



2023: DHC: 8842



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 30th November, 2023
Pronounced on: 11th December, 2023

+ **MAC.APP. 1213/2012**

TATA AIG GENERAL INSURANCE CO. LTD. Appellant

Through: Ms. Vandana Kahlon and Mr. Rudra
Kahlon, Advs.

versus

A.K. TRIPATHI & ORS. Respondents

Through: Mr. Nalin Tripathi, Adv.

+ **MAC.APP. 112/2013**

A.K. TRIPATHI & ANR. Appellants

Through: Mr. Nalin Tripathi, Adv.

versus

PRABHAT RANJAN & ANR. Respondents

Through: Ms. Vandana Kahlon and Mr. Rudra
Kahlon, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.



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1. The present appeals have been filed both by the Insurance Company and the parents of the deceased respectively assailing judgement dated 14th September, 2012 (“**impugned judgement**”) passed by the Ld. Motor Accident Claims Tribunal (“**Ld. MACT**”). While the Insurance Company has restricted its challenge to the extent of Rs. 15,000/- being considered as the income of the deceased in the calculation of compensation payable, the parents of the deceased seek enhancement of the compensation awarded *vide* the impugned judgement.

Factual Background

2. On 15th October, 2006 the daughter of the appellant-parents, Ms. Shobha Tripathi, suffered injuries in an accident and subsequently succumbed to them. At about 1:00 p.m. on that day, she along with her friend Nischal Sharma had gone to DDA park to have lunch after attending classes for Masters of Computer Application (“**MCA**”) at Laxman Public School, New Delhi. Ms. Shobha had, on completion of her graduation in 2005, enrolled for 3 years’ MCA course. She had successfully completed one year and was in her second year. At about 1:30 p.m. they came out of the park and Nischal Sharma started his motorcycle which he had parked on the left side of the road near the gate of the park and both sat on the said motorcycle. When they were about to proceed towards Laxman Public School to attend the remaining class, a Santro Car bearing No. DL 3C AP 4792, driven by respondent No. 1 in MAC APP 112/2013, Mr. Prabhat Ranjan, sped from the direction of Hauz Khas and hit the motorcycle from behind. Due to the impact, they both were thrown on the road, the car dashed into the pavement and stopped. Both of them were



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taken to Safdurjung Hospital. Ms. Shobha could not survive and resultantly, died at about 10:30 pm in All India Institute of Medical Sciences on the same day. Nischal Sharma sustained a fracture in his right thigh. A case was registered *vide* FIR No. 652/2006 at Police Station Hauz Khas, Delhi.

Findings of the Ld. MACT

3. After assessing the evidence on record, Ld. MACT found that the factum of the accident was proved and that the injuries sustained by both Shobha and Nischal Sharma were caused by the negligent driving of the Santro Car by one Mr. Prabhat Ranjan. The Santro car was insured with the appellant-Insurance Company. As regards compensation, the Ld. MACT noted that the deceased, Ms. Shobha was 26 years of age, was a brilliant student, a had graduated from Indira Gandhi National Open University (“IGNOU”) in 2004, and from 1997 to 2001, had attended various courses in commercial painting, dress making, and dress designing. She also held a diploma in internet program and was pursuing MCA from IGNOU. At the time of the accident, she was working with M/s. Ritika Shipping Lines Pvt. Ltd. (“M/s Ritika”) as a front desk-cum-computer operator earning a monthly salary of Rs. 9,000/-. As per the statement of PW-1, Sh. A. K. Tripathi, the father of the deceased, it was assessed that after completion of MCA, she would have secured a proper job in a multinational company on a possible salary package of Rs. 6 lakh per annum.

4. As per the statement of PW-2, Sh. Ugranath Jha, the accountant of M/s. Ritika, who had brought service record of the deceased, it was stated that the



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deceased had worked for the company from 1st April, 2006 to 14th October, 2006. He stated in his examination that the deceased was pursuing MCA while in service and, had she continued in service with M/s. Ritika, her salary would have been Rs. 50,000/- per month.

5. On the basis of these testimonies, Ld. MACT calculated the loss of dependency at Rs. 15,000/- per month, deducted 50% from it as personal and living expenses [*on the assumption that as a single unmarried person, she would spend more on herself, in line with principles enunciated in Sarla Verma and Others v. Delhi Transport Corporation and Another (2009) 6 SCC 121*]. The multiplier used was on the basis of the age of her mother (dependent/beneficiary) who was 50 years old, and was therefore taken as '13'. The future prospects were assessed at 30% on the basis of the decisions of this Court in *Rakhi v. Satish Kumar and Others*, MAC APP.390/2011. Accordingly, the annual income of the deceased amounted to Rs. 1,80,000/- which along with future prospects amounted to Rs. 2,34,000/-; upon deduction of 50% towards personal and living expenses and using the multiplier of '13', a sum of Rs. 15,21,000/- was awarded towards loss of dependency. Further amounts of Rs. 25,000/- were awarded towards loss of love and affection, Rs. 10,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate.

Submissions on behalf of the parties

6. Learned counsel for the appellant-Insurance Company has assailed the determination of Rs. 15,000/- as possible income of the deceased. He stated this was not based on any evidence; and the evidence which was brought on



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record on behalf of M/s. Ritika could not be relied upon *firstly*, since there was no Board Resolution on behalf of M/s. Ritika, which was a company, to authorize anybody to depose on its behalf; and *secondly*, no one had identified signatures of the deceased on the attendance register and even her full name was not mentioned on the registers produced (*only 'Shobha' was mentioned*).

7. It was pointed out that *vide* order dated 10th October, 2017 passed by this Court, records were summoned and Mr. Prasanta Kumar Das, working as an accountant with M/s. Ritika was examined as CW-1 by the Court. In his testimony, he stated that he had been authorized to appear by Mr. Ashok Kumar, proprietor of M/s. Ashoka International, a sister concern of M/s. Ritika. He also submitted an authority letter in this regard.

8. Learned counsel for the appellant-Insurance Company contended that even though the said authority letter was signed by Mr. Ashok Kumar, he could not give proper authority to Mr. Prasanta Kumar Das considering that authority of Mr. Ashok Kumar itself was in question. Moreover, he pointed to the statement of Mr. Ashok Kumar who was also summoned by the Court and examined as CW-2. He stated that Mr. Ashok Kumar was one of the directors of the company but resigned from the Board of Directors and was only looking after the affairs of the company and remained in the management of the company.

9. In response to this, learned counsel for the parents of the deceased drew the Court's attention to the order dated 3rd September, 2019 passed by this Court. The Court had assessed the submission of the appellant-Insurance Company that the evidence of CW-1 was not sufficient to establish that the



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deceased was employed with M/s. Ritika. This aspect was dealt with in detail by this Court; the complete order dated 3rd September, 2019 is extracted below for ease of reference:

“The learned counsel for the appellant submits that even the evidence of the Court Witness and the Certificate in Form-G (Register of Employment and Remuneration), is not sufficient to establish that the deceased viz. Shobha, was employed with M/s Ritika Shipping Lines Pvt. Ltd. as it does not show any documentation apropos employment of other persons in the said company. The learned counsel for the claimants submits that they wish to bring some more documents on record since they were not in a position to do so because the records of M/s Ritika Shipping Lines Pvt. Ltd. were kept with the proprietor of the company i.e. Mr. Ashok Kumar, who has already deposed on 07.08.2018.

However, the learned counsel for the claimants submits that the entire Register of Employment and Remuneration i.e. Form G was produced by the employer. The said register is maintained under Rule 14 of The Delhi Shops & Establishments Rules, 1954; the ledger had records of other employees as well, but only the portion relevant to deceased Shobha, was extracted and has been exhibited in these claim proceedings; the signatures in Form G for the months of April, May, June, July, August, September, October of 2016 are shown on a revenue stamp. It is argued that the signatures do not match for the month of May, 2006 as it is Sobha and not Shobha.

The Court is of the view that the said contention is untenable because the signatures otherwise are similar for all the months; the amounts paid for each of the months varies i.e. for April it was Rs. 6,300/-, for May it was Rs. 6,548/-, for January it was Rs. 5,950/- for July it was Rs. 6,435/-, for August it was Rs. 8,565/-, for September it was Rs. 8,250/-. The salary



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allowances of the said employee increased from Rs. 7,000/- to Rs. 9,000/- from the month of August, 2006 as the payment for that month was Rs. 8,565/-, for September it was Rs. 8,250/-, for October it was Rs. 4,065/-. The variation in payment is on account of leaves applied by the employee and it is so reflected in the attendance register.

From the above, it is being proven that Shobha was an employee of M/s Ritika Shipping Lines Pvt. Ltd. Be that as it may, an amount of Rs. 6,11,481/- would be payable in terms of the amount admitted by the employer, i.e. the minimum wages applicable to a Graduate, which in 2006 was Rs. 4,072/-, plus 40% towards 'loss of future prospects', in terms of National Insurance Co. Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680. The claimants shall also be entitled to an addition of Rs. 2,10,000/- in terms of Pranay Sethi (Supra).

Each of the claimants would also be entitled to compensation for 'loss of filial consortium', 'loss of love and affection' at the rate of Rs. 40,000/- & Rs. 50,000/- respectively and for 'loss of estate' and 'loss of funeral expenses' Rs. 15,000/- and Rs. 15,000/- respectively, in terms of the dicta of Supreme Court in Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors. 2018 SCC OnLine SC 1546 i.e. [(Rs. 40,000 + Rs. 50,000) x 2 = Rs. 1,80,00/- + Rs. 15,000x2 = Rs. 2,10,000/-]. Let the amount of Rs. 8,21,481/- (Rs. 6,11,481/- + Rs. 2,10,000/-) be released to the beneficiaries of the award along with interest accrued thereon from the date mentioned in the impugned order in terms of the scheme of disbursement specified therein.

List for further proceedings on 09.10.2019. Issue Court notice to Ashok Kumar in terms of the order dated 18.12.2017, returnable on 09.10.2019."

10. Thereafter, yet another order dated 27th February, 2020 was passed by this Court when Mr. Ashok Kumar, the erstwhile director of M/s. Ritika was



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present. This Court noted that his authority to depose on behalf of the company was never challenged in the cross examination and in any event, his letter of authorization was placed on record as Ex. CW-1/1.

11. As per the learned counsel for the parents of the deceased, the issue of authority of Mr. Ashok Kumar was examined by this Court and concluded in their favour, i.e. Mr. Ashok Kumar had adequate authority. Further, it was evident from the order dated 3rd September, 2019 that the objection relating to the signatures of the deceased on the attendance register and its authenticity was assessed by this Court wherein it was held, “*it is being proven that Shobha was an employee of M/s. Ritika Shipping Lines Pvt. Ltd.*”.

12. The only issue which remains for consideration before us is the wages amount of the deceased to be taken into account for the purpose of computing compensation payable to the parents. While this Court in its order dated 3rd September, 2019 had arrived at an amount of Rs. 6,11,481/- as being payable [*assessed on account of minimum wages of Rs. 4,072/- plus 40% towards future prospects, deduction of 50% towards expenses and a multiplier of 17, in terms of the principles enunciated in National Insurance Co. Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680*], it also directed an addition of Rs. 2,10,000/- in terms of *Pranay Sethi (supra)*, towards loss of filial consortium, loss of love and affection at Rs. 40,000/- and Rs. 50,000/- respectively for each of the parents, and loss of estate at Rs. 15,000/- and funeral expenses at Rs. 15,000/-. Therefore, a total amount, of Rs. 8,21,481/- was directed to be released to the beneficiaries/parents of the deceased along with interest accrued thereon.



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13. A perusal of the above order would clearly show that, while this Court had determined the issues of proof regarding employment of Ms. Shobha, since the main appeal was pending in the interim, it computed the compensation on the basis of minimum wages for the purpose of release of the amounts to the beneficiaries.

14. The beneficiaries' contention, therefore, is to at least sustain the determination of Rs. 15,000/- per month as the income of deceased, considering that she was doing her MCA, was a graduate and was already in a part-time job earning Rs. 9,000/- per month. Reliance was placed upon the testimony of PW-2, the accountant at M/s. Ritika, who stated that had the deceased completed her MCA, she would be drawing the salary of Rs. 50,000/- per month.

15. Further, it was contended that the multiplier, as per guidelines in *Sarla Verma (supra)*, considering the deceased was 26 years at the relevant time, should be '17' and not '13' (*as was assessed by the Ld. MACT on the basis of the age of her mother*).

Analysis

16. Having assessed the contentions of the parties, this Court is of the view that while the issue of proof of employment of deceased Ms. Shobha with M/s. Ritika was already assessed by this Court *vide* order dated 3rd September, 2019 in a part hearing and, resultantly, held in favour of the parents of the deceased, as also the authority of Mr. Ashok Kumar, on behalf of M/s. Ritika (*as held by the order dated 27th February, 2020*), the issue of income assessed at



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Rs.15,000/- per month as determined by the Ld. MACT is reasonable, appropriate, and justified. Considering that she was already earning Rs. 9,000/- per month, on the basis of the documents produced in evidence by M/s. Ritika, it would have been a reasonable assumption that she would earn more going ahead. Testimony of PW-2 that if she had continued in the same organization post her MCA, she would have drawn Rs. 50,000/- per month is also dispositive in this regard. In this view of the matter, the determination by the Ld. MACT pertaining to assessing the income of the deceased at Rs. 15,000/- per month is to be upheld.

17. As regards the multiplier, Ld. MACT and other courts are guided by the exposition in Step 2 of paragraph 19 read with paragraph 42 of *Sarla Verma* (*supra*) as affirmed in *Pranay Sethi* (*supra*). For ease of reference, paragraph 42 of *Sarla Verma* (*supra*) is extracted below:

“We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

Thus, the multiplier to be used for the purpose of computing claims is well-settled.

18. The issue that comes up for consideration herein, as contested by the parents, i.e. the dependents of deceased Ms. Shobha, is whether the multiplier



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to be taken for the purpose of computing the claim should be based on the age of the deceased or the age of the dependent, especially considering the fact that deceased Ms. Shobha was a bachelor. In this regard, it is apposite to refer to the view expressed by the Hon'ble Supreme Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors.*, (2019) 5 SCC 554. The relevant portions have been extracted as under:

“1. The only legal issue canvassed before us in these matters, which are in the nature of cross appeals, is that in the case of a motor accident where there is death of a person, who is a bachelor, whether the age of the deceased or the age of the dependents would be taken into account for calculating the multiplier.”

“10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

11. A reading of the judgment in *Sube Singh* (*supra*) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of *Munna Lal Jain* (*supra*) which is also a three Judge Bench judgment in this behalf.

The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.* The relevant portion of *Reshma Kumari* in turn has referred to *Sarla Verma* (*supra*) case and given its imprimatur to the same. The loss of dependency is thus stated



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to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

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

(emphasis supplied)

19. In view of the aforesaid, this Court finds that the use of multiplier ‘13’ (taken as against the age of the dependent mother) by the Ld. MACT in the impugned judgement for calculating the loss of dependency is erroneous. Instead, the multiplier in the present case shall be ‘17’ considering that the deceased was 26 years of age.

Therefore, the amount payable towards loss of dependency in view of the above discussion stands modified. The details of the same along with the total amount payable is laid down in the chart for ease of understanding:

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>LD. MACT</u>	<u>HIGH COURT</u>	<u>AMOUNT PAYABLE (Rs.)</u>
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1.	Loss of Dependency			
a.	Salary per month	15,000	15,000	15,000
b.	Annual Income	(15,000 x 12)	(15,000 x 12)	1,80,000
c.	Addition of Future Prospects	1,80,000 + 30% = 1,80,000 + 54,000	1,80,000 + 30% = 1,80,000 + 54,000	2,34,000
d.	Subtraction towards personal and living expenses	2,34,000 / 2	2,34,000 / 2	1,17,000
e.	Applicable multiplier	13 (based on the age of the dependent mother) = 1,17,000 x 13	17 (based on the age of the deceased bachelor) = 1,17,000 x 17	19,89,000
	Total Loss of Dependency	15,21,000	19,89,000	19,89,000
2.	Loss of filial consortium	N.A.	40,000 x 2 (for each parent)	80,000
3.	Loss of Love and Affection	25,000	50,000 x 2 (for each parent)	1,00,000
4.	Funeral Expenses	10,000	15,000	15,000
5.	Loss of Estate	10,000	15,000	15,000



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	Total	15,66,000	21,99,000	21,99,000
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20. The impugned judgement stands modified in terms of the above calculations.

21. By order dated 26th November, 2012 in MAC. APP. No. 1213/2012, this Court directed the appellant-insurance company to deposit 75% of the awarded amount with up-to-date proportionate interest with the Ld. MACT, within the period specified. The amount so deposited was to be kept in a fixed deposit in favour of the Claimants/parents of the deceased in terms of directions passed by the Ld. MACT. Furthermore, *vide* order dated 3rd September, 2019, this Court gave interim directions to release an amount of Rs.8,21,481/- along with interest accrued thereon to the beneficiaries/Claimants.

22. The Ld. MACT is now directed to take steps to ensure that the balance amount along with interest accrued thereon is released to the Claimants.

23. The insurance company is directed to deposit with the Ld. MACT within 30 days hereof, the balance of awarded amount as modified above to be released to the claimants in terms of the judgment given.

24. Statutory deposit, if made, shall be refunded upon proof of the award being satisfied in favour of the claimants.

25. The present appeals stand disposed of in the aforesaid terms.

26. Copy of the judgement be uploaded on the website of this Court.



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**(ANISH DAYAL)
JUDGE**

DECEMBER 11, 2023/sm