(2018) 04 SHI CK 0034

High Court of Himachal Pradesh

Case No: FAO No. 74 of 2016

Reliance General Insurance Company Limited		APPELLANT
	Vs	
Smt. Manju Kumari and others		RESPONDENT

Date of Decision: April 17, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166
- Code of Civil Procedure, 1908 - Order 41 Rule 33

Hon'ble Judges: SANDEEP SHARMA

Bench: Single Bench

Advocate: Jagdish Thakur, Kamlesh, Sanjeev Kuthiala, Suneet Goel

Final Decision: Allowed

Judgement

Sandeep Sharma, J.

1.Respondents No. 1 and 2 being widow and mother of Lalit Kumar (deceased), filed a claim petition under Section 166 of the Motor Vehicles Act

before the learned Motor Accident Claims Tribunal-I Solan District Solan, Himachal Pradesh, claiming therein compensation to the tune of

`20,00,000/- on account of death of deceased Lalit Kumar, who at the relevant time was 27 years old and was doing job in a factory. Allegedly, on

1.6.2012 at about 2.45 pm, when deceased was going to factory, a truck being driven by respondent No. 3-Hira Lal came from the behind and struck

the motor cycle of the deceased, as a consequence of which deceased suffered multiple injuries and ultimately expired. Claimants claimed before the

learned Tribunal below that they had been deprived of the love and affection of the deceased and as such, they are entitled to compensation to the

tune of Rs.20,00,000/-.

2.Respondents No.3 and 4 i.e. driver and owner of the offending truck bearing registration No. HP-12D - 3164, denied the factum with regard to the

accident and claimed that the vehicle in question was not involved in the accident. Both the respondents claimed that accident occurred on account of

rash and negligent driving of the vehicle being driven by deceased. Aforesaid respondents also averred in the reply that the vehicle in question was

insured with the appellant-Insurance Company at the time of accident and as such, appellant-Insurance Company is liable to indemnify the insured.

3.Appellant-Insurance Company resisted the claim of the claimants by raising preliminary objections of maintainability and offending truck being plied

in violation of terms and conditions of insurance policy as such, it was not liable to indemnify the owner. Appellant-Insurance Company further

claimed that the motor cycle was being driven by the deceased in violation of the Motor Vehicles Act, without having a valid and effective driving

licence, as such, claimants are not entitled to any compensation. Learned Motor Accident Claims Tribunal below, on the basis of pleadings as well as

evidence adduced on record by the respective parties allowed the claim petition and held them entitled to compensation to the tune of ` 27,52,000/-

alongwith interest at the rate of 9% per annum from the date of filing of petition till realization. In the aforesaid background, appellant-Insurance

Company being aggrieved and dissatisfied with the aforesaid award passed by learned Tribunal below, approached this Court in the instant

proceedings, praying therein for setting aside the impugned award.

4.Mr. Jagdish Thakur, learned counsel representing the appellant-Insurance Company argued that the impugned award is against law and facts as

such, same is liable to be set aside. He further contended that bare perusal of impugned award clearly suggests that the learned Tribunal below has

not appreciated the evidence in its right perspective, as a consequence of which, erroneous findings have come on record to the detriment of the

appellant-Insurance Company. Mr. Thakur, further contended the learned Tribunal below while returning its findings qua issue No.1 has fallen in

grave error because bare perusal of post-mortem report of deceased, Exhibit PW-2/A, clearly shows that the deceased was under the influence of

liquor at the time of accident and as such, learned Tribunal below ought to have presumed that deceased himself was negligent. Mr. Thakur further

contended that findings returned by the learned Tribunal below qua issue No.4 are also against evidence because post-mortem report Exhibit PW-2/A

was proved in accordance with law by the appellant-Insurance Company by examining PW-2, Junior Assistant of Referral Hospital, Nalagarh as such,

learned Tribunal below fell in grave error while not holding deceased responsible for the accident. Learned counsel for the appellant-Insurance

Company further contended that the learned Tribunal below erred in taking monthly income of the deceased as ` 19,500/- [Rs.13000 +6500(50%

addition)] for the purpose of compensation, whereas learned Tribunal below ought to have deducted 1/3rd from the salary of deceased i.e. `13,000/-,

and as such, impugned award is liable to be set aside. Lastly, Mr. Thakur contended that deceased was not serving in any regular establishment and

learned Tribunal below ought not have made addition of 50% in the established income of deceased, as has been laid down by Hon'ble Apex Court in

National Insurance Company Limited vs. Pranay Sethi and others, AIR 2017 SC 5157. Mr. Thakur also contended that learned Tribunal below also

erred in awarding interest at the rate of 9% per annum because, as per prevalent market rate, interest could not be awarded more than 7.5% per

annum. While placing reliance upon the judgment rendered by Hon'ble Apex Court in National Insurance Company Limited vs. Pranay Sethi and

others(supra), Mr. Thakur contended that the learned Tribunal below has erred in awarding a sum of ` 50,000/- on account of loss of consortium to

claimant No.1 and an equal sum of `50,000/- on account of funeral charges. He contended that as per aforesaid judgment passed by Hon'ble Apex

Court, only ` 40,000/- and `15,000/- can be awarded under the heads of loss of consortium and funeral charges. Mr. Thakur also placed reliance upon

judgment passed by Hon'ble Apex Court in Laxmidhar Nayak and ors v. Jugal Kishore Behera and Ors, (Civil Appeal No. 19856 of 2017, arising out

of SLP(C) No. 31405 of 2016), to suggest that interest awarded by the learned Tribunal below is on higher side.

5.Ms. Kamlesh, learned vice counsel representing respondents No.1 and 2, supported the judgment passed by the learned Tribunal below and

contended that there is no illegality or infirmity in the impugned award and same deserves to be upheld. While inviting attention of this Court to the

evidence available on record, Ms. Kamlesh contended that it stands duly proved on record that the deceased died due to rash and negligent driving of

driver of the offending vehicle, which was admittedly insured with the appellant-Insurance Company at the relevant time. She further contended that it

stands duly proved on record that monthly income of deceased was `13,000/- per month, as such, learned Tribunal below drawing strength from law

laid down in Reshma Kumari . Madan Mohan and others 2013 (2) ACJ 1253, rightly made an addition of 50% to the actual salary while assessing

future prospects. Learned counsel fairly conceded that in terms of judgment rendered in National Insurance Company Limited v.Pranay Sethi and

others, AIR 2017 SC 5157, claimants are entitled to `15,000/- on account of funeral charges and `40,000/- on account of loss of consortium to

claimant No.1.

6.Having heard the learned counsel for the parties and perused the record, this Court finds no force in the contention having been raised by the

learned counsel representing the appellant-Insurance Company that the deceased died on account of his own rash and negligent driving, rather, bare

perusal of evidence available on record clearly suggests that accident was result of rash and negligent driving of vehicle in question, by respondent No.

3 (driver of the offending vehicle), who while driving vehicle rashly and negligently, hit motor cycle of deceased causing injury to him, which

subsequently resulted into his death. Similarly, this Court finds from the evidence available on record that the onus to prove that driver of the offending

vehicle was not having valid and effective driving licence to drive the same and offending vehicle was being plied in violation of terms and conditions

of insurance policy was on the appellant-Insurance Company, which has not been able to discharge aforesaid onus, rather, it stands duly proved on

record that respondent No.3 (driver) was having a valid and effective driving licence to drive the offending vehicle. Evidence available on record

further reveals that the claimants successfully proved on record that the monthly income of deceased was `13,000/- at the time of accident. Learned

Tribunal below while placing reliance upon judgment rendered in Sarla Verma & Ors. v. Delhi Transport Corporation and Anr., AIR 2009 SC 3104,

rightly applied multiplier of 17 because undisputedly deceased was 27 years old at the time of accident. However, this Court is in agreement with the

contention of Mr. Jagdish Thakur that since deceased was 27 years old and self employed, addition of 40% of the established income of the deceased

is/was to be made while determining future prospects as has been held in Pranay Sethiâ€™s case (supra).

7.Having perused judgment rendered by the Hon'ble Supreme Court in Pranay Sethiâ€™s case, this court is persuaded to agree with the contention of

Mr. Jagdish Thakur, learned counsel representing the appellant-Insurance Company that the Tribunal has erred in making addition of 50% of actual

salary /income of deceased while determining future prospects. In the aforesaid judgment Hon'ble Apex Court has specifically quantified the amounts

to be paid under conventional heads i.e. loss of estate, loss of consortium and funeral charges. Relevant paragraphs of aforesaid judgment are

reproduced herein below:

â€œ47.In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the

courts would be avoided. 48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses.

In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted ` 5,000/- for transportation of the body, ` 10,000/-as funeral

expenses and ` 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted ` 5,000/- under the head of loss of estate, ` 5,000/-

towards funeral expenses and ` 10,000/- towards loss of Consortium. In Rajesh, the Court granted ` 1,00,000/- towards loss of consortium and `

25,000/-towards funeral expenses. It also granted ` 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on

the principle that a formula framed to achieve uniformity and consistency on a socioeconomic issue has to be contrasted from a legal principle and

ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads.

What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined

to think so, for what it states in that regard. We quote:-

â€œ17. â€¦ In legal parlance, â€œconsortiumâ€ is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and

sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of

companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non pecuniary

damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of

America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary

disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouseâ€™s affection, comfort, solace,

companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries

and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major

amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of

consortium.â€

49.Be it noted, Munna Lal Jain (2015 AIR SCW 3105) (supra) did not deal with the same as the notice was confined to the issue of application of

correct multiplier and deduction of the amount.

50.This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule of the Act. The said

Schedule has been found to be defective as stated by the Court in Trilok Chandra (supra). Recently in Puttamma and others v. K.L. Narayana Reddy

and another it has been reiterated by stating:- â€œâ€¦we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational

and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.â€

51.As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also

provides for General Damages in case of death. It is as follows:- â€œ3.General Damages (in case of death): The following General Damages shall be

payable in addition to compensation outlined above:-

(i)Funeral expenses- `2,000/-.

(ii)Loss of Consortium, if beneficiary is the spouse-`5,000/-

(iii)Loss of Estate - ` 2,500/-

(iv)Medical Expenses â€" actual expenses incurred before death supported by bills/vouchers but not exceeding â€" ` 15,000/-â€

52.On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in Trilok

Chandra (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice,

in different cases different amounts have been granted. A sum of ` 1,00,000/- was granted towards consortium in Rajesh. The justification for grant of

consortium, as we find from Rajesh, is founded on the observation as we have reproduced hereinbefore.

53.On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

54.As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted ` 25,000/- towards

funeral expenses, ` 1,00,000/- loss of consortium and ` 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of

care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional

heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income,

the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall

in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in

this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense

variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided.

Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of

consortium and funeral expenses should be ` 15,000/-, ` 40,000/- and ` 15,000/- respectively. The principle of revisiting the said heads is an acceptable

principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified

should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are

disposed to hold so because that will bring in consistency in respect of those heads.

55.Presently, we come to the issue of addition of future prospects to determine the multiplicand.

56.In Santosh Devi the Court has not accepted as a principle that a self -employed person remains on a fixed salary throughout his life. It has taken

note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on

the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries

of those who are employed in private sectors also with the passage of time increase manifold. In Rajeshâ€™s case, the Court had added 15% in the

case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition

has been made in respect of self employed or engaged on fixed wages.

57.Section 168 of the Act deals with the concept of â€œjust compensationâ€ 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 â€œjust compensationâ€ 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. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the

tribunal to be guided by the expression, that is, â€œjust compensationâ€. The determination has to be on the foundation of evidence brought on record

as regards the age and income of the deceased and thereafter the opposite multiplier to be applied. The formula relating to multiplier has been clearly

stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by

adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to

reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity

of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an

adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its

ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization

keeping in view the principle of certainty, stability and consistency. We approve the principle of â€œstandardizationâ€ so that a specific and certain

multiplicand is determined for applying the multiplier on the basis of age.

58.The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has

carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se,

allowed any future prospects in respect of the said category.

59.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 oneâ€™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.

60.The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50

years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of

the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other.

To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an

addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of selfemployed or

person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be

consistency in the approach by the tribunals and the courts.

61.In view of the aforesaid analysis, we proceed to record our conclusions:-

(i)The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than

what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a

contrary view than what has been held by another coordinate Bench.

(ii)As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding

precedent.

(iii)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.

(iv)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.

(v)For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30

to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi)The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph of that judgment.

(vii)The age of the deceased should be the basis for applying the multiplier.

(viii)Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ` 15,000/-, ` 40,000/ - and `

15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â€

8.In view of aforesaid exposition of law laid down in Pranay Sethiâ€™s case, amount awarded under various heads i.e. funeral expenses and loss of

consortium needs to be reassessed.

9.Accordingly, amount awarded under funeral expenses and loss of consortium is modified to `15,000/- and `40,000/-instead of ` 50,000/- each.

Similarly, as has been observed above an addition of 40% of established income could have been made by the learned Tribunal below in the case of

deceased who was self employed and 27 years old, while assessing compensation on account of future prospects. In the case at hand, established

income of deceased is `13,000/- per month and after adding 40% of the actual income/salary of deceased, same comes to `18,200/-(` 13000+5200) per

month. Learned Tribunal below taking note of the ratio of law laid down in Sarla Vermaâ€™s case has deducted 1/3rd amount towards personal living

expenses of the deceased and as such, contribution of deceased towards family comes to `18,200-6067 = 12133, which comes to `145,596 or say

`1,45,600/- per annum and after applying multiplier of 17, same comes to ` 24,75,200/-.

10.In view of aforesaid modification, claimants are entitled to a sum of ` 24,75,200/-, on account of loss of dependency instead of ` 26,52,000/- as

awarded by the learned Tribunal below. However, this Court while exercising powers under Order XLI, Rule 33 CPC, wherein appellate court enjoys

power to pass any decree and make any order, which ought to have been passed or made, as the case may be, deems it fit to grant an amount of `

15,000/- on account of loss of estate. In view of aforesaid modification, now the claimants shall be entitled to the following amount:

1.Loss of dependency `24,75,200/-

2.Loss of Estate ` 15,000/-

3.Funeral charges `15,000/-

Total `25,05,200/-

4.Loss of consortium (payable to

petitioner No. 1) ` 40,000/-

Total `25,45,200

11.The award amount shall be apportioned in the ratio of 60:40 as held by the Motor Accident Claims Tribunal below.

12.Though, reliance placed on the judgment rendered by the Hon'ble Apex Court in Laxmidhar Nayak (supra) by the learned counsel representing the

appellant-Insurance Company in support of his contention that the learned Tribunal below has fallen in grave error while awarding interest at the rate

of 9% to the claimants on the awarded amount, is wholly misplaced because there is no thumb rule/law that interest on the compensation /awarded

amount cannot be awarded at the rate of 9%, however, in the given facts and circumstances of the case, interest awarded at the rate of 9% is

modified to 7.5% and as such, claimants shall be entitled to interest at the rate of 7.5% on the awarded amount.

13.Consequently, in view of the detailed discussion made herein above and law laid down by the Honâ€™ble Apex Court, present appeal is partly

allowed and impugned award passed by the learned MACT below is modified to the aforesaid extent only. Present appeal is disposed of, so also

pending applications if any.