

The New India Assurance Company Limited vs Smt. Vimla Devi & Others on 30 March, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Appeal from Order No.106 of 2018

The New India Assurance Company Limited ...Appellant

Vs.

Smt. Vimla Devi & othersRespondents

Mr. V.K. Kohli, Senior Advocate, assisted by Mr. Kanti Ram Sharma, Advocate,
for the appellant.

Mr. Manoj Joshi, Advocate, for the respondents.

Hon'ble Sharad Kumar Sharma, J (Oral)

Though the Appeal from Order, is being canvassed by the learned senior counsel for the appellant, on the very narrow prospective, to the effect that "(i) as to whether any amount would be payable towards future prospects, (ii) whether it could be determined to be paid by the Tribunal, when the compensation to be paid is determined, on the basis of the notional income". It is this question which has to be answered by this Court.

2. The facts of the case are that an accident took place on 20th June 2016, in which, it is contended by the claimant that her husband Late Mr. Rajendra Kumar Arya, when he was standing in the front of Mahendra Auto Centre, by the side of the road at about 9 p.m., a truck which was being driven from "Haldwani", bearing Registration No.UP78 AT 8215, is being said to have been rashly and negligently driven by the driver of the offending vehicle, due to which, it collided against the husband of the claimant Late Mr. Rajendra Kumar Arya, and due to which, he suffers grievous injuries and later on succumbed to the injuries on the spot. The postmortem was conducted on the corpse of the deceased, on which, it was contended by the claimant, that approximately a sum of about Rs.25,000/- has been spent, and according to the claimant, it was contended that Late Mr. Rajendra Kumar Arya, the deceased, was at the relevant time, was serving as a labourer, and it was pleaded to be that he was earning Rs.12000/- per month. The claimant submitted that the Driver of the vehicle, has had to be attributed for, for driving the vehicle negligently causing the death on account of the accident, which had occurred on 20th June 2016, and thus claimed that the compensation was to be made payable, on the basis of the alleged income, which was pleaded in the claim petition which was said to be accruing to the deceased husband, who was working as a labourer. The owner of the vehicle filed a written statement, being Paper No.27 kha, and had denied

the fact, that the driver of the vehicle was negligent in causing the accident, and apart from it, it was stated by the owner of the vehicle, that the vehicle was being driven with all valid documents, and was validly insured with the Insurance Company.

3. The Insurance Company, filed the written statement being Paper No.22 kha, and it was argued before the Motor Accident Claim Tribunal by the Insurance Company, that no information as per the terms of the insurance policy was ever parted with to the insurance company of the accident, which has chanced, nor any documentary evidences pertaining to the death of the deceased, was proved by way of leading evidence. An independent written statement was filed by the Driver of the vehicle, being Paper No.29 kha, where he accepted the factum of the accident, but he denied that at the time when the accident chanced, the vehicle was being driven rashly and negligently by him, and based on the aforesaid pleadings, the learned Motor Accident Claim Tribunal, had framed the issues to the following effect, which is extracted hereunder:-

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4. The parties had led their respective oral and documentary evidences, and consequently, while recording its finding pertaining to the Issue No.3, which was related to the adequate quantification of the compensation, it had been observed by the Motor Accident Claims Tribunal, that the deceased on the date of the accident was of about 42 years of age, and according to the claimants case, which was a fact which was not proved by evidence, particularly when it was contended, that he was earning about Rs.12000/- per month.

5. The learned Motor Accident Claim Tribunal, while recording its finding in paragraph no.37, on its own wisdom and the interpretation given to the pleadings which were raised, and that too for no logic or reasoning assigned to it, had recorded the findings, that the deceased Late Mr. Rajendra Kumar Arya, was an illiterate person, and in all probability his notional income, which could be determined and which would be Rs.4500/- per month, and based on which, the compensation was directed to be determined, and accordingly the compensation was computed, as per the observations made in paragraph no.42, of the impugned judgment, wherein, while applying the multiplier after making one-fourth deductions from the annual income, as to be an amount, which was presumed that must have been spent by the deceased on himself, the Court has assessed the annual dependency of the claimants of Rs.50625/-, based on the notional income, and after applying the multiplier of 13, a total amount of Rs.7,28,125/-, was directed to be determined as a compensation which would be payable. The learned Motor Accident Claim Tribunal, while determining the compensation, has on the basis of the annual dependency, which has accrued, has also determined the future prospects, which would be payable to the dependents of the deceased, and findings with

regards to the determination of the future prospects has been recorded in paragraph no.42 of the impugned award, whereby, the future prospects has been assessed to be payable to the tune of 25%.

6. It has been argued by the learned Senior Counsel for the appellant that in view of the Constitution Bench judgment of the Hon'ble Apex Court as reported in 2017 (16) SCC 680, "National Insurance Company Limited Vs. Pranay Sethi and others", particularly he has made a reference to paragraph No.57, of the said judgment, which had provided that an amount payable at the rate of 25% towards the future prospects in relation to the claim, of the claimants of the deceased, could only be made payable, subject to the conditions that it was assessed on the basis of an established income. What he wants and intends to argue is that based upon the evidence and its appreciation made by the learned Motor Accident Claim Tribunal, since there was no iota of evidence or any document on record to show, as to what was the actual accruing established income of the deceased, and in the absence of the same being proved, no amount of future prospects, which has been paid in the instant case at the rate of 25% could have been paid to the claimants.

7. Learned counsel for the appellant further submits that if the judgment of Pranay Sethi (Supra) is taken into consideration, particularly, he has made a reference to paragraph No.57, which has laid down that where looking to the legislative intent of the Motor Vehicle Act, for the determination of the payment of the compensation, where the claimants have failed to prove the aspect of income accruing to the deceased, by evidence, and the compensation is made payable, based on the application of the principles of notional income, as it happens to be in the instant case, in view of the finding recorded in paragraph no.37 of the impugned judgment. In that eventuality, as per the ratio of Pranay Sethi, judgment, no amount would be payable towards the future prospects, which could not be given in those cases, where the compensation has been determined on the basis of the notional income. Paragraph 57, of the judgment of the Constitution Bench is extracted hereunder:-

"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the 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. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. 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."

8. In this judgment, and particularly also, a reference may be had to paragraph No.59, of the judgment, where the ultimate conclusion has been drawn by the Hon'ble Apex Court, as to how the determination of compensation towards the future prospects is to be made, and particularly, the ratio as laid down in paragraph 59.3, which is extracted hereunder:-

"59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

9. In response to it, the learned counsel for the respondent/claimants, had made a reference to the judgment rendered by the three Judges Bench of the Hon'ble Apex Court, as reported in 2021 (2) SCC 166, "Kirti and another Vs. Oriental Insurance Company Limited", and particularly, he has drawn the attention of this Court to paragraph No.14 of the said judgment. If paragraph No.14, of the said judgment is taken into consideration in fact it has been observed that no amount would be payable by way of compensation, towards the future prospects ought to be allowed in those cases, where notional income is the foundation for determination of the compensation, but considering the inflation induced due to the economic era of the country, the future prospects has also to be one of

the aspects to be considered, and the determination of the guess work of the facts and circumstances of the case may not be taken into consideration for avoiding to award the future prospects.

10. In fact, this Court is of the view that in order to answer the argument extended by the learned Counsel for the respondent, this Court, with all humility at its command is in disagreement with the findings of paragraph No.14, of the judgment of the Hon'ble Apex Court for the reason being that three Judges Bench judgment of the Hon'ble Apex Court, where it has dealt with the impact of Pranay Sethi judgment, and has carved out a distinction in the light of the findings recorded in paragraph No.59.4, will not be a ratio in rem to be applied invariably in all the cases, particularly when the field stood covered by the ratio descents of the Constitution Bench judgment of the Hon'ble Apex Court in Pranay Sethi case. Hence, for the reasons aforesaid, the same would not apply in the instant case.

11. Learned Single Judge of the Allahabad High Court in the judgment reported in 2018 3 TAC 226, "Surendra Singh & another Vs. Vijay Singh & others", was also ceased with almost akin situation to be considered as to whether at all the claimants, were not been able to establish the fact of the income accruing to the deceased by way of leading evidence, and when the compensation is determined on the basis of the notional income, the Allahabad High Court in its paragraph No.67, of the said judgment has observed that when there is no established income and the award is made on the basis of the notional income, no future prospects could be awarded. In fact, the said analogy has been drawn from the ratio laid down by the Constitution Bench Judgment of Pranay Sethi's case. Paragraph No.67 of the said judgment is extracted hereunder:-

"67. In view of the fact that the age of the deceased was 16 years and there was no evidence led by the claimant to establish the income of the deceased. However, the notional income estimated by the Tribunal at Rs. 15,000/- is too less (@ Rs. 50/- per day). The same is enhanced to Rs. 36,000/- per annum, the claimant having disclosed the deceased to be a manual labourer to bring it in conformity with and consistent with such assumptions made in numerous cases decided by the Supreme Court and this Court. Thereafter, the Tribunal has made a deduction of 50% to the aforesaid notional income of the deceased on account of personal expenses. The same may be sustained in view of the fact that the deceased was a bachelor. Again there being no "established income" and compensation being awarded on basis of a notional income only there is no room to make an addition on account of future prospects. Thus, applying the multiplier of 18 with reference to the age of the deceased, the total compensation towards loss of dependency is Rs.

3,24,000/- (18,000 X 18)."

12. In that eventuality, and the for the reasons assigned above, this Appeal from Order is partly allowed, limited to the extent that the learned Motor Accident Claim Tribunal has awarded the future prospects at the rate of 25% on the basis of the notional income, because the same would not be payable, in view of the ratio, already discussed above.

13. Accordingly, the Appeal from Order partly succeeds only limited to the extent of grant of future prospects and the Motor Accident Claim Award dated 12th January 2018, as rendered in MACP No.121 of 2016, "Smt. Vimla Devi and others Vs. Mohd. Naseem and others", would stand modified to that extent.

14. Having said so, the statutory amount of Rs.25,000/- which has been deposited by the appellant at the time of the preference of the Appeal from Order before the Registry of this Court is directed to be remitted back to the Motor Accident Claim Tribunal in order to settle the amount awarded to be paid to the claimants (Sharad Kumar Sharma, J.) 30.03.2022 NR/