



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:13.05.2025

+ **MAC.APP. 711/2019**
RAJWANT KAUR & ORSAppellants
Through:

versus

RAKESH KUMAR & ORS (CHOLAMANDALAM MS
GENERAL INSURANCE CO LTD)Respondents
Through:

Advocates who appeared in this case:

For the Petitioner : Mr. Manish Maini & Ms. Anjali Singh,
Adv.

For the Respondent : Ms. Suman Bagga & Ms. Rhea Duggal,
Adv. for R3.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the judgment and award dated 18.04.2019 (hereafter '**the impugned award**') passed by the learned Presiding Officer, Motor Accident Claims Tribunal (North), Rohini Courts, Delhi, in MACP No. 279/2017.

2. Briefly stated, on 14.02.2017 at approximately 06:10 AM, the deceased, Sh. Sukhdev Singh, was standing near the police booth at Mukarba Chowk Bus Stand, Delhi, when a tempo bearing registration



number HR-67A-4674, being driven in a rash and negligent manner by Respondent No.1, came at high speed and hit the deceased with great force. As a result of the impact, the deceased suffered grievous and fatal injuries and was immediately shifted to BJRM Hospital, where he was declared brought dead.

3. The offending vehicle was subsequently seized, and FIR bearing no. 142/2017 under Sections 279/337/304A of the IPC was registered at Police Station Samaipur Badli against the driver of the vehicle.

4. The deceased, Sh. Sukhdev Singh, was 43 years old at the time of the accident and was employed as a Head Constable with the Delhi Police. He was drawing a gross salary of ₹46,138/- per month and was in stable employment with a promising career trajectory. He was survived by his wife and two minor children, who were entirely dependent on his income, as also by his aged parents, both of whom unfortunately passed away during the pendency of the claim proceedings. A claim petition was filed under Sections 166 and 140 of the MV Act seeking compensation for the loss suffered on account of the death of the sole breadwinner.

The learned Tribunal, after examining the pleadings, evidence, and documents on record, computed the compensation at ₹64,28,000/-, along with interest @ 9% per annum from the date of filing of the claim petition till realization.

5. The appellants, being the legal heirs and dependents of the deceased, are aggrieved by the inadequate computation of



compensation. It is stated that parents of the deceased have expired during the pendency of the proceedings before the learned Tribunal.

6. The learned counsel for the appellants submitted that the impugned award suffers from material irregularities and errors of law and fact, and is liable to be modified and enhanced. Firstly, the learned Tribunal erred in deducting one-third of the income of the deceased towards personal expenses. It is submitted that in view of the law laid down by the Hon'ble Supreme Court in *Sarla Verma v. DTC : (2009) 6 SCC 121*, and *National Insurance Co. Ltd. v. Pranay Sethi : (2017) 16 SCC 680*, where the number of dependents is three or more, the correct deduction ought to be one-fourth of the income. In the present case, the deceased left behind his widow and two minor children, and therefore, the deduction should have been limited to one-fourth.

7. He submitted that the learned Tribunal has erroneously excluded the House Rent Allowance (**HRA**) and Transport Allowance from the computation of income. These allowances are regular components of salary and form part of the earnings utilized for the benefit of the entire family.

8. Lastly, it is contended that the rate of interest awarded by the Tribunal at 9% per annum is on the lower side, considering the long pendency of claim proceedings and depreciating value of money.

ANALYSIS

9. Upon careful consideration of the rival submissions and a perusal of the impugned award dated 18.04.2019, this Court finds merit in the appeal to a limited extent. While most of the Tribunal's



findings appear consistent with the legal position and evidentiary material on record, two specific aspects merit interference—(i) the deduction towards personal expenses, and (ii) the exclusion of House Rent Allowance (HRA) and Transport Allowance in the computation of income.

Deduction for Personal Expenses

10. It is the contention of the learned counsel for the appellant that the learned Tribunal erred in deducting one-third of the income of the deceased towards personal expenses. He submitted that the subsequent death of the deceased's dependent father ought not to be a reason for reduction of the compensation.

11. As regards the deduction made towards personal expenses, the learned Tribunal applied a one-third deduction from the assessed income of the deceased. However, the Hon'ble Apex Court in *Kirti v. Oriental Insurance Co. Ltd. : 2021 2 SCC 166*, held that claims and legal liabilities crystallise at the time of the accident itself and changes post thereto ought not to ordinarily affect pending proceedings. The relevant portion is reproduced hereunder :

“Analysis

I. Deduction for personal expenses

9. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the



pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law.”

12. In the present case, the deceased was survived by his wife, two minor children, and his father—who was originally impleaded as a claimant and declared to be wholly dependent in the affidavit (Ex. PW1/A). Although the father of the deceased passed away during the pendency of the claim, dependency at the time of the accident is the relevant consideration for this computation and the fact remains that on the date the cause of action arose there were four claimants.

13. The learned Tribunal failed to appreciate this legal position and thus erred in applying the deduction of one-third instead of one-fourth. The same is liable to be corrected.

Assessment of monthly income

14. As regards the computation of income, this Court finds that the learned Tribunal wrongly excluded HRA and Transport Allowance drawn by the deceased from his salary while calculating the loss of dependency. This approach stands contrary to the settled law laid down in *Meenakshi v. Oriental Insurance Co. Ltd. : 2024 INSC 573*, wherein the Hon’ble Apex Court explicitly held that perquisites and allowances such as HRA, transport allowance, flexible benefit plan, and company contribution to provident fund cannot be ignored in computing the actual income of the deceased. It is held as under :

“7. As per the service conditions and pay scales of the Government officials, the house rent allowance is payable between 8% and 30% of the basic salary. Therefore, the house rent allowance is paid in a fixed ratio proportionate to the basic salary.



With the increase in basic salary, the quantum of house rent allowance also increases proportionately. The flexible benefit plan and Company contribution admissible to a person employed in private service would also not remain static and are bound to increase with the length of service. The only bone of contention in this appeal is whether perquisites/allowances referred to above should also be taken into account while applying the future prospects. Therefore, entirely excluding these components from the salary of the employee for applying the principle of future prospects would be unjustified. Consequently, we have no hesitation in holding that these allowances cannot be ignored and have to be added to the salary when assessing the rise in income due to future prospects of a person employed in private service. This Court has carved out a rational formula to fix the percentage of rise of income by future prospects. In the case at hand, the said percentage has been fixed at 50% by both, the Accident Claims Tribunal as well as the Division Bench of the High Court. In view of the discussion made supra, the perquisites/allowances have to be added to the basic salary of the deceased before applying the rise by future prospects.

9. *Recently in a judgment dated 11th July, 2024 in National Insurance Company Ltd. v. Nalini and Ors. [Petition for Special Leave to Appeal (C) No. 4230/2019], this Court held that, allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary of the victim/deceased to arrive at the dependency factor.*

10. *Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future prospects, while calculating the total compensation payable to the appellant.”*

15. It is relevant to note that these allowances are neither transient nor discretionary, and they form a substantive part of the deceased's take-home salary, especially in government service. The exclusion of



these components by the Tribunal has led to a materially suppressed assessment of the deceased's income and consequential compensation.

16. In view of the above findings, this Court is of the opinion that the issue of computation of income, deduction towards personal expenses, and the application of correct principles relating to dependency requires fresh determination.

Rate of Interest

17. Another issue raised by the appellant is that while awarding the compensation amount, the learned Tribunal directed the same to be payable alongwith interest @ 9%, which is on the lower side.

18. It is pertinent to note that this Court in the case of *United India Insurance Company Ltd v. Smt. Mithlesh Kumari and Ors* : **MAC. APP. 161/2025** had noted that the award of interest was a matter of judicial discretion, and that the same found its genesis in the forbearance of the claimants who are kept out of the money that they are entitled to at the time of filing of the claim petition. It was consequently noted that the award of @9% interest is a reasonable assessment. While there is no set standard for the grant of rate of interest in every case, and the same ought to be determined in accordance with the peculiar facts and circumstances of each case, yet no worthy ground has been pleaded by the appellants as to why the rate of interest should be enhanced to @12%.

19. Consequently, in the opinion of this Court, the rate of interest as awarded by the learned Tribunal is reasonable and need not be interfered with.



Conclusion

20. Keeping in view the facts and circumstances of the case, the appeal is partly allowed. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the loss of dependency by (i) applying a one-fourth deduction towards personal expenses instead of one-third, and (ii) including the components, HRA and Transport Allowance, in the gross monthly income of the deceased and computing the compensation afresh.

21. The findings of the Tribunal on all other issues, including negligence, multiplier, future prospects, non-pecuniary damages, and interest rate, are affirmed and shall remain undisturbed.

22. The learned Tribunal shall undertake this re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 19.05.2025.

23. The compensation amount so determined, on remand, shall be released in favour of the appellant in accordance with the schedule of disbursement stipulated by the learned Tribunal in the impugned award.

24. The present appeal is partly allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 13, 2025