

KIRTI & ANR. ETC.

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v.

ORIENTAL INSURANCE COMPANY LTD.

(Civil Appeal Nos.19-20 of 2021)

JANUARY 05, 2021

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**[N.V. RAMANA, S. ABDUL NAZEER
AND SURYA KANT, JJ.]**

Motor Vehicles Act, 1988: Claims and legal liabilities crystallise at the time of accident itself – Any changes post thereto, ought not to ordinarily affect pending proceedings – Just like how claimants cannot rely upon subsequent increases in minimum wages, the insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings – Similarly, any concession in law made in this regard by either counsel would not bind the parties.

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Concession in law: Permissibility, extent of – Held: Advocates cannot throw away legal rights or enter into arrangements contrary to law – Motor Vehicles Act, 1988.

Motor Vehicles Act, 1988: Assessment of income in the absence of evidence – Held: In the instant case, although it is correct that the claimants were unable to produce any document evidencing victim-husband's income, nor they established his employment as a teacher; but that would not justify adoption of the lowest-tier of minimum wage while computing his income – From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that victim was comparatively more educationally qualified and skilled – Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting – Preserving the existing standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law – Thus, the minimum wage of Rs 6197 as applicable to skilled workers applied in his case.

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Motor Vehicles Act, 1988: Future prospects – 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

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- A *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 –*
- B *The argument that no future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation-induced increase in wages.*

Motor Vehicles Act, 1988: Calculation of notional income for homemakers and the grant of future prospects with respect to them,

- C *for the purposes of grant of compensation – Determining factors, discussed. (Per N.V. Ramana, J – Supplementing)*

Partly allowing the appeals, the Court

HELD:

Per SURYA KANT, J.:

- D **1. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident**
- E **itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings.**
- F **Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw-away legal rights or enter into arrangements contrary to law. [Para 10][998-G; 999-A-B]**

- G **2.1 Any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity, and good conscience. Not only did the family of the deceased consist of septuagenarian parents, but there were also two toddler-girls, aged merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of self-dependency. Tragically, in addition to the**

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married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in victim-lady's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both victims (couple) ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependent on the deceased. [Para 11][999-C-E]

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Director of Elementary Education v. Pramod Kumar Sahoo (2019) 10 SCC 674 Helen C Rebello v. Maharashtra State Road Transport Corp, (1999) 1 SCC 90 – relied on

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2.2 *Second*, although it is correct that the claimants have been unable to produce any document evidencing victim-husband's income, nor have they established his employment as a teacher; but that doesn't justify adoption of the lowest-tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that victim was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving theexisting standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law. Thus, at the very least, the minimum wage of Rs 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case. [Para 12][999-E-G; 1000-A]

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RK Malik v. Kiran Pal (2019) 14 SCC 1 - relied on

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2.3 *Third* and most importantly, it is unfair on part of the respondent-insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of the *Pranay Sethi* reference. Nevertheless, the law on this point is no longer *res integra*, and stands crystalised, as it was held therein that 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

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- A 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. [Para 13][1000-B-D]

National Insurance Co Ltd v. Pranay Sethi (2017) 16

- B SCC 680 – followed

3. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with

- C notional income, is both incorrect in law and without merit considering the constant inflation-induced increase in wages. It was held in *Hem Raj v. Oriental Insurance Co. Ltd.* that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made..” [Para 14][1000-E-G]

Sunita Tokas v. New India Insurance Co Ltd 2019 SCC

OnLine SC 1045; Hem Raj v. Oriental Insurance Co. Ltd. (2018) 15 SCC 654 – relied on

Per N.V. RAMANA, J. (Supplementing):

1. There are two distinct categories of situations wherein the Court usually determines notional income of a victim. The

- F first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the Court “guesses” the income of the victim on the basis of the evidence on record, like the quality of life being led by the victim and her family, the general earning of an individual employed in that field, the

- G qualifications of the victim, and other considerations. The second category of cases relates to those situations wherein the Court is called upon to determine the income of a non-earning victim, such as a child, a student or a homemaker. Needless to say, compensation in such cases is extremely difficult to quantify.

- H [Paras 2, 3][1002-B-D]

2. The Court often follows different principles for determining the compensation towards a non-earning victim in order to arrive at an amount which would be just in the facts and circumstances of the case. Some of these involve the determination of notional income. One category of non-earning victims that Courts are often called upon to calculate the compensation for are homemakers. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome. [Paras 4, 5, 10][1002-D-E, F; 1005-D-F]

3. On considering the growing awareness around this issue, the United Nations Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 17 on the “*Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product*” in 1991. The General Recommendation affirmed that “*the measurement and quantification of the unremunerated domestic activities of women, which contribute to development in each country, will help to reveal the de facto economic role of women*”. It is worth noting that the above General Recommendation is passed in furtherance of Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women which relates to ending discrimination against women in the field of employment, a Convention that India has ratified. [Paras 13, 14][1006-F-G; 1007-A]

4. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms.

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- A It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses.
- B It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals. Returning to the question of how such notional income of a homemaker is to be calculated, there
- C can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances. [Para 15, 16][1007-B-E]
- D *R.K. Malik v. Kiran Pal (2009) 14 SCC 1; M.R. Krishna Murthi v. New India Assurance Co. Ltd. 2019 SCC OnLine SC 315; Lata Wadhwa v. State of Bihar (2001) 8 SCC 197 : [2001] 1 Suppl. SCR 578; Arun Kumar Agrawal v. National Insurance Co. Ltd. (2010) 9 SCC 218 : [2010] 9 SCR 303; Rajendra Singh v. National Insurance Co. Ltd. 2020 SCC OnLine SC 521; National Insurance Co. Ltd. v. Minor Deepika rep. by guardian and next friend, Ranganathan 2009 SCC OnLine Mad 828; Kajal v. Jagdish Chand (2020) 4 SCC 413; General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs), (1994) 2 SCC 176; Sarla Dixit (Smt) v. Balwant Yadav (1996) 3 SCC 179 : [1996] 3 SCR 30; Sarla Verma (Smt) v. Delhi Transport Corporation (2009) 6 SCC 121: [2009] 5 SCR 1098 – relied on.*
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- F
- G 5. The rationale behind the awarding of future prospects is therefore no longer merely about the type of profession, whether permanent or otherwise, although the percentage awarded is still dependent on the same. The awarding of future prospects is now a part of the duty of the Court to grant just compensation, taking
- H into account the realities of life, particularly of inflation, the quest

of individuals to better their circumstances and those of their loved ones, rising wage rates and the impact of experience on the quality of work. [Para 23][1010-H; 1011-A-B]

National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680 : [2017] 13 SCR 100 – followed.

6. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a Court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the Court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the Court has determined their notional income. When it comes to the second category of cases, relating to notional income for non-earning victims, the above principle applies with equal vigor, particularly with respect to homemakers. Once notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. [Paras 24, 25][1011-B-E]

Hem Raj v. Oriental Insurance Company Limited (2018) 15 SCC 654; Sunita Tokas v. New India Insurance Co. Ltd. (2019) 20 SCC 688 – relied on.

Case Law Reference

Per SURYA KANT, J.

(2019) 10 SCC 674	relied on	Para 10
(1999) 1 SCC 90	relied on	Para 11
(2009) 14 SCC 1	relied on	Para 12
(2017) 16 SCC 680	relied on	Para 13
(2018) 15 SCC 65	relied on	Para 14

Per N.V. RAMANA, J.

(2001) 8 SCC 197	relied on	Para 5
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A	(2010) 9 SCC 218 [2019] 6 SCR 402 (2017) 16 SCC 680 (2020) 4 SCC 413	relied on relied on followed relied on	Para 6 Para 16 Para 20 Para 20
B	(1994) 2 SCC 176 (1996) 3 SCC 179 (2009) 6 SCC 121 (2018) 15 SCC 654	relied on relied on relied on relied on	Para 20 Para 20 Para 21 Para 25
C	(2019) 20 SCC 688	relied on	Para 25

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 19-20 of 2021.

D From the Judgment and Order dated 17.07.2017 by the High Court of Delhi at New Delhi in MAC. APP. Nos. 336 of 2017 and 375 of 2017.

Mritunjay Kumar Sinha, S.N. Parasari, Ranjan Kumar Pandey, K.K. Bhat for the appearing parties.

E The Judgment of the Court was delivered by
SURYA KANT, J.

Leave Granted.

F 2. These civil appeals, which have been heard through video conferencing, have been filed by three surviving dependents (who are two minor daughters and father) of the two deceased, impugning the judgment dated 17.07.2017 of the High Court of Delhi through which the motor accident compensation of Rs 40.71 lakhs awarded by the Motor Accident Claims Tribunal, Rohini (hereinafter, “Tribunal”) on 24.12.2016 under Section 168 of the Motor Vehicle Act, 1988 (“MV Act”), was reduced to Rs 22 lakhs.

FACTUAL MATRIX

G 3. The deceased couple, Vinod and Poonam, while commuting on a motorcycle in Delhi at around 7AM on 12.04.2014 were hit at an intersection by a Santro Car bearing registration ‘DL 7CA 1053’. The impact immediately incapacitated both the deceased and they soon passed

away from crano-cerebral damage and haemorrhagic shock caused by A
the accident's blunt-force trauma.

4. An FIR was registered under Sections 279 and 304 of the Indian B
Penal Code, 1860 (hereinafter, "IPC") against the driver, and the
statement of an independent eyewitness (Constable Vishnu Dutt) was
recorded, which evidenced rash driving and negligence on part of the
car-driver. Subsequently, a claim petition was filed under Section 166 of
the MV Act by the two toddler-daughters and septuagenarian-parents
of the deceased. This was contested by the driver and owner claiming
that the deceased were themselves driving negligently and the accident
was as a result of their very own actions. Two witnesses were examined
by the appellant-claimants and none by the respondents. The insurance
company (Respondent No. 1) offered as settlement a compensation of
Rs 6.47 lakhs for the death of Poonam and Rs 10.71 lakhs for Vinod.

5. The Tribunal took note of the chargesheet filed against the C
driver in the criminal case and also his failure to step-into the witness
box. Relying on the strong testimony of the independent witness, it was
concluded that the car-driver was indeed driving rashly and thus liability
ought to be fastened on the respondent-insurer. Regarding the quantum
of compensation, the Tribunal began by determining the ages of Poonam
and Vinod as being 26 and 29 years respectively. Consequently, an age-
multiplier of 17 was adopted. Although the deceased's father took a plea
that Vinod was earning Rs 14,000 every month as a teacher at the Pratap
Public School in Delhi, but he was unable to substantiate his claim with
any documentary evidence. Thus, minimum wage in Delhi was adopted
for computation of loss of dependency. An additional 25% income was
accounted for future prospects of Poonam, and 1/3rd of Vinod's salary
was deducted towards personal expenses. Rs 2.50 lakhs was given for
each deceased as compensation for loss of love and affection, estate,
and funeral charges. Thus, the Tribunal awarded a total sum of Rs 40.71
lakhs for both deceased to the claimants.

6. This computation was challenged by the respondent-insurer D
before the High Court, on grounds that the Tribunal had erroneously
relied upon the minimum wage as notified by Government of Delhi as
there was no proof that the deceased were employed in Delhi. Instead,
given their established residence in Haryana, the minimum wage notified
for that State ought to be the basis for calculation of loss of dependency.
Simultaneously, addition of future prospects as well as non-deduction of E

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- A personal expenses for Poonam was prayed to be reversed. Further, compensation was sought to be halved on grounds of contributory negligence. A categorical submission was made highlighting the then divergent law on the issue of payment of ‘future prospects’ to non-permanent employees, pending resolution of which, it was prayed that no such addition be granted to the claimants.
- B 7. The High Court concurred with these contentions and consequently reduced the notional income for both deceased by adopting the lowest minimum wage applicable for unskilled workers in Haryana, instead of Delhi. Similarly, 1/3rd of Poonam’s income was deducted towards personal expenses and future prospects were denied to both deceased. However, given the totality of circumstances and Poonam’s contribution to her household, 25% additional gratuitous income was added to her salary. The High Court thus brought down the total compensation payable to the claimants to Rs 22 lakhs.

CONTENTIONS OF PARTIES

- D 8. This reduction has been assailed before us by learned counsel for the claimants. Re-computation is sought of compensation for loss of dependency consequent to the decision of the Constitutional Bench of this Court in *National Insurance Co Ltd v. Pranay Sethi*¹, which authoritatively settles the law on future prospects for non-permanent employees as well. Furthermore, the anomaly between the gratuitous increase of income between Vinod and Poonam, and the usage of unskilled minimum wage for Vinod have been brought to our notice.
- F 9. Learned Counsel for the respondent-insurer, on the other hand, has sought to forestall any increase in compensation, including under the ground of future prospects. It is claimed that the High Court’s decision was a consent order, and that the counsel for the appellants had conceded to a lower computation under the head of loss of dependency, which thus cannot be challenged before this Court.

ANALYSIS

- G *I.Deduction for Personal Expenses*
10. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased’s

H ¹(2017) 16 SCC 680.

dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw-away legal rights or enter into arrangements contrary to law.²

11. Any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity, and good conscience.³ Not only did the family of the deceased consist of septuagenarian parents, but there were also two toddler-girls, aged merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of self-dependency. Tragically, in addition to the married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in Poonam's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both Vinod and Poonam ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependent on the deceased.

II. Assessment of monthly income

12. *Second*, although it is correct that the claimants have been unable to produce any document evidencing Vinod's income, nor have they established his employment as a teacher; but that doesn't justify adoption of the lowest-tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving theexisting standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law.⁴ Thus, at the very least, the minimum wage of Rs

²Director of Elementary Education v. Pramod Kumar Sahoo, (2019) 10 SCC 674, ¶ 11.

³See, Helen C Rebello v. Maharashtra State Road Transport Corp, (1999) 1 SCC 90, ¶ 28.

⁴See, RK Malik v. Kiran Pal, (2019) 14 SCC 1, ¶ 9.

- A 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case.

III. Addition of Future Prospects

13. Third and most importantly, it is unfair on part of the respondent-insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of the *Pranay Sethi (supra)* reference. Nevertheless, the law on this point is no longer *res integra*, and stands crystallised, as is clear from the following extract of the afore-cited Constitutional Bench judgment⁵:
- C “**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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[Emphasis supplied]

14. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law⁶ and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in *Hem Raj v. Oriental Insurance Co. Ltd.*⁷, as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case:

- G “**7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made..”**

[Emphasis supplied]

⁵ National Insurance Co Ltd v. Pranay Sethi, (2017) 16 SCC 680, ¶ 59.4.

⁶ Sunita Tokas v. New India Insurance Co Ltd, 2019 SCC OnLine SC 1045.

H ⁷(2018) 15 SCC 654.

IV. Other heads and division of compensation

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15. Finally, given the lack of arguments on the other heads of funeral charges, loss of estate, love, and affection; there arises no cause of alteration. We similarly see no infirmity with the High Court's adoption of 17 as the age-multiplier, award of 9% interest, calculation of Poonam's notional income or the division of total compensation in the ratio of 1:2:2 between the grandfather and the two girls. For ready reference, a comparative table of revised compensation after suitable increases would thus be as follows:

		TRIBUNAL		HIGH COURT		SUPREME COURT	
	Head	Vinod	Poonam	Vinod	Poonam	Vinod	Poonam
A	Monthly Income	8554	9438	5547.1	5547.1	6197.1	5547.1
B	Deduction towards Personal Expenses	33%	None	33%	33%	25%	25%
C	Age Multiplier	17	17	17	17	17	17
D	Adjustment for Future Prospects	None	25%	None	None	40%	40%
E	Increase for Special Circumstances	None	None	None	25%	None	25%
F	Funeral Charges & Loss of Estate	250000	250000	250000	250000	250000	250000
G	Total per deceased	1413344	2656690	1004406	1193007	1577419	1735236
	(rounded off)	1414000	2657000	1005000	1195000	1580000	1740000
	Total compensation	4071000		2200000		3320000	

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CONCLUSION

16. For the reasons afore-stated, the appeals are allowed in-part. The total motor accident compensation of Rs 22 lakhs awarded by the High Court to the claimant-appellants is increased by Rs 11.20 lakhs to reach a new total of Rs 33.20 lakhs. The enhanced amount of compensation shall be paid within two months along with interest @ 9% p.a. from the date of filing of the Detailed Accident Report i.e. 23.05.2014, and shall be apportioned per the terms laid down by the Tribunal.

N. V. RAMANA, J.

1. I have had the advantage of perusing the judgment prepared by my learned brother, Surya Kant, J., and am in complete agreement with

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- A him. However, I thought to supplement the reasoning in his judgment, with respect to the question of notional income of a housewife and whether future prospects should apply to the same or not.
2. There are two distinct categories of situations wherein the Court usually determines notional income of a victim. The first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the Court “guesses” the income of the victim on the basis of the evidence on record, like the quality of life being led by the victim and her family, the general earning of an individual employed in that field, the qualifications of the victim, and other considerations.
- B 3. The second category of cases relates to those situations wherein the Court is called upon to determine the income of a non-earning victim, such as a child, a student or a homemaker. Needless to say, compensation in such cases is extremely difficult to quantify.
- C 4. The Court often follows different principles for determining the compensation towards a non-earning victim in order to arrive at an amount which would be just in the facts and circumstances of the case. Some of these involve the determination of notional income. Whenever notional income is determined in such cases, different considerations and factors are taken into account. For instance, for students, the Court often
- E considers the course that they are studying, their academic proficiency, the family background, etc., to determine and fix what they could earn in the future. [See *M. R. Krishna Murthi v. New India Assurance Co. Ltd.*, 2019 SCC OnLine SC 315]
- F 5. One category of non-earning victims that Courts are often called upon to calculate the compensation for are homemakers. The granting of compensation for homemakers on a pecuniary basis, as in the present case, has been considered by this Court earlier on numerous occasions. A three-Judge Bench of this Court in *Lata Wadhwa v. State of Bihar*, (2001) 8 SCC 197, while dealing with compensation for the victims of
- G a fire during a function, granted compensation to housewives on the basis of the services rendered by them in the house, and their age. This Court, in that case, held as follows:
- H “**10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine**

the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs 12,000 per annum in cases of some and Rs 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs 3000 per month and Rs 36,000 per annum..."

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(emphasis supplied)

6. In *Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218*, this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows:

"26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the

- A **husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother.** In that context, the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”
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(emphasis supplied)

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- The above pronouncement has been followed by this Court in its recent judgment in ***Rajendra Singh v. National Insurance Co. Ltd., 2020 SCC OnLine SC 521***, wherein the notional income of a deceased housewife was calculated for the purposes of granting compensation in a motor accident case.

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7. Before discussing this topic further, it is necessary to comment on its gendered nature. In India, according to the 2011 Census, nearly 159.85 million women stated that “household work” was their main occupation, as compared to only 5.79 million men.

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8. In fact, the recently released Report of the National Statistical Office of the Ministry of Statistics & Programme Implementation, Government of India called “*Time Use in India- 2019*”, which is the first Time Use Survey in the country and collates information from 1,38,799 households for the period January, 2019 to December, 2019, reflects the same gender disparity.¹ The key findings of the survey suggest that, on an average, women spend nearly 299 minutes a day on unpaid domestic services for household members versus 97 minutes spent by men on average.² Similarly, in a day, women on average spend 134 minutes on unpaid caregiving services for household members as compared to the 76 minutes spent by men on average.³ The total time spent on these activities per day makes the picture in India even more clear- women on average spent 16.9 and 2.6 percent of their day on unpaid domestic
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¹ National Statistical Office, *Time Use in India- 2019* (September, 2020).

² *Id.* at 56.

³ *Id.* at 54.

services and unpaid caregiving services for household members A respectively, while men spent 1.7 and 0.8 percent.⁴

9. It is curious to note that this is not just a phenomenon unique to India, but is prevalent all over the world. A 2009 Report by a Commission set up by the French Government, analyzing data from six countries, viz. Germany, Italy, United Kingdom, France, Finland and the United States B of America, highlighted similar findings:

“117. Gender differences in time use are significant. In each of the countries under consideration, men spend more time in paid work than women and the converse is true for unpaid work. Men also spend more time on leisure than women. The implication is that women provide household services but other members of the household benefit...”⁵

(*emphasis supplied*)

10. The sheer amount of time and effort that is dedicated to D household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle [See *Arun Kumar Agrawal* (*supra*); *National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan*, 2009 SCC OnLine Mad 828]. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.

11. The concurring opinion in the *Arun Kumar Agrawal* judgment F (*supra*), has highlighted this bias:

“44. This bias is shockingly prevalent in the work of census. In G the Census of 2001 it appears that those who are doing household

⁴ *Id.* at x.

⁵ Stiglitz *et al.*, Report of the Commission on the Measurement of Economic Performance and Social Progress, 117 (2009).

- A duties like cooking, cleaning of utensils, looking after children, fetching water, collecting firewood have been categorised as non-workers and equated with beggars, prostitutes and prisoners who, according to the census, are not engaged in economically productive work. As a result of such categorisation about 36 crores (367 million) women in India have been classified in the Census of India, 2001 as non-workers and placed in the category of beggars, prostitutes and prisoners. This entire exercise of census operations is done under an Act of Parliament.”
- B 12. In fact, this unfortunate silence when it comes to the value of housework has been a problem which was identified as far back as in 1920, when the economist Pigou noted the oddity and contradictions when it came to the calculation of the contribution of women in the national income, by stating that:
- C “...the services rendered by women enter into the dividend when they are rendered in exchange for wages, whether in the factory or in the home, but do not enter into it when they are rendered by mothers and wives gratuitously to their own families. Thus, if a man marries his housekeeper or his cook, the national dividend is diminished”.⁶
- D This issue was further focused on by those in the field of feminism economics in the 1970s and 1980s, who criticized the traditional labour statistics which did not consider unpaid domestic work and therefore undervalued women’s role in the economy.⁷
- E 13. On considering the growing awareness around this issue, the United Nations Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 17 on the “*Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product*” in 1991. The General Recommendation affirmed that “*the measurement and quantification of the unremunerated domestic activities of women, which contribute to development in each country, will help to reveal the de facto economic role of women*”.
- F 14. It is worth noting that the above General Recommendation is passed in furtherance of Article 11 of the Convention on the Elimination

⁶ Cecil Pigou, *The Economics of Welfare*, 44 (1920).

⁷ United Nations Economic Commission for Europe, *Guide on Valuing Unpaid Household Service Work*, 2 (2017).

of All Forms of Discrimination against Women which relates to ending discrimination against women in the field of employment, a Convention that India has ratified.

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15. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.

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16. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances [*See R.K. Malik v. Kiran Pal, (2009) 14 SCC 1*].

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17. One method of computing the notional income of a homemaker is by using the formula provided in the Second Schedule to the Motor Vehicles Act, 1988, which has now been omitted by the Motor Vehicle (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the Court in the *Arun Kumar Agrawal (supra)* case. However, rationale behind fixing the ratio as one-third is not very clear. [*See Arun Kumar Agrawal (supra)*]

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18. Apart from the above, scholarship around this issue could provide some guidance as to other methods to determine the notional income for a homemaker.⁸ Some of these methods were highlighted by

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⁸ See Ann Chadeau, *What is Households' Non-Market Production Worth*, OECD ECONOMIC STUDIES No. 18 (1992); Also see United Nations Economic Commission for Europe, *supra* note 7.

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- A a Division Bench of the Madras High Court in the case of *Minor Deepika(supra)* which held as follows:
- “**10.** The Second Schedule to the Motor Vehicles Act gives a value to the compensation payable in respect of those who had no income prior to the accident and for a spouse, it says that one-third of the income of the earning surviving spouse should be the value. Exploration on the internet shows that there have been efforts to understand the value of a homemaker’s unpaid labour by different methods. **One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker’s salary is valued at half her husband’s salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the Replacement Method.”**

(emphasis supplied)

- E 19. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.
- F 20. Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [*National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413*].
- G 21. Once notional income has been determined, the question remains as to whether escalation for future prospects should be granted with regard to it. Initially, the awarding of future prospects by this Court was related to the stability of the job held by the victim [See *General*

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Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs), (1994) 2 SCC 176; Sarla Dixit (Smt) v. Balwant Yadav, (1996) 3 SCC 179]. This focus on the stability of the job of the victim, while awarding future prospects, was continued in the judgment of this Court in *Sarla Verma (Smt) v. Delhi Transport Corporation, (2009) 6 SCC 121* wherein the Court held as follows:

“**24.** In *Susamma Thomas* [(1994) 2 SCC 176] this Court increased the income by nearly 100%, in *Sarla Dixit* [(1996) 3 SCC 179] the income was increased only by 50% and in *Abati Bezbaruah* [(2003) 3 SCC 148] the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

(*emphasis supplied*)

22. However, there was a shift in jurisprudence regarding future prospects with the five-Judge Bench decision of this Court in *Pranay Sethi (supra)*. This Court extended the benefit regarding future prospects to even self-employed persons, or those on a fixed salary. The Court held as follows:

“**57.** Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the

- A self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities... Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”
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- H 23. The rationale behind the awarding of future prospects is therefore no longer merely about the type of profession, whether

(emphasis supplied)

permanent or otherwise, although the percentage awarded is still dependent on the same. The awarding of future prospects is now a part of the duty of the Court to grant just compensation, taking into account the realities of life, particularly of inflation, the quest of individuals to better their circumstances and those of their loved ones, rising wage rates and the impact of experience on the quality of work.

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24. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a Court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the Court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the Court has determined their notional income.

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25. When it comes to the second category of cases, relating to notional income for non-earning victims, it is my opinion that the above principle applies with equal vigor, particularly with respect to homemakers. Once notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. It is worth noting that, although not extensively discussed, this Court has been granting future prospects even in cases pertaining to notional income, as has been highlighted by my learned brother, Surya Kant, J., in his opinion [*Hem Raj v. Oriental Insurance Company Limited*, (2018) 15 SCC 654; *Sunita Tokas v. New India Insurance Co. Ltd.*, (2019) 20 SCC 688].

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26. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

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- a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.
- b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income

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- A of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.
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- c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.
 - d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.
 - e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.
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- D 27. With the above observations, I concur with the opinion of my learned brother.

Devika Gujral

Appeals partly allowed.