(2025) 01 SC CK 0049

Supreme Court Of India

Case No: Civil Appeal No. 24 Of 2025 (@ Special Leave Petition (Civil) No. 30491 Of 2018)

New India Assurance Co. Ltd — APPELLANT

Vs

Sonigra Juhi Uttamchand — RESPONDENT

Date of Decision: Jan. 2, 2025

Acts Referred:

- Motor Vehicles Act, 1988 - Section 168

Hon'ble Judges: C.T. Ravikumar, J; Sanjay Karol, J

Bench: Division Bench

Advocate: Viresh B. Saharya

Final Decision: Dismissed

Judgement

C.T. Ravikumar, J.

1. Leave granted.

2. In these quintuplet appeals, two from the Insurer and three from the Claimant who is the legal heir of the deceased persons, the insurer claims for

reduction of quantum of compensation and the claimant seeks enhancement of quantum of compensation granted by the Motor Vehicles Accident

Tribunal, raising various grounds. In this judgment, the claimant is referred to as â€˜the appellantâ€™ and the insurance company which preferred two

appeals is referred to as â€˜the respondentâ€™, for convenience.

3. The unfortunate incident in which the appellant lost her parents and the younger brother occurred on 20. 06.2007. The offending vehicle bearing

No. TN-21-X-3879/Tata van insured with the respondent driven by its driver in a rash and negligent manner dashed against the stationary auto bearing

No. TN-07-Y-0657 in which the deceased persons were travelling. Seeking compensation for the death of the father, mother and the brother, the

appellant filed MCOP No.5238/2011, MCOP No.5239/2011 and MCOP No.5252/2011, respectively. On appreciating the evidence on record, both

oral and documentary, the Tribunal found the driver of the Tata van to be negligent and ultimately saddled the respondent with the liability to indemnify

the owner of the said offending vehicle. Hence, in view of the concurrent findings in that regard, we proceed to consider only on the question whether

enhancement of compensation is to be made at the instance of the appellant or reduction of compensation is to be done at the instance of the

respondent-insurer.

4. The Tribunal granted an amount of Rs.14,78,000/-, as compensation for the death of the father of the appellant. For the death of her mother and

brother, the Tribunal granted Rs.13,33,936/- and Rs.2,45,000/-respectively. Aggrieved by and dissatisfied with the quantum of compensation thus

awarded, the appellant preferred appeals. After taking into account the rival contentions, the High Court enhanced the compensation for the death of

the father of the appellant from Rs.14,78,000/- to Rs.30,58,000/- and for the death of her mother, the High Court enhanced the compensation from

Rs.13,33,936/- to Rs.16,34,000/-. For the death of brother, the appellant was granted an amount of Rs.2,55,000/- in addition, and in other words,

enhanced the compensation from Rs.2,45,000/- to Rs.5,00,000/-. As noted earlier, the appellant claims enhancement of compensation in all the three

cases and at the same time, the respondent seeks deduction of quantum of compensation granted in the case of the parents of the claimant. In other

words, the respondent has chosen not to prefer any appeal against the enhanced compensation granted for the death of the brother of the appellant.

5. Heard the learned counsel appearing for the appellant and also the learned counsel appearing for the respondent.

6. We will, firstly, consider the appeals preferred by the respondent-insurer seeking reduction of the enhanced quantum of compensation granted in the

case of the parents of the appellant. Needless to say, that only if the said question of such deduction is answered in negative, the appeals by the

claimant invite consideration. A perusal of the appeals by the respondent would reveal that the very same three questions of law have been raised

while contending for reduction of the enhanced compensation, as hereunder:-

â€œA. Whether the Hon'ble High Court of Judicature at Madras has erred or not deducting the 1/3 of the income of the deceased regarding personal expenditures

where the deceased has a minor daughter and old aged parents as the dependents?

B. Whether the Hon'ble High Court has error in considering the income of the deceased, where there is no proof of income considered by the Hon'ble High Court

and considered the income on assumption basis?

C. Whether the Hon'ble High Court has error in awarding Rs.2,00,000/- to the respondent No.1 and also Rs.20,000/- to the respondent no. 2 & 3 towards the loss

love and affection and 30,000 /- towards the Funeral Expenses. Whereas this Hon'ble Court had already fixed the quantum in conventional heads at Rs. 70,000/-

in total of all, in its judgment in National Insurance Co. Ltd, vs. Pranay Sethi & Ors. (SLP No. 25590/2014))?â€

7. It is true that a perusal of the award passed by the Tribunal and the judgment of the High Court in the appeals would reveal that when one-third of

the income assessed in the case of the parents was deducted towards their personal expenses by the Tribunal while determining the quantum of

enhanced compensation, the High Court did not deduct one-third without assigning any specific reason therefor. In that regard, according to us there

cannot be any room for doubt with respect to the position that while calculating the quantum of compensation for death, deduction is bound to be

effected towards personal and living expenses, this position was made clear by this Court in the decision in Sarla Verma and Ors. v. Delhi

Transport Corporation &

Anr. (2009) 6 SCC 121; 2009 INSC 506, in paragraph 30 of the said decision it was held thus:-

â€œ30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra

[(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view

that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of

dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of

dependent family members exceeds six.â€

8. The ground No. B taken in consonance with the question of law No. B in the appeals filed by the insurer is that the High Court had gone wrong in

considering the income of the deceased on assumption basis when there was no proof of income. In this context, it is to be noticed that though the

Tribunal granted compensation in all the three claim petitions, the respondent-insurer had not chosen to challenge the awards in appeals. In that regard,

the indisputable position revealed from the records is that the parents of the appellant were not salaried persons and the claim was that they were self-

employed. A perusal of the impugned judgment would reveal the monthly income of the appellantâ€™s father as also the mother were fixed by the

Tribunal and the same was not challenged by the respondent in appeal. The fact is that, the appellant had produced only the xerox copies of the

Income Tax Returns of her parents, pertaining to the financial years 2003 to 2007. Indisputably, the Tribunal as also the High Court did not take them

as admissible evidence and make assessment on their basis. At the same time without placing reliance on the xerox copies of the Income Tax

Returns, the Tribunal fixed the monthly income of her father as Rs.12,000/- and that of her mother as Rs.8,000/-. The impugned judgment would

reveal that the monthly income thus fixed in the case of the parents were slightly enhanced by the High Court and it in the case her of father was re-

fixed as Rs. 18,000/- and in case of her mother as Rs. 9,000/-. As held by this Court in Sarla Vermaâ€™s case (supra), in the matter of assessment

of compensation, hypothetical considerations would be involved, but nevertheless such assessments should be objective. As noticed hereinbefore, the

accident had occurred in the year 2007, and the father of the appellant, who claimed to had been running a jewellery shop, was aged only 48 years at

the time of the accident. In the case of the mother of the appellant, she was aged only 38 years at the time of the accident and she was also not a

mere housewife and claimed to had been running a jewellery shop. The Tribunal could not be said to have committed any mistake in not accepting the

xerox copies of the tax returns and virtually adopted guess work relying on the attending circumstances to fix the monthly income of the parents of the

appellant for calculation purpose. But finding that the monthly income so assessed was slightly on the lower side and taking into account various

parameters, the High Court enhanced the monthly income in their cases, respectively as Rs.18,000/- and Rs. 9,000/-. Taking note of the year of the

accident and the age of the deceased parents of the appellant, we do not think that the monthly income so re-fixed by the High Court is without

jurisdiction or highly excessive. The said approach cannot be said to be legally improper or incorrect warranting an interference. Monthly income could

be fixed taking into account the tax returns only if the details of payment of tax are appropriately brought into evidence so as to enable the

Tribunal/Court to calculate the income in accordance with law.

9. In tune with the question of law No.C, the respondent-insurer took a ground in the appeal contending that the High Court had gone wrong in

granting amount in excess of Rs.70,000/- under the conventional heads. In this context, the learned counsel appearing for the respondent drew our

attention to the law laid down by this Court in the decision in National Insurance Co. Ltd. v. Pranay Sethi & Ors .(2017) 16 SCC 680; 2017 INSC

1068. Paragraph 59. 8 of the said decision would reveal that this Court held that under the conventional heads, only a total amount of Rs.70,000/- ; the

split-up being Rs. 15,000/- under the head loss of estate, Rs.40,000/- under the head loss of consortium and Rs.15,000/- towards funeral expenses, is

grantable. It is to be noted that after having held thus, this Court went on to hold that the amounts thus fixed under the conventional heads should be

revisited every three years and the enhancement should be at the rate of 10% in a span of three years. Even while taking into account the said

position laid down by this Court in Pranay Sethiâ€™s case, we are of the view that the Tribunal and the High Court cannot be found at fault with

fixing the amounts in excess of the aforesaid amounts fixed by this Court as the award and the judgment of the High Courts were passed prior to the

pronouncement of the judgment of this Court in Pranay Sethiâ€™s case. But at the same time, it is to be noted that in the decision in M.A. Murthy v.

State of Karnataka and Ors. (2003) 7 SCC 517; 2003 INSC 447, this Court held that when in a decision this Court enunciates a principle of law, it is

applicable to all cases irrespective of the stage of pendency thereof because it is to be assumed that what is enunciated by this Court is, in fact, the

law from inception. We may hasten to add that we shall not be understood to have held that pursuant to enunciation of a principle of law, matters that

attained finality shall be reopened solely for the purpose of applying the law thus laid. But at the same time, if the matter is pending, then, irrespective

of the stage, the principle cannot be ignored.

10. Now, we will consider the contention of the respondent-insurer regarding the failure of the High Court to deduct one-third of the income while

calculating the compensation payable by way of enhancement, in terms of the decision of this Court in Sarla Vermaâ€™s case (supra). This is

because the decision in Sarla Vermaâ€™s case (supra) was very much in force as a precedent since 15. 04.2009. In view of the same, we are of the

view that the respondents are justified in contending that the High Court ought to have deducted one-third of the income while calculating the

compensation by way of enhancement, in terms of Sarla Vermaâ€™s case (supra).

11. Now, we will consider the appeals preferred by the appellant to know the merits of the contentions. It is to be noted that at the time of death of the

brother of the appellant, he was aged only 10 years or thereabouts. The quantum of compensation Rs.2,45,000/- granted by the Tribunal for the death

of the brother of the appellant was enhanced by the High Court in the appeal to Rs.5,00,000/- in terms of the decision of this Court in Kishan Gopal

and Anr. v. Lala and Others (2014) 1 SCC 244; 2013 INSC 566, we do not think that the appellant has made any ground for enhancement for the

compensation granted for the death of her brother taking into account his age at the time of the accident any further.

12. The question, now, survives for consideration is whether the appellant is entitled to get enhanced compensation in respect of the accidental death

of her parents. We think that the appellant has certainly made out grounds for enhancement of compensation granted for her parents, on certain

counts. It is a fact that while calculating the monthly income, in respect of the father and mother of the appellant, the Tribunal as also the High Court

did not consider the future prospects, may be because both of them were not salaried persons. There cannot be any doubt with respect to the position

that in the case of self-employed persons too, fixation of monthly income, taking the factor of future prospects cannot be denied. The position is that, in

the case of self-employed persons below the age group of 40 years, 40% of the income assessed for fixation is grantable taking into account towards

future prospects and in the case of persons within age group of 40 to 50 years an addition of 25% is grantable on that count, in terms of the decision in

Pranay Sethiâ€™s case (supra). In the case of the father of the appellant, the multiplier was correctly taken with reference to his age. However, in

the case of her mother, the multiplier was not correctly taken in terms of the decision in Sarla Vermaâ€™s case (supra) by both the Tribunal and the

High Court. The age of mother of the appellant was taken as 38 years. The multiplier was taken as â€˜16â€™ by the Tribunal and as â€˜13â€™ by

the High Court. To put it succinctly, while considering the compensation for the death of the parents of the appellant, additions and deductions have to

be made taking into account the aforesaid aspects which we have held not considered in the light of the contentions of the respondent-insurer as also

the factors with reference to the contentions made on behalf of the appellant. On working out the entitlement of enhancement upon such

consideration, we find that the answer can only be in the negative. In fact, if the amount thus payable is re-worked making such additions and

deductions on the aforesaid heads it will result in lowering of the quantum of compensation, though certainly not in a big way. At the same time, we

cannot lose sight of certain other aspects. The appellant was aged only 14 years when she lost her parents as also her younger brother. True that she

got paternal grandfather. But then, the plight and fate on account of such solitude was considered by the Tribunal and the High Court. She will have to

experience the same for long. That apart, while calculating compensation it is to be borne in mind that Section 168 of the Motor Vehicles Act

mandates grant of â€˜just compensationâ€™. In a family of 4 members, viz., the parents and two children including the appellant, three of them died,

leaving the appellant. After bestowing our anxious consideration on all aspects, we are of the considered view that after taking into account all

parameters, just compensation was assessed and granted by the High Court as per the impugned common judgment by way of enhancement, which

cannot be said to be excessive or exorbitant. In such circumstances, in the name of correcting the law, we do not think it appropriate to interfere with

justice done to the appellant by the High Court by granting enhanced compensation. In other words, we do not think that after re-working out, the

compensation payable to the appellant should be brought down, to some extent, especially because the difference between what was already granted

and to be granted, if reworked, cannot be said to be alarmingly excessive. Therefore, we are of the considered view that in the interest of justice, the

enhanced compensation granted by the High Court as per the impugned judgment has to be maintained. Resultantly, all the appeals must fail and

accordingly they are dismissed.