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

% **Order reserved on : 06 February 2025**
Order pronounced on : 14 February 2025

+ MAC.APP. 954/2015

THE ORIENTAL INSURANCE CO LTD Appellant
Through: None.

versus

KHUSHANUMA AND ORS Respondents
Through: Mr. Pankaj Gupta, Adv. for R1
to 6.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

REVIEW PET. 378/2024 in MAC.APP. 954/2015

1. This petition has been moved on behalf of the applicants/respondent Nos.1 to 6, who are the claimants, seeking a review of the judgment dated 13.08.2024 passed by this Court. By the said judgment, the appeal filed by the non-applicant/insurance company was partly allowed, thereby reducing the amount of compensation awarded by the learned Presiding Officer, Motor Accident Claim Tribunal¹, Shahdara, Karkardooma Court, Delhi under Section 166 read with Section 140 of the MV² Act from ₹11,47,631/- to ₹9,62,631/- with interest at the rate of 7% from the date of filing of the claim petition i.e. 02.07.2013 till realisation.

¹ MACT

² Motor Vehicles Act, 1988



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2. No one has appeared on behalf of the non-applicant/insurance company despite sending advance notice.
3. Having heard the learned counsel for the applicants/respondent Nos.1 to 6/claimants, this Court finds no hesitation in holding that there is an “error apparent on the face of the record” warranting a review of the impugned judgment, as this Court, while deciding the impugned judgment in appeal, failed to consider the cross objections filed by the applicants/claimants.
4. In a nutshell, the deceased/Sallu, sustained fatal injuries in a motor accident on 10.04.2012, involving the offending truck bearing registration No. HR-38J-0335, which was being driven in a rash and negligent manner by the respondent No.7/Jugendra Singh.
5. Insofar as the quantum of compensation was concerned, the learned Tribunal, upon appreciating the evidence brought on the record, held that the deceased was working as a scrap dealer in Baghpat, Uttar Pradesh, and not in Delhi. Accordingly, the learned Tribunal assumed his notional income to be equivalent to the minimum wages for an “unskilled workman” prevalent in Uttar Pradesh as on 10.04.2012, which was ₹ 4,227/- per month. The annual income was assessed at ₹ 54,324/-, from which one-fourth was deducted towards personal and living expenses of the deceased. Applying a multiplier of 17, the loss of dependency was quantified at ₹6,92,631/-.
6. This Court interfered with the impugned judgment dated 28.09.2015 passed by the learned MACT only to the extent that a total compensation of ₹ 3,00,000/- had been awarded to the



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applicants/claimants towards loss of love and affection, i.e., ₹ 50,000/- to each petitioner, in addition to ₹ 40,000/- towards loss of estate, ₹ 40,000/- for loss of expectancy of life, and ₹25,000/- towards funeral and transportation expenses.

7. In the appeal filed by the appellant/insurance company, this Court, in view of the decision in *National Insurance Company v. Pranay Sethi*³, reduced the compensation only with respect to loss of consortium, funeral expenses and loss of estate. Accordingly, ₹40,000/- was awarded to each claimants, totalling ₹ 2,40,000/-, along with ₹ 15,000/- each towards funeral expenses and loss of estate, thereby arriving at a total compensation amount of ₹ 9,62,631/-

8. In the present review petition, the applicants/claimants submit that the deceased was not employed in Baghpat, Uttar Pradesh, but was working in Delhi. Accordingly, their plea is that this Court not only overlooked the cross-objections filed by them but also incorrectly applied the minimum wages. It is canvassed that the applicable minimum wage in Delhi should have been reckoned at ₹7,020/- per month. Furthermore, no provision was made for the presumption of a 40% increase in the deceased's income/earnings.

9. At the outset, this Court is not impressed with the plea that the deceased was working as a scrap dealer in Delhi. This Court cannot re-appraise the evidence that was produced in this regard. The learned MACT has reasonably assumed that he was working as a ragpicker at Baghpat, Uttar Pradesh, and accordingly, applied the indicators of minimum wages applicable in the State of Uttar Pradesh. All said and

³ (2017) 16 SCC 680



done, it is also evident that the deceased was 30 years old, and with the application of a multiplier of 17, it is but natural that the minimum wages would have increased annually or biennially under normal circumstances. In fact, the learned counsel for the applicants/claimants has placed on record tabular details indicating the increase in minimum wages over the years, even in Uttar Pradesh, where the current notional income for an unskilled worker is pegged at ₹ 10,701/-. As per the decision in **Pranay Sethi (supra)**, a minimum increase of 40% can be assessed in the case of self-employed persons and it was held as follows: -

“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 Sar/a Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 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 Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

10. Accordingly, assuming the notional income of the deceased was ₹4,527/-and from the annual income deducting one fourth of the expenses towards personal expenses of the deceased and applying 40% increase towards future prospects, the compensation towards loss of dependency after applying multiplier of 17 comes to ₹ 9,69,683/- The compensation is, accordingly, computed as under: -

S. No.	Heads	Amount
1.	Loss of financial dependency	₹ 9,69,683
2.	Loss of consortium [Rs.40,000 x 6]	₹ 2,40,000/-
3.	Funeral expenses	₹ 15,000/-
4.	Loss of estate	₹ 15,000/-
Total		₹ 12,39,683/-

11. Accordingly, the present review petition is allowed. The cross objections filed by the applicants/respondents vide CM APP. 10221/2016 is disposed of in the aforesaid terms and the applicant/claimants shall be entitled to the total compensation of ₹



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12,39,638/- with the interest at the rate of 7% per annum from the date of the filing of the claim petition i.e. 02.07.2013 till realisation. The statutory amount of ₹25,000/- deposited by the appellant/insurance company shall be released to them with the accrued interest.

DHARMESH SHARMA, J.

FEBRUARY 14, 2025

Ch