aligned} & \text{Rs.26,250} \times 40/100 = \\ & \text{Rs.10,500/-} [\text{Rs.26,250} + \\ & \text{Rs.10,500} \\ & = \text{Rs.36,750/-}] \end{aligned}$
	Deduction of 1/3 <sup>rd</sup> for personal living expenses	$\begin{aligned} & \text{Rs.36,750} \times 1/3 = \\ & \text{Rs.12,250/-} [\text{Rs.36,750} - \\ & \text{Rs.12,250} \\ & = \text{Rs.24,500/-}] \end{aligned}$
	Total pecuniary loss of the deceased (with 15 as the multiplier)	$\begin{aligned} & \text{Rs.24,500} \times 12 \times 15 = \\ & \text{Rs.44,10,000/-} \end{aligned}$
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16. We, accordingly, set aside the judgment of the High Court to the extent of computation made of pecuniary loss on account of death of said Bala Babitha for a sum Rs.30,94,740/- . We quantify the said sum to be Rs.44,10,000/-.

17. Argument was also advanced on behalf of the respondents that compensation awarded towards loss of love and affection is contrary to the ratio of the judgement of this Court in case of **United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others** [(2021) 11 SCC 780]. It was held in this decision that loss of love and affection is comprehended in loss of consortium, and there is no justification to award compensation towards loss of love and affection as a separate head. The relevant paragraphs from the judgement are reproduced below:-

*“34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of Love and affection is comprehended in loss of consortium.*

*35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate Conventional head. There is no jurisdiction to award compensation towards loss of love and affection as a separate head.”*

18. We accept this argument advanced by the respondents. The High Court has thus committed error in law while providing for compensation under the heads of loss of love and affection and also loss of consortium. Instead, in our opinion, compensation provided under the head of loss of consortium would be Rs. 40,000/- for each appellant, comprehending the loss of love and affection within it. Hence, the total compensation provided under this head would amount to Rs 1,60,000/-. That part of the judgment of the High Court shall stand modified accordingly.

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- A        19. We find no reason to interfere with the High Court's finding as regards computation of compensation on other heads. Interest of 7.5% per annum has been awarded by both the Tribunal and the High Court. We do not disturb the concurrent views of the High Court and the Tribunal on the rate of interest. Certain authorities were cited on behalf of the appellants in support of their argument for enhancing the rate of interest. The first one, reported in [(2001) 2 SCC 9] related to an accident that occurred on 20<sup>th</sup> March 1986. The next one, reported in [(2009) 8 SCC 507] related to insurance claim on loss of stocks by fire and the date of occurrence of the accident in that case was 24<sup>th</sup> August 1999. The bank rate of interest has fallen over the years and for this reason
- B        we sustain the award of the Tribunal and the High Court in appeal on this point.

The total amount payable to the appellants on account of death of Bala Babitha, thus, would be:-

D	Pecuniary loss	Rs. 44,10,000/-
	Loss of consortium	Rs. 1,60,000/-
	Funeral expenses	Rs. 15,000/-
	Loss of estate	Rs. 15,000/-
	Medical expenses	Rs. 17,350/-
E	Total	Rs.46,17,350/-

20. The aforesaid sum shall be payable to the appellants in the proportion directed by the High Court except that in the case of the 4<sup>th</sup> appellant (that is the mother of the deceased), we direct lumpsum payment of Rs.2,00,000/- instead of Rs.1,00,000/- as directed by the High Court.
- F        The aforesaid sum shall be paid within two months from this date adjusting therefrom any amount which may have already been paid to the appellants. Unpaid amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till payment is made in terms of this judgment and order.
- G        21. The appeals are allowed in the above terms, without any order as to costs.
22. Pending application(s), if any, shall stand disposed of.