



2025:DHC:1455



* IN THE HIGH COURT OF DELHI AT NEW DELHI
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Pronounced on: 4th March, 2025
MAC.APP. 282/2022

1. RAKESH SHARMA @ RAKESH
S/o Sh. BalbirAppellant No.1

2. PUJA SHARMA
W/o Sh. Rakesh Sharma
Both r/o H.No. A-1, Prem Nagar-1, Kirari Road
Nangloi, Delhi-110086.Appellant No.2

Through: Mr. Jatinder Kamra, Advocate.
versus

1. ASHOK
S/o Ram
R/o Villae Bahram Ka Bas, Post Rampur,
Tehsil Bansur, Alwar, Rajasthan ..Respondent No.1

2. SUWA LAL
S/o Sh. Bhanwar Singh
r/o Dhani Gomakawali Jaje Kalan,
Jaipur, Rajasthan ...Respondent No.2

3. CHOLAMANDALAM MS GENERL INSURANCE CO.
LTD.
Through its Manager
Second Floor, E-52, C-Scheme Jaipur,
Also at Plot No. 39, 2nd Floor, Samyak Tower,
Pusa Road Near Metrol Pillar 120, Karol Bagh,
New Delhi-11005Respondent No. 3

Through: Ms. Suman Bagga, Advocate for
R-3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

1. Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed by the Appellants/ parents of the child, Harsh Sharma, aged about 14 years 10 months, who died in the road accident on 28.09.2017, to seek enhancement of compensation in the sum of Rs.10,20,000/- along with interest @ 6% per annum, granted *vide* Award dated 26.05.2022.
2. ***Briefly stated***, on 28.09.2017 at about 11:15 p.m., Sh. Satyendra along with his friend, Ajay was going on a Scooty, while Chandan with Harsh as the pillion rider, was driving the Motorcycle to Chattarpur Temple, Delhi. As they climbed down from Naraina Flyover, the Motorcycle driven by Chandan slightly hit another Motorcycle, and lost its balance and fell. At this point, the Offending Truck bearing No.RJ-52GA-2449 being driven by Respondent No.1 in a rash and negligent manner, came from behind and hit Harsh Sharma/pillion rider on the Motorcycle causing him injuries. Subsequently, Harsh Sharma (*hereinafter referred to as “deceased”*) was taken to DDU Hospital where he was declared “Brought Dead”.
3. The *FIR No.219/17* under *Section 279/304-A of the Indian Penal Code, 1860* was registered at Police Station Naraina. Subsequently, Detailed Accident Report was filed by the Investigating Officer, which was treated as the Claim Petition for determination of Compensation.



4. After trial, the learned Tribunal granted a compensation in the sum of Rs.10,20,000/- along with interest @ 6% per annum to the Claimants on account of fatal injuries suffered by their son/Harsh Sharma.

5. The *main ground for seeking enhancement of Compensation* is that the child was in Class 11th and was a Matriculate and therefore, the compensation should have been calculated by taking the Minimum Wages of a Matriculate.

6. *Learned counsel on behalf of Insurance Company*, however, has submitted that the child was below 15 years and, therefore, the calculation of compensation has been done correctly and the Award does not warrant any interference.

7. **Submissions heard and record perused.**

Loss of Dependancy:-

Assessment of Notional Income:-

8. The Appellant/Claimants have challenged the calculation of Loss of Income of the deceased which has been determined on the basis of the “*inflation correction method/formula*” by taking the Notional Income of the deceased as per the Second Schedule of the MV Act, 1988, as prescribed in the case of Chetan Malhotra vs. Lala Ram, MAC. APP. 554/2010, decided on 13.05.2016.

9. The *core issue* herein is what should be the principle for determination of Loss of Income in case of demise of the child in a road accident.



10. In the landmark judgment of R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1, the Apex Court, while considering the Claims arising on account of demise of 29 children in a road accident in November 1997, succinctly observed that in motor accident cases, the goal is to return the dependents or claimants to the pre-accident state. The Apex Court deemed it appropriate to refer to the notional income mentioned in the Second Schedule, to determine the pecuniary loss of the claimants/dependants.

11. Thus, traditionally, in the case of death of a child upto 15 years, the notional income of Rs. 15,000/- in terms of *Second Schedule to Section 163-A of the Motor Vehicle Act, 1988*, was being adopted which was from time to time, corrected by taking into consideration the ***Cost Inflation Index***.

12. In Kishan Gopal vs. Lala, (2014) 1 SCC 244, the son of the Claimants, aged ten years, had died in an accident that occurred on 19.07.1992. The Apex Court assessed the notional income of the deceased 10-year-old, took Rs. 30,000/- p.a. instead of Rs.15,000/- p.a. (as specified in the Second Schedule to MV Act 1988 for a non-earning member), by taking into consideration the ***Cost Inflation Index***. It was observed that the Rupee value has come down drastically since 1994 and the amount mentioned in the Second Schedule would be inadequate.

13. Likewise, in the case of Chetan Malhotra (*Supra*), the Coordinate Bench of this Court while deciding the Claim Petitions arising out of death of 15 children, observed that the notional



income specified in the Second Schedule in November 1994, needs to be corrected as the amount specified therein, cannot hold good even after elapse of more than two decades because the value of money stands eroded on account of the effect of inflation. Thus, on the basis of ***inflation correction method***, the method of Calculation was defined thus:

“71. Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :-

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation- corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year



under Section 48 of the Income Tax Act, 1961,
by applying the formula indicated hereinafter.

(ii) **For inflation-correction,** *the financial year of 1997- 1998 shall be treated as the "base year" and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :- 15,000/- x A ÷331 [wherein the figure of „ `15,000/-" represents the notional income specified in the second schedule requiring inflation-correction; „A" represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of „331" represents the CII for the „base year"]*

(iii). *After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.*

(iv). *The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one- third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as "the multiplicand").*

(v). *For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).*

(vi). *For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be*



calculated by applying the multiplier of fifteen (15).

(vii). *For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).*

(viii). *After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary damages taking care of not only the conventional heads but also towards future prospects as awarded in *R.K. Malik v. Kiran Pal (2009) 14 SCC 1*.*

(ix). *The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.”*

14. The Apex Court, in *Rajendra Singh vs. National Insurance Company Ltd.*, 2020 SCC OnLine SC 521 upheld the determination by MACT, the *notional income of a 12-year-old child* who died in an accident prior to 2019, *as Rs. 36,000/- p.a.*, by observing that the structured formula provided in the Second Schedule was inadequate to assess the compensation.

15. Similarly, in *Kurvan Ansari*, (supra), the Apex Court assessed the notional income of a *deceased 7-year-old victim as Rs. 25,000/- p.a.* considering the devaluation of the Rupee since the introduction of Second Schedule. Relying on this judgment, the Apex Court, in *Meena Devi vs. Nunu Chand Mahto & Ors.*,



decided on October 13, 2022, observed that for the *12-year-old (deceased)* victim, *the appropriate notional income would be Rs. 30,000/-*. Pertinently, here also the basis was the Notional Income which was adjusted in accordance with the *Cost Inflation Index*.

16. **The general trend thus, was to take the base of notional income as per the Second Schedule which was time to time adjusted by taking into consideration the Cost Inflation Index.**

17. *The Second Schedule however, was deleted w.e.f. 01.09.2019.* Thus, the question as to what would should the basis of assessing the notional income of a child i.e. a non-earning member below 15 years of age, who is a victim of a motor vehicle accident, became a subject of extensive judicial discourse.

18. A definitive change of Principle of determination of the income of a deceased/disabled Child from *Notional income with its correction on the basis of Cost Inflation Index to Minimum Wages* was reflected in *Kajal vs. Jagdish Chand & Ors.*, (2020) 4 SCC 413, wherein while computing the Loss of earning for calculating compensation to be granted to an *injured girl child aged around 12 years*, who suffered permanent disability, the Supreme Court observed that the Courts have erred in taking notional income of Rs 15,000 p.a. as the girl was a young child of 12 years and held that this was not a proper way of assessing the future loss of income, because after studying, the child could have worked and would have earned much more than Rs.15,000 p.a. Hence, the Supreme Court *assessed the notional income on the basis of the Minimum*



Wages payable to a skilled workman and opined that the same would be reflective of the minimum amount which she would have earned on becoming major.

19. Subsequently, in Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd., (2022) 7 SCC 738, the Apex Court while considering the grant of compensation to the parents on account of *injuries suffered by a five-year-old child*, relied upon Kajal (Supra) and *observed that the notional income should be calculated on the basis of minimum wages payable to a skilled worker.*

20. The *Minimum Wage criteria* has been adopted by Supreme Court in the recent judgment of Baby Sakshi Greola vs. Manzoor Ahmad Simon &Anr., SLP (C) No. 10996/2018, wherein the Apex Court applied the approach taken in Kajal (supra) and Master Ayush (supra) and ascertained the *notional income of a 7-year-old injured child* on the basis of the *‘Minimum Wages paid to a skilled worker on a fulltime basis’*.

21. Similar observations were made in Minor Roopa vs. The Divisional Manager, New India Assurance Company Ltd., Civil Appeal No.5069 of 2022 decided on 03.08.2022 and the Apex Court assessed the *compensation based on minimum wages notified by the State of Karnataka.*

22. The *principle of Minimum Wages for skilled Worker* has been adopted as the principle to calculate the Income of a deceased child by the Co-ordinate Bench of this Court in United India



Insurance Company Ltd. vs. Jamaluddin Khan & Ors., NC No. 2023:DHC:6242; Om Prakash vs. Reliance Gen Ins Co. Ltd. and Ors., 2023 SCC OnLine Del 6526 and Oriental Insurance vs. Reena Raghav, 2023 SCC OnLine Del 6695.

23. In light of the aforementioned Judgments, it emerges that the Minimum Wage criteria is the uniform standard for being applied for compensation calculation, especially after the deletion of Second Schedule in 2019.

24. In the present case, to prove the educational qualification of the deceased, **PW-1/Sh. Rakesh Sharma**, the father of the deceased in his Affidavit of Evidence, *Ex. PW1/A* deposed that his son, was studying in class 11th in BSM Public School, Baljit Nagar, Delhi at the time of the accident. He has also placed on record the *Matriculate Certificate of the deceased Ex. PW1/2* in support thereof.

25. **Thus, considering that the deceased was a matriculate, the compensation has to be re-calculated on the basis of Minimum Wages of a Matriculate in Delhi in 2017, i.e. Rs.16,182/- p.m.**

Future Prospects: -

26. The learned Tribunal has placed reliance on the “*Inflation Correction Method*” to calculate the compensation towards pecuniary heads but has not granted any amount towards Future Prospects of the deceased child.



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27. In the case of Master Ayush, (supra), it was observed that in addition to the Minimum Wages for skilled worker, *the Claimants would also be entitled to 40% for future prospects* as laid down in the judgment of National Insurance Company Limited v. Pranay Sethi & Ors; (2017) 16 SCC 680.

28. Thus, the deceased is held entitled to **40% Future Prospects** as per Pranay Sethi (supra).



Deduction of personal expenses:-

29. The learned Tribunal has deducted 1/3rd amount of the Notional Income towards personal and living expenses of the deceased.

30. However, in light of the judgment of the Supreme Court in Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, and United India Insurance Co. Ltd. vs. Satinder Kaur alias Satwinder Kaur & Ors., (2021) 11 SCC 780, out of the above amount so assessed, **50% has to be deducted on account of personal and living expenses** for a bachelor.

Multiplier:-

31. The learned Tribunal has computed the compensation by applying a Multiplier of 15, by considering the age of the deceased.

32. The appropriate Multiplier applicable to the different age Groups was laid down in the case of Sarla Verma (supra) but it starts from the age of 15 and is silent on the Multiplier to be used for the victims under 15 years of age.

33. This incongruity in the matter of selection of multiplier in the case of persons in the age group up to 15 years was noted in by the Apex the case of Divya vs. National Insurance Company Ltd., Civil Appeal No. 7605/2022. Furthermore, in the case of Baby Sakshi Greola vs. Manzoor Ahmad Simon &Anr., SLP (C) No. 10996/2018, while referring to the judgments of Kajal (supra) and Master Ayush (supra), the Apex Court has applied the multiplier of



18 for a minor.

34. In the present case, as per the Matriculate Certificate of the deceased, Ex.PW-1/2, his date of birth is 21.11.2002. The accident occurred on 28.09.2017. Thus, the deceased was less than 15 years old at the time of accident. ***Therefore, the Multiplier of '18' shall be applicable.***

35. Thus, the Total Loss of Dependency is calculated as under: -

- i. Rs. 16,182/- p.m. + 40% (Future Prospects) = Rs. 22,654.8/- p.m.
- ii. Rs. 22,654.8 - 50% (personal expenses) = Rs.11,327.4/- p.m.
- iii. Rs. 11,238 x 12 x 18 = **Rs. 24,46,848/-**.

36. **Therefore, the Total Loss of Dependency is determined as Rs. 24,46,848/-.**

Non-Pecuniary Heads:-

37. The learned Tribunal referred to the case of Chetan Malhotra (supra) to award compensation for Non-Pecuniary Losses, and granted an amount equal to the amount awarded under pecuniary losses, thereby granting a total compensation of Rs. 5,10,000/- for each head.

38. However, the Appellants/Claimants shall be entitled to the compensation under Non-Pecuniary Heads in terms of National



Insurance Company Limited vs. Pranay Sethi And Others, (2017) 16 SCC 680 wherein it was held that in the case of death, Rs.15,000/- each is liable to be paid towards the *Loss of Estate* and *Funeral Charges*, while Rs.40,000/- was payable towards the *Loss of Consortium* to each legal heir and the same may be enhanced by 10% every three years.

39. The total compensation towards the Non-Pecuniary Heads is re-calculated as under: -

i. **Loss of Consortium:** Rs. 40,000 + (10% of 40,000) = Rs. 44,000/- to each Claimant i.e. total of Rs. 88,000/-.

ii. **Loss of Estate:** Rs.15,000 + (10% of 15,000) = Rs. 16,500/-

iii. **Funeral Charges:** Rs.15,000 + (10% of 15,000) = Rs. 16,500/-

40. *Therefore, the total compensation towards the non-pecuniary heads comes to Rs. 1,21,000/-.*

Conclusion:-

41. In view of the above observations, the modified final amount of compensation, is encapsulated in the tabular chart as under:-

S. No.	Heads	Compensation granted by the Tribunal	Final Amount / Enhanced Compensation
<i>Pecuniary Heads</i>			



1.	Income of Deceased	Rs.15,000/- p.a.	Rs.16,182/- p.m.
2.	Add-Future Prospects	-	40%
3.	Less-Personal Expenses of Deceased	1/3	1/2
4.	Monthly loss of Dependency	-	Rs. 11,328/-
5.	Annual loss of Dependency	-	Rs. 1,35,936/-
6.	Multiplier	15	18
7.	Total loss of Dependency	Rs.5,10,000/- [Reliance placed on the principle of Cost Inflation Index method as per <i>Chetan Malhotra</i> (supra)]	Rs.24,46,848/-
8.	Medical Expenses	Nil.	Nil.
<i>Non - Pecuniary Heads</i>			
9.	Compensation for loss of Consortium	Rs.5,10,000/- (equivalent amount added towards composite non-pecuniary damages)	Rs.88,000/- (Rs.44,000/- to each Claimant)
10.	Compensation for loss of Estate		Rs. 33,000/-
11.	Compensation towards funeral expenses		(Rs.16,500/- each)



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12.	TOTAL COMPENSATION	Rs. 10,20,000/-	Rs. 25,67,848/- (rounded off to Rs. 25,68,000/-)
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Relief:-

42. Thus, the total compensation granted to the Claimants, is revised as **Rs.25,68,000/- along with interest @ 6% per annum** from the date of the Claim till deposit of the amount, in terms of the Impugned Award dated 26.05.2022 of the learned Tribunal.

43. The additional amount be deposited within three months, to be disbursed in terms of the Award dated 26.05.2022. The statutory deposit be returned to the Insurance Company in accordance with law.

44. The Appeal is accordingly disposed of along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 4, 2025