

RAJ BALA & ORS.

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v.

RAKEJA BEGAM & ORS.

(Civil Appeal No. 7604 of 2022)

OCTOBER 18, 2022

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[B. R. GAVAI AND C. T. RAVIKUMAR, JJ.]

Motor Vehicles Act, 1988: s.166 – Compensation, determination of – Compensation under head of ‘love and affection’, ‘loss of spousal consortium to wife and ‘loss of parental consortium to children’ – A bus fell into a river in which victim-deceased was a passenger and he drowned in the river – Appellants, wife and children of the deceased filed claim petition under s.166 of the Act seeking compensation of Rs.50 lakhs, under different heads – Tribunal found that the accident had occurred due to rash and negligent driving and awarded Rs.17,73,704/- with interest at the rate of 6 % p.a. – High Court enhanced compensation to Rs. 20,68,704/- – On appeal, held: Future prospects were not taken into account while fixing the multiplicand – Evidence on record revealed that the deceased was aged 32 years at the time of his death and he was working as a Head Constable in the RPF – There was absolutely no justification for not reckoning the future prospects which he would have had but for his untimely death – The contention of appellants that 50% of the actual salary of the deceased is to be added while determining the income for calculation purpose is accepted – Taking into account the multiplicand and multiplier with reference to the age group of deceased, the appellants are entitled to get an enhanced amount of Rs. 8,84,160/- under the head of ‘loss of dependency’ – Rs. 15,000/- each is awarded to the appellants under the head ‘loss of estate’ and the ‘funeral expenses which was not granted by Tribunal as well as High Court – In the light of precedents of this court, appellant would be entitled to get Rs.40,000/- under the head of ‘loss of consortium’ – The amount granted by High Court to appellants under the head of ‘love and affection’ to be adjusted against ‘parental consortium’ – Thus, appellants are entitled to enhanced compensation of Rs.10,29,260/- which shall be paid by respondent no.4 within 8 weeks.

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A Partly allowing the appeal, the Court

- HELD:** 1. Future prospects were not taken into account by the Tribunal and High Court while fixing the ‘multiplicand’. The evidence on record would reveal that the deceased was aged 32 years at the time of his death and he was working as a Head Constable in the Railway Protection Force. When that be the circumstances, there is absolutely no justification for not reckoning the future prospects which he would have had but for his untimely death. In the said circumstances, this Court upheld the contention of the Appellants that 50% of the actual salary of the deceased is to be added while determining the income for calculation purpose. [Paras 8, 9][1035-G-H; 1036-A, D]

National Insurance Co. Ltd. v. Pranay Sethi and Others
2017 ACJ 2700 (SC); Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. (2009) 6 SCC 121 – relied on.

- D 2. Evidently, the Tribunal as also the High Court had correctly identified the ‘multiplier’ with reference to the age group of the deceased viz., between 30 and 35 years as 16. On re-assessing the compensation for ‘loss of dependency’, taking into account the multiplicand and the multiplier as stated above it would be Rs. 26,52,864/- . The Tribunal has granted only an amount of Rs. 17,68,704/-, virtually, under the head ‘total loss of income’ after applying the multiplier method and the same was confirmed by the High Court. Hence, under the head of ‘loss of dependency’ the Appellants are entitled to get an enhanced amount of Rs. 8,84, 160/- ($26,52,864 - 17,68,704$). Further, no amount was granted towards ‘loss of estate’ and ‘funeral expenses’ by the Tribunal as also by the High Court. Going by the decision of this Court Rs. 15,000/- each is awarded to the Appellants under the head ‘loss of estate’ and the ‘funeral expenses. [Paras 12, 13][1037-B-E]
- G 3. In the instant case, compensation towards ‘loss of consortium’ Rupees One lakh was awarded by the High Court besides granting an amount of Rs. 2 lakhs (Rupees one lakh each to the minor children) under the head of ‘loss of love and

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affection'. In the light of the binding decision of the Constitution Bench, interference is required with the grant of excess amount in respect of the compensation under the head 'loss of consortium' and the grant of compensation under the non-existing head of 'love and affection'. Hence, the Appellants are entitled only to get an additional compensation of Rs. 35,000/- In other words, an amount of Rs. 65,000/- granted in excess under the said head and to be deducted. [Paras 17, 18][1039-D-F]

4. While considering the question of interference with the compensation granted by the High Court under the head of 'love and affection', it was observed that compensation under the head of 'love and affection' is impermissible when compensation for 'loss of spousal consortium to wife and 'loss of parental consortium to children' are admissible. In the said circumstances, the amount of Rupees One lakh each granted by the High Court to Appellants 2 & 3 under the head 'love and affection' require to be deducted and at the same time, Rs. 40,000/- each, out of it can be granted, rather, adjusted against 'parental consortium' grantable to the minor children. Thus, an amount of Rs. 80,000/- has to be adjusted and can be granted to the minor children viz., Appellants No. 2 & 3 and the balance amount of Rs.1,20,000/- has to be deducted. [Paras 19, 20][1039-G; 1040-B, C-D]

Jana Bhai and Ors. v. ICICI Lombard General Ins. Co. Ltd. 2022 ACJ 203; Magma General Ins. Co. Ltd. v. Nanu Ram 2018 ACJ 2782 – referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7604 of 2022.

From the Judgment and Orders dated 24.08.2017 of the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 5948 of 2013.

Rakesh Kumar Yadav, Rameshwar Prasad Goyal, Advs. for the Appellants.

Ashok Mathur, Adv. for the Respondents.

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- A The Judgment of the Court was delivered by
C. T. RAVIKUMAR, J.
1. Leave granted.
2. This instant Appeal arises out of the final judgment and order dated 24.08.2017 in F.A.O. No.5948 of 2013 passed by the Punjab and Haryana High Court at Chandigarh. The Appellants- claimants who are respectively the wife and children of the victim of a motor vehicle accident are dissatisfied with and aggrieved by the said judgment and order and they filed this Appeal seeking enhancement of the quantum of compensation.
- C 3. The brief facts necessary for the disposal of this Appeal are as follows:-
- On 11.08.2009, the deceased-Sudesh Kumar was amongst the passengers in a bus bearing registration No. JK-01Y-0432 of Jammu and
- D Kashmir State Road Transport Corporation, driven by the deceased husband of the first Respondent, on its trip from Jammu to Srinagar. By about 13:20 hrs the bus fell into river Chenab and Shri Sudesh Kumar drowned in the river. The Appellants alleged that the accident had occurred due to the rash and negligent driving and the consequential loss of control of the bus. He was working as a Head Constable in the
- E Railway Protection Force (for short ‘the RPF’) and was then aged 32 years. Claiming the monthly income of the deceased as Rs.20,000/- the Appellants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the MV Act’) seeking a total compensation of Rs.50 lakhs, under different heads.
- F 4. On appreciation of the evidence, the Motor Accidents Claims Tribunal (hereinafter, ‘the Tribunal’) at Rewari found that the accident had occurred due to the rash and negligent driving of Mohd. Rasid, the deceased husband of the first Respondent. On the principle of vicarious liability, the 4th Respondent – State Road Transport Corporation the owner of the bus was held jointly and severely liable with Mohd. Rasid, the husband of first Respondent, to satisfy the award, quantified as Rs.17,73,704/- with interest at the rate of 6 % per annum from the date of filing of the petition till realization of the amount.
- G 5. The inadequacy of the compensation granted by the Tribunal was assailed by the Appellants herein before the High Court of Punjab
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and Haryana in F.A.O. No.5948 of 2018. As per the impugned judgment, the High Court re-assessed the compensation and granted an additional compensation of Rs.2,95,000/- In fact, the total compensation was re-assessed by the High Court as Rs.20,68,704/- and the amount awarded by the Tribunal was deducted by the High Court to arrive at the said figure of Rs.2,95,000/-. The enhanced amount of compensation viz. Rs.2,95,000/- was ordered to carry interest at the rate of 9% per annum from the date of the claim petition till its realization. The Appellants still feel that they are deprived of just compensation to be awarded under Section 168 of the MV Act. Hence, the captioned Appeal.

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6. Heard the learned counsel for the Appellants and the learned counsel for the Respondent No.4, the Jammu and Kashmir State Road Transport Corporation.

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7. According to the Appellants the High Court had erred in not adhering to what are recorded as conclusions in the decision of a Constitution Bench of this Court in **National Insurance Co. Ltd., v. Pranay Sethi and Others¹**, inasmuch as the future prospects of the deceased was not taken into account while quantifying the amount payable under the ‘loss of dependency’ and also in deciding the other heads of compensation payable. It is contended that no amount whatsoever was granted under the head ‘loss of estate’ and towards ‘funeral expenses’. *Per contra*, the learned counsel appearing for the Respondent No. 4 would contend that the High Court, in the Appeal, has granted just compensation contemplated under Section 166 of the MV Act and, therefore, no further enhancement of compensation is warranted. It is further contended that compensation under the head ‘loss of love and affection’ is impermissible and under the head ‘loss of consortium’ only an amount of Rs. 40,000/- is permissible, going by the decision in **Pranay Sethi’s** case (supra).

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8. We have carefully gone through the award passed by the Tribunal and the judgment of the High Court whereby the quantum of compensation was enhanced by Rs. 2,95,000/-, on re-assessment. They would reveal that future prospects were not taken into account while fixing the ‘multiplicand’. The evidence on record would reveal that the deceased was aged 32 years at the time of his death and he was working as a Head Constable in the RPF. When that be the circumstances,

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¹ 2017 ACJ 2700 (SC)

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- A there is absolutely no justification for not reckoning the future prospects which he would have had but for his untimely death, in the light of the decision of this Court in *Pranay Sethi's* case (supra). In this context it is worthy to extract conclusion No. (iii) in the said decision. It, in so far as it is relevant, reads thus: -
- B *"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."*
9. True that the impugned judgment and order is dated 24.08.2017
- C and the decision in *Pranay Sethi's* case (supra) was rendered only on 31.10.2017. But then, the fact is that conclusion No. (iii), as extracted above, is nothing but approval of the position exposit in the decision in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*² In the said circumstances, we have no hesitation to uphold the contention of the Appellants that 50% of the actual salary of the deceased is to be added while determining the income for calculation purpose.
10. The monthly income of the deceased was taken as Rs.13,817/- though the salary certificate for the month of July, 2009 would reveal that he was drawing Rs.16,194/. Obviously, the income was taken as Rs.13,817/- after deducting allowances like TPT, ration money, hill allowance and washing allowance. The Appellants did not specifically state as to which among the said components was wrongly deducted in the matter of such fixation.
11. Thus, going by the decision in *Pranay Sethi's* case (supra), when the deceased was below the age of 40 years and was having a permanent job for the purpose of determination of income 50 % of his actual salary viz., Rs.13,817/- ought to have been added to the actual income. At the same time, taking into account the number of dependents in the family viz., three, 1/3rd of the monthly income was to be deducted towards the personal and living expenses of the deceased. This is to be done so, in view of the Constitution Bench decision in *Pranay Sethi's* case (supra) directing that for determination of multiplicand, the deduction for personal and living expenses shall be guided by paragraphs 30 to 32 of *Sarla Verma's* case (supra). After such deduction and re-assessment,
- H ²(2009) 6 SCC 121

the contribution to the family (dependents) would be Rs.1,65,810/- per annum. A

12. Evidently, the Tribunal as also the High Court had correctly identified the ‘multiplier’ with reference to the age group of the deceased viz., between 30 and 35 years as 16. This was done evidently, in terms of the decision in *Sarla Verma*’s case (supra). This is only to be upheld in view of conclusion number ‘(vi)’ recorded in *Pranay Sethi*’s case (supra) whereunder it was held that determination of the multiplier shall be as indicated in *Sarla Verma*’s case (supra) read with paragraph 42 of the judgment. On re-assessing the compensation for ‘loss of dependency’, taking into account the multiplicand and the multiplier as stated above it would be Rs. 26,52,864/-. The Tribunal has granted only an amount of Rs. 17,68,704/-, virtually, under the head ‘total loss of income’ after applying the multiplier method and the same was confirmed by the High Court. Hence, under the head of ‘loss of dependency’ the Appellants are entitled to get an enhanced amount of Rs. 8,84,160/- ($26,52,864 - 17,68,704$). D

13. Obviously, no amount was granted towards ‘loss of estate’ and ‘funeral expenses’ by the Tribunal as also by the High Court. Going by the decision in *Pranay Sethi*’s case (supra) under the conventional heads compensation at the rate of Rs. 15,000/- each, is awardable towards ‘loss of estate’ and ‘funeral expenses’. Accordingly, Rs. 15,000/- each is awarded to the Appellants under the head ‘loss of estate’ and the ‘funeral expenses’. E

14. It is a fact that no appeal or cross-objection has been filed by the 4th Respondent despite the fact that the High Court as per the impugned judgment and order granted an amount of Rupees One lakh towards ‘loss of consortium’ as against Rs. 5,000/- granted under that head by the Tribunal and a further amount of Rs. 2 lakhs (Rupees One lakh each to Appellants 2 and 3) under the head ‘loss of love and affection’. Normally, in the absence of appeal or cross-objection, grant of compensation under any head need not be considered at the instance such a Respondent. But, in this case such a course is not advisable. This is because, we have reassessed compensation under the head ‘loss of dependency’ and further granted compensation for ‘loss of estate’ and ‘funeral expenses’, which are denied by the Tribunal and the High Court, referring to the Constitution Bench decision of this Court in *Pranay Sethi*’s case (supra). When the said decision was relied on for the grant G H

- A of/enhancement of compensation under the aforesaid heads, we cannot lose sight of any glaring violation of the said Constitution Bench. In short, we would not be justified in ignoring the conclusions, issued in the form of directions by the Constitution Bench in respect of a grant of compensation under the head ‘loss of consortium’ as also regarding the impermissibility of granting compensation under the head ‘loss of love and affection’.
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15. In this contextual situation, we think it only appropriate to refer to the following observations made by the Constitution Bench in paragraph 57 of the decision in *Pranay Sethi’s* case (supra):-

- C “*Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance*”.
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16. In the light of the observations thus made and taking note of the fact that the Constitution Bench in the said decision took note of the

- F decision in *Rajesh and Ors. v. Rajbir Singh and Ors.*³ of a three Judge Bench holding that towards ‘funeral expenses’ and ‘loss of consortium’ and ‘loss of care and guidance’ for minor children Rs. 25,000/-, Rupees One lakh and Rupees One lakh each, are to be granted and held the decision in *Rajesh’s* case (supra) as not a binding precedent the matter requires further consideration. In *Pranay Sethi’s* case (supra), the Constitution Bench further held that towards ‘loss of consortium’ and ‘funeral expenses’ compensation only at the rate of Rs. 40,000/- and Rs. 15,000/- respectively is grantable. So also, it was specifically held therein that the head ‘loss of care and guidance’ for minor children did not exist as a head of compensation. As per the
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³ (2013) 9 SCC 54

impugned judgment of the High Court, in place of Rs. 5,000/- granted by the Tribunal towards ‘loss of consortium’, an amount of Rupees One lakh was granted. Under the head ‘loss of love and affection’, which again falls under the general head ‘loss of care and guidance’ of minor children the Tribunal did not grant any amount. However, the High Court has granted Rupees One lakh each, to the minor Appellants 2 & 3 under the head ‘loss of love affection’. In the contextual situation obtained in view of *Pranay Sethi’s* case (supra) it is only appropriate to refer to the decision of this Court in *M.A. Murthy v. State of Karnataka and Ors.*⁴ It was held therein that normally the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of the stage of pendency thereof, because it should be assumed that what is enunciated by the Supreme Court is, in fact, the law from inception.

17. In the instant case compensation towards ‘loss of consortium’ Rupees One lakh was awarded by the High Court besides granting an amount of Rs. 2 lakhs (Rupees one lakh each to the minor children) under the head of ‘loss of love and affection’. We are of the considered view that in the light of the binding decision of the Constitution Bench, which is already relied on by us to grant benefits in favour of the Appellants, we are bound to interfere with the grant of excess amount in respect of the compensation under the head ‘loss of consortium’ and the grant of compensation under the non-existing head of ‘love and affection’.

18. We have already noted that towards ‘loss of consortium’ an amount of Rs. 5,000/- was granted by the Tribunal. Hence, in the light of the decision in *Pranay Sethi’s* case (supra) over and above the said amount, the Appellants are entitled only to get an additional compensation of Rs. 35,000/-. In other words, an amount of Rs. 65,000/- granted in excess under the said head and that has to be deducted.

19. While considering the question of interference with the compensation granted by the High Court under the head of ‘love and affection’ it is only appropriate to refer to a two Judge-Bench decision of this Court in *Jana Bhai and Ors. v. ICICI Lombard General Ins. Co. Ltd.*⁵ Evidently, the two Judge Bench took note of the fact that the Constitution Bench in *Pranay Sethi’s* case (supra), has recognized only three conventional heads where compensation are awardable viz., ‘loss

⁴ (2003) 7 SCC 517

⁵ 2022 ACJ 203

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- A of estate', 'loss of consortium' and the 'funeral expenses'. Then, the two Judge-Bench referred to the decision of this Court in *Magma General Ins. Co. Ltd. v. Nanu Ram*⁶, which, in turn, had virtually followed by three Judge Bench of this Court in *United Ins. Co. Ltd. v. Satinder Kaur*⁷. It was held therein that as held in *Magma*'s case (supra)
 - B though compensation under the head of 'love and affection' is impermissible compensation for 'loss of spousal consortium to wife and 'loss of parental consortium to children' are admissible.
20. After having held thus, it was further held in *Jana Bhai*'s case (supra) that the amount to be awarded for 'loss of parental consortium' should be in uniformity with the amount fixed by the Constitution Bench in *Pranay Sethi*'s case (supra). In other words, the amount payable under the said head 'parental consortium' shall not exceed Rs. 40,000/- qua a single child. In the said circumstances, the amount of Rupees One lakh each granted by the High Court to Appellants 2 & 3 under the head 'love and affection' require to be deducted and at the same time, Rs. 40,000/- each, out of it can be granted, rather, adjusted against 'parental consortium' grantable to the minor children. Thus, an amount of Rs. 80,000/- has to be adjusted and can be granted to the minor children viz., Appellants No. 2 & 3 and the balance amount of Rs.1,20,000/- has to be deducted.

- E 21. In the light of the aforesaid findings and conclusions the compensation on account of the death of Shri Sudesh Kumar is re-assessed as under: -

Sl. No.	Heads of Compensation	Calculation/Amount awarded
1	Income (Salary)	Rs.13,817/-
F 2	50 % addition to the actual salary towards future prospects.	Rs.13,817 + Rs.6,908.50 = Rs.20,725.50/-
3	1/3 rd deduction towards personal and living expenses.	Rs.20,725.50/3 = Rs.6,908.50/ = Rs.13,817.50/-
G 4	Annual income	Rs.13,817.50 x 12 = Rs. 1,65,810/-
5	Compensation for loss of dependency, after identifying the multiplier as '16'	Rs.1,65,810 x 16 = Rs. 26,52,960/-
6	Additional (enhanced) compensation under the head 'loss of dependency'	Rs. 26,52,960 – Rs.17,68,704 = Rs. 8,84,256/-

H ⁶ 2018 ACJ 2782

⁷ 2020 ACJ 2131

7	<u>Conventional Heads</u> (a) Funeral expenses. (b) Loss of estate.	Rs. 15,000/- Rs. 15,000/-	A
8	<u>Loss of Consortium</u> (a) Loss of spousal consortium. (b) Loss of parental consortium (to minor children/appellant Nos.2 and 3 at the rate of Rs.40,000/- each).	Rs. 40,000 – Rs.5,000/- = Rs. 35,000/- (Rs.5,000/- granted by the Tribunal). Rs. 80,000/-	B
9	Total Compensation (Total enhanced compensation payable after deducting the compensation granted by the Tribunal and the High Court and after deducting the excess compensation granted by the High Court and effecting consequential adjustment towards other grantable heads.	Rs.8,84,256 + Rs. 15,000 + Rs. 15,000 + Rs. 35,000 + Rs. 80,000 = Rs. 10,29,256/- rounded off to Rs. 10,29,260/-	C

22. As a result, this Appeal is allowed in part as follows: - D

- (I) The Appellants are entitled to an enhanced amount of compensation of Rs.10,29,260/-.
- (II) The enhanced amount shall be paid by the 4th Respondent within a period of 8 weeks from today and in case of failure, the enhanced amount will carry interest at the rate of 6% per annum from the date of filing of this appeal till the date of realisation. E

23. There will be no order as to costs. Pending application(s), if any, shall stand disposed of. F

Devika Gujral
 (Assisted by : Shevali Monga, LCRA)

Appeal partly allowed.