



2025:DHC:1212



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

Pronounced on: 24th February, 2025

+ **MAC.APP. 324/2018, CM APPL. 12428/2018**

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.

Plot No.6,1st Floor, Pusa Road,

Near Metro Pillar No.81,

New Delhi -110005

.....Appellant

Through: Ms. Suman Bagga, Advocate.

Versus

1. BHUPAN PASWAN

.....Respondent No.1.

2. MRS. INDU DEVI

Parents of deceased master Parvesh @ Rahul

.....Respondent No.2.

Both R/o 202-203, Jai Vihar,

Block F-2, Near Fauji Farm House,

Nangloi, West Delhi-110041.

3. MR. UMESH KUMAR

S/o Sh. Braham Singh

R/o Village Nirganjani,

District Muzaffar Nagar, U.P.

.....Respondent No.3.

4. MR. AMIT JAIN

S/o Sh. Jagdeesh

R/o 128, Sadh Bhopa Road,

Nai Mandi, Muzaffar Nagar, LLP.

.....Respondent No.4.

Through: Mr. Javed Hashmi and Mr. F.M.

Khan, Advocates for R-1 & R-2.

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. An Appeal under Section 173 of the Motor Vehicle Act, 1988 (*hereinafter referred to as “MV Act, 1988”*) has been filed by the Insurance Company/Appellant against the Award dated 05.12.2017, wherein the compensation in the sum of Rs.10,20,000/- along with interest @ 9% per annum has been granted on account of death of Master Parvesh @ Rahul, aged 11 years (*hereinafter referred to as “deceased”*) in a road accident on 10.02.2017.
2. ***Briefly stated***, on 10.02.2017 at about 1:05 a.m., Master Parvesh @ Rahul was walking on the Street in front of M.V. Hospital, Pooth Khurd, Delhi when he was hit by the offending truck bearing No.UP 12 AT 1899, driven by Shri Umesh Kumar and owned by Shri Amit Jain. The driver of the offending truck was improperly reversing the vehicle, as a result of which he hit the deceased and crushed him against the wall.
3. The *FIR No. 55/2017* was filed under *Sections 279/337/304A of the Indian Penal Code, 1860* at Police Station Bawana. After investigations, the DAR was filed by the Investigating Officer on 12.09.2017. Also, the Claim Petition was filed by the parents of the deceased for the grant of compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988.
4. After trial, the compensation was granted in the sum of Rs.10,20,000/- along with interest @ 9% per annum, on account of demise of Master Parvesh @ Rahul.
5. ***Learned counsel for the Appellant/Insurance Company*** submits that compensation has been calculated by placing reliance on the judgment of



Chetan Malhotra vs. Lala Ram, etc. MAC APP.No.554/2010 decided on 13.05.2016. However, this judgment is no longer being followed and in the light of the later judgments of the Apex Court, the compensation be calculated by taking the Notional Income of the deceased as Rs. 30,000/- per annum. The Appellants further contend that the compensation awarded under the non-pecuniary heads is on the higher side.

6. ***Learned counsel for the Respondent***, however, has submitted that the compensation has been rightly calculated and the Award does not merit any interference.

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

Loss of Dependency: -

Assessment of Notional Income: -

8. The Appellant/Insurance Company has questioned the Loss of Income of the deceased by the learned Tribunal, 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 (supra).

9. The ***core issue*** 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 compensation includes future financial losses, such as lost income or dependency. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime, but this will not necessarily bar the parents' claim and *prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.* Since the Second Schedule was introduced in the year 1994 and the year of accident in that case was 1997, the 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, it was 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 Apex Court, while assessing the notional Income of the deceased 10 year old child, declined to fix the same as 15,000 p.a. (the amount specified in the Second Schedule for a non-earning member) by observing that the Rupee value has come down drastically since 1994 and the amount mentioned in the Second Schedule would be inadequate. Thus, the Apex Court determined the notional income as Rs. 30,000/- p.a., by taking into consideration the Cost Inflation Index.

13. Likewise, in the case of *Chetan Malhotra vs. Lala Ram*, MAC. APP. 554/2010, decided on 13.05.2016, 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 :- $15,000/- \times A \div 331$ [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 while considering dismissal of Appeals arising out of the Impugned Awards in regard to accident prior to 2019, decided the ***notional income of a 12-year-old child (deceased), as Rs. 36,000/- p.a.***, by observing that the structured formula provided in the Second Schedule was inadequate to assess the compensation; thus, the



computation by the Learned Tribunal was fair and the Awards passed by the learned Tribunal did not warrant any interference.

15. Pertinently, here also the basis was the Notional Income which was adjusted in accordance with the Cost Inflation Index. The general trend thus, was to take the base of notional income as per Schedule II which was time to time adjusted by taking into consideration the Cost Inflation Index.

16. 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.** and observed that the income is an enhancement of the figure specified in the Second Schedule of the M.V. Act, considering the devaluation of the Rupee since the Schedule's introduction. 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/-.**

17. However, it is apposite to note that in the above judgments while Notional income as defined in Second Schedule was taken as a basis but the amount was being modified by applying *Cost Inflation Index*, in the facts of each case.

18. ***The Second Schedule however, stands deleted w.e.f. 01.09.2019. Thus, the question that what would be 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.***

19. 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.

20. 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.***

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. Recently, in *Oriental Insurance vs. Reena Raghav*, 2023 SCC OnLine



Del 6695, wherein *the deceased was a 5-year-old-girl-child*, studying in DPS Public school, the Coordinate Bench of this Court upheld the Impugned Award of compensation and assessed the income of the deceased *by adopting minimum wages of a skilled labour as notified in the State of Uttar Pradesh*.

23. 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. v. Jamaluddin Khan & Ors.*, NC No. 2023:DHC:6242 and *Om Prakash vs. Reliance Gen Ins Co. Ltd. and Ors.*, 2023 SCC OnLine Del 6526.

24. The Kerala High Court in the case of *Master Jyothis Raj Krishna, Represented by His Next Friend and Father Rajesh Kumar vs. Sunny George*, 2024 SCC OnLine Ker 6875 held, “*This Court is conscious of the fact that by referring to the provisions of the Minimum Wages Act, 1948, for the purpose the notional income of a minor child, this Court has never ignored the future of a blooming young mind nor has closed its eyes over the bright future of the child and the prospects which he may have secured but for this fatal accident.*”

25. 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*’.



26. In light of the aforementioned Judgements, it emerges that the Minimum Wage criteria guarantees a dignified and a uniform standard for compensation calculation. The most reasonable basis for estimating the child's income, in the present case, would be to refer to the Minimum Wages established by the State Government, in the location where the minor lived at the time of the accident.

27. *In the present case*, the income of the deceased child is taken as **Rs. 11,830/-** as per the *Minimum Wages of a Skilled Worker in Delhi in the year 2017*.

Future Prospects: -

28. 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* in view of the judgment of *National Insurance Company Limited v. Pranay Sethi & Ors;* (2017) 16 SCC 680.

29. Thus, in the present case, the deceased is held entitled to **40% Future Prospects** as per *Pranay Sethi* (supra) as the same creates a standard ensuring uniformity in compensation calculation and upholding the dignity of the deceased minor by recognizing their unrealized potential.

Deduction of personal expenses:-

30. 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% have 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 calculation of Multiplier has been laid down in the case of *Sarla Varma (Supra)* as under :-

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

33. Evidently, the Judgment is silent on the multiplier to be used for the victims under 15 years of age. 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.

34. In the most recent judgment of the Supreme Court in *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.

35. Thus, in light of the above judgments, this Court deems it appropriate to ascertain *the Multiplier as '18'* to calculate the loss of dependency is calculated accordingly.

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

- i. Rs. 11,830/- p.m. + 40% (Future Prospects) = Rs. 16,562/-p.m.
- ii. Rs. 14,523 - 50% (personal expenses) = Rs. 8,281/- p.m.
- iii. Rs. 8,281- x 12 x 18 = **Rs. 17,88,696/-**.

37. **Therefore, the Total Loss of Dependency is determined as Rs. 17,88,696/-.**

Non-Pecuniary Heads:-

38. The Respondents/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.

1. In the case of Pranay Sethi (supra), it was held that in the case of death, Rs.15,000/- is liable to be paid towards the loss of estate and funeral charges each, 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.

2. In the present case, the accident is of 2017 and the Award was also passed in 2017. Thus, an amount of **Rs. 15,000/-** is granted towards the **Loss of Estate, Rs. 15,000/-** towards **funeral charges**.

3. Further, **Rs. 40,000/- each is granted to the father and mother i.e. total of Rs. 40,000 x 2 = Rs. 80,000/- towards Loss of Consortium.**

**Relief:-**

4. In view of the above observations, the modified final amount of compensation, is calculated as under:-

S.No.	Heads	Compensation granted by the Tribunal	Final Amount / Enhanced Compensation
1.	Income of Deceased	Rs.15,000/- (Notional Income)	Rs. 11,830 p.m.
2.	Add-Future Prospects	NIL	40%
3.	Less-Personal Expenses of Deceased	1/3	1/2
4.	Monthly loss of Dependency	NIL	Rs. 8,281/-
5.	Annual loss of Dependency	NIL	Rs. 99,372/-
6.	Multiplier	15	18
7.	Total loss of Dependency	Rs 5,09,759/- [Reliance placed on the principle of Cost Inflation Index method as per <i>Chetan Malhotra</i> (supra)]	Rs.17,88,696/-
8.	Medical Expenses	Nil.	Nil.
9.	Loss of Consortium	Rs 5,09,759/-	Rs. 80,000/-
10.	Loss of Estate		Rs. 40,000/-
11.	Funeral expenses		Rs. 40,000/-
12.	Total Compensation	Rs. 10,20,000/- (rounded off)	Rs. 19,48,696/- Rounded off to Rs.19,49,000/-



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5. Thus, the total compensation granted to the Claimants is *revised as Rs. 19,49,000/- along with interest @ 9% per annum* from the date of the Claim till deposit of the amount, in terms of the Impugned Award dated 05.12.2017 of the learned Tribunal.

6. The additional amount be deposited within three months, to be disbursed in terms of the Award dated 05.12.2017. The statutory deposit be returned to the Insurance Company in accordance with law.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 24, 2025