



2025:DHC:5530



S~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 04.07.2025***+ **MAC.APP. 397/2025 & CM APPL. 38347-38348/2025**

THE ORIENTAL INSURANCE CO LTDAppellant

Through: Mr. Kanwar Kochhar, Advocate
versusBHUWAN CHANDRA SINCE DECEASED
THR LRS

.....Respondent

Through: Mr. Anshuman Bal, Advocate for R-1
& 2**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 38348/2025 *[Exemption from filing certified/true typed copies]***

1. Allowed, subject to the Appellant filing certified/true typed copies of the annexures within a period of three weeks.
2. The Application stands disposed of.

MAC.APP. 397/2025 & CM APPL. 38347/2025 *[Stay]*

3. The present Appeal has been filed on behalf of the Appellant under Section 173 of the Motor Vehicle Act, 1988 impugning the award dated 24.04.2025 [hereinafter referred to as "Impugned Award"] passed by the learned Presiding Officer, MACT-02 (Central), Tis Hazari Courts, Delhi. By the Impugned Award, compensation in the sum of Rs.45,04,000/- has been awarded along with interest at the rate of 9% per annum.
4. Learned Counsel for the Appellant raises four grounds of challenge in the present Appeal. Firstly, that the monthly salary of the deceased has been



2025:DHC:5530



wrongly calculated. Learned Counsel submits that the salary slip for the month of April was taken into account, and since the deceased died on 24th of April, the salary slip for the month of March should be taken into account.

4.1 Concededly, the deceased was working until the date of his death. The monthly salary of the deceased as on the date of his death was Rs.30,000/- as per the salary slips which were exhibited as Ex. PW-2/4 (colly) before the learned Tribunal. Thus, this ground of challenge in the present Appeal is without merit.

5. Secondly, learned Counsel for the Appellant submits that the conveyance which formed part of the salary should not have been included in the salary of the deceased.

6. Thirdly, it is contended that the 30% of future prospects were not in accordance with law.

7. Fourthly, it is contended that a high rate of interest has been awarded by the learned Trial Court.

8. So for as concerns the rate of interest, the learned Trial Court has awarded interest @ 9% per annum from the date of filing the Petition, i.e., 17.05.2024, the law is settled as *qua* the interest.

8.1 The award of interest is usually determined at the prevailing bank rate of interest on a case to case basis and at the rate which is just and fair and reasonable. The Supreme Court in the judgment of *Dharampal & Ors v U.P. State Road Transport Corporation*¹ after discussing the law as laid down

¹ AIR 2008 SC 2312



held that interest has to be awarded at the prevailing bank rate of interest at the relevant time as per the facts and circumstances of each case.

8.2 In addition, in the case of *Savita Devi & Ors. v. SBI General Insurance Company Ltd. & Ors.*² held that for determining 'just compensation' interest must be based on fairness, reasonableness and equitability. The interest awarded in the *Savita Devi* case was enhanced from 6% to 9% per annum by the Supreme Court.

8.3 The learned Trial Court has awarded interest at the rate of 9% per annum. This Court finds no infirmity with the Impugned Award of 9% interest in the circumstances of the present case.

9. So far as concerns the contention that 30% future prospects should not be awarded, learned Counsel for the Appellant, while relying on paragraphs 59.3 and 59.4 of the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.*³ submits that the *Pranay Sethi* case states that the addition of 30% would only be in the case where the deceased has a government job.

9.1 Learned Counsel for the Respondent who appears on advance service submits that the finding in the *Pranay Sethi* case does not refer to a government job but to a permanent job.

10. The submission of the learned Counsel appearing for the Petitioner is without merit once again. The judgment in the case of *Pranay Sethi* case in paragraphs 59.3 and 59.4 states that where the deceased has a permanent job and is between the age of 40-50 years [as in the present case], the addition

² Civil Appeal No. 10053-10054 of 2024 dated 02.09.2024

³ (2017) 16 SCC 680



should be 30%. The relevant extract of the *Pranay Sethi* case is set out below:

“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.

59.4. 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.”

[Emphasis supplied]

10.1 Concededly, the deceased was employed as a Marketing Executive with a private firm at the time of his death and was not a daily wager. There is no evidence to show that the deceased was employed for a short period of time or on a temporary basis.

11. Learned Counsel for the Appellant has submitted that a perusal of salary slip shows that the salary for the month of April, 2024 is divided into various components which include the basic HRA, Conveyance, “SPLALL”, lunch, CCA and medical. It is the contention of the learned Counsel for the Appellant that the calculation of the salary should be done after deducting the amount of conveyance, which is shown in the salary slip as Rs.4,000/-. Learned Counsel for the Appellant submits that the travel allowance is the benefit extended to the employee alone, and therefore, the amount of Rs.4,000/- as mentioned in the salary slip should be deducted from the salary before computing the monthly income of the deceased.



11.1 A Coordinate Bench of this Court in *National Insurance Co. Ltd. v. Manoj Prasad & Ors.*⁴ while placing reliance on the judgments of the Supreme Court in *Sunil Sharma & Ors. v. Bachitar Singh & Ors.*⁵ and *National Insurance Co. Ltd. v. Indira Srivastava & Ors.*⁶ has held that having regard to change in societal conditions, the Court must consider the question of determination of income having regard to not only the total pay that the employee carries home at the end of the month but also the other perks of the entire family, which include payments made on account of house rent allowance, medical allowance, etc. The Coordinate Bench held that whether or not the amount received in a case of reimbursement or as a monthly perk, was to be examined. It further held that the Insurance Company did not show that these allowances were required by the Claimant to actually spend any amount on such heads, thus a finding was given that these were benefits which the Claimant took home irrespective of where any expenditure was incurred on this account.

12. Learned Counsel for the Appellant requests for some time to place on record documents in support of this challenge.

13. Accordingly, issue Notice on the limited aspect of deduction of the conveyance allowance, which forms part of the salary of the deceased.

13.1 Learned Counsel appearing on behalf of the Respondent Nos. 1 and 2 accepts Notice.

14. Learned Counsel appearing on behalf of the parties submit that the service of the Respondent Nos. 3 and 4, who are the driver and the owner

⁴ MAC.APP. 454/2017

⁵ (2011) 11 SCC 425

⁶ AIR 2008 SC 845



2025:DHC:5530



respectively, be dispensed with.

15. Upon deposit by the Appellant, 75% of the decretal amount inclusive of up to date interest be released to the Respondent/Claimant in accordance with scheme, as is set out in the Impugned Award.

16. The parties seek and are granted time to file their respective written synopsis, not exceeding three pages each, at least three days before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon.

16.1 All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

17. The Registry is directed to place on record the digital copy of the Trial Court Record duly paginated and book-marked in accordance with the rules of the High Court.

18. List for hearing on 12.09.2025.

19. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 4, 2025/ ha/g.joshi/r

Click here to check corrigendum, if any