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

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\+ MAC.APP. 356/2013 & CM APPL. 31697/2023

LALITA GUPTA & ORS. .....Appellants
Through: Mr. Manish Maini, Ms. Anjali Singh & Ms. Moumita Mondal, Advocates.

versus

MANOJ KUMAR RANA & ORS. ..... Respondents
Through: Mr. Onkar Nath & Mr. Anuj Mirdha, Advocates for R-1 & R-2.
Ms. Shruti Jain, Ms. Vijay Laxmi, Mr. Yuvraj Sharma, Advocates for Insurance Company.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The appellants were the claimants before the Motor Accident Claims Tribunal ["Tribunal"] in MACT No. 335/2010. By way of this appeal, they seek enhancement of compensation, granted by the award dated 22.12.2022. The Tribunal granted them compensation of Rs. 7,78,182/- alongwith interest at the rate of 7.5% per annum.

2. The factual background relating to the claim is not disputed. The deceased, Mr. Anand Kumar Gupta, and his wife (appellant No. 1 herein)

were travelling on a two-wheeler scooter bearing No. DL-5SK-8085 on 22.03.2010 at 12:40 AM. The scooter was being driven by the deceased. At a T-point crossing in Madhu Vihar, Delhi, it was hit by a Maruti Alto car bearing No. UP-14-AQ-6744. Both riders on the scooter sustained grievous injuries, and the deceased succumbed to his injuries on 22.03.2010. He was 46 years of age at the time of the accident.

3. Following the accident, a criminal case was registered[1] and a claim was also instituted before the Tribunal for compensation. The respondents before the Tribunal were the driver, owner and insurer of the car - arrayed as respondent Nos. 1, 2, and 3 respectively, both before the Tribunal and before this Court. Before the Tribunal, all the respondents filed separate written statements, but evidence was led only by the claimants and respondent No.3- National Insurance Company Ltd. ["Insurance Company"].

4. The Tribunal returned a finding of rash and negligent driving against the driver of the insured vehicle (Respondent-1 herein), and computed compensation of Rs. 7,78,182/- under the following heads:

Sl. No.	***On Account of***	***Amount (Rs.)***
1.	*Loss of dependency*	*Rs.7,11,516/-*
2.	*Loss of Consortium*	*Rs.10,000/-*
3.	*Towards medical bills*	*Rs. 11,666/-*
4.	*Loss of Love and affection*	*Rs.25,000/-*
5.	*Loss of Estate*	*Rs. 10,000/-*
6.	*Funeral Expenses*	*Rs. 10,000/-*
	Total	***Rs. 7,78,182/-***

[1] FIR 85/2010 under Sections 279/338/304A of Indian Penal Code, 1860, at P.S. Madhu Vihar.

5. I have heard Mr. Manish Maini, learned counsel for the appellants, Mr. Onkar Nath, learned counsel for respondents No. 1 and 2, and Ms. Shruti Jain, learned counsel for respondent No. 3-Insurance Company.

6. The principal ground of challenge relates to the appellants' claim for loss of dependency. The appellants had placed before the Tribunal, the income tax returns of the deceased for three Assessment Years, 2007–08, 2008–09 and 2009–10, which showed the income of the deceased as Rs.1,06,961.88, Rs. 1,08,745 and Rs. 1,48,974, respectively. The Tribunal, based on the cross-examination of appellant No. 1 by the Insurance Company, disregarded the income tax returns and instead computed the income of the deceased on the basis of minimum wages applicable to an unskilled worker, as there was also no proof of his educational qualifications. It is the contention of the appellants that this approach of the Tribunal was erroneous, and that the income tax returns should have been accepted as evidence of the income of the deceased in the relevant year.

7. Learned counsel for the parties also made submissions regarding errors in the non-pecuniary heads of damages awarded by the Tribunal, which are also discussed hereinbelow.

A. LOSS OF DEPENDENCY

8. Turning first to the evidence of the three income tax returns, it is undisputed that the returns were exhibited before the Tribunal as Ex. PW-1/15 to Ex. PW-1/17, respectively. The certified copies of the income tax returns disclosed in the Tribunal's record, as stated above, show income of Rs. 1,06,961.88, Rs. 1,08,745 and Rs. 1,48,974, respectively.

9. The appellant No. 1, who deposed as PW-1, however, stated in cross-examination by the counsel for the Insurance Company, as follows "*…I have not filed any business document of my husband on record...*". It is this statement, and the lack of any balance sheet or proof of transactions, that was relied upon by the Insurance Company to discredit the appellants' claim.

10. The Tribunal accepted this submission with the following reasoning:

> *"37.* ***In view of the rival contentions on behalf of Ld. counsel for both the parties and also taking into consideration the evidence adduced by the petitioner and also in the absence of other relevant documents required to be filed with the ITR coupled with the fact that petitioner in her testimony during cross examination clearly stated that she is not having any document showing thereby that her husband was doing a business, the filing of the ITR alone cannot be considered as cogent evidence regarding income of deceased, therefore, the plea taken by Ld. counsel for petitioner is declined*** *and by following the observation given by their lordships in the aforesaid decided case cited as* ***Kiran Devi & another Vs. Surjeet Yadav and anothers II (2010) ACC 289*** *wherein it is observed as under:*
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> > ***"while assessing the income of the deceased in motor accident cases, the Tribunal should bear in mind that the same should be assessed on the basis of cogent and reliable evidence produced and duly proved on record. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident then the minimum wages notified under the minimum wages act prevalent at the time of accident can be taken into consideration.***
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> *and also in the absence of any proof of educational qualifications, the income of the deceased is to be assessed on the basis of Minimum Wages Chart being an unskilled worker prevalent on the date of accident."*[2]

[2] Emphasis supplied.

11. Having heard learned counsel for the parties, I am of the view that the Tribunal's approach was in error. In the affidavit of evidence of appellant No. 1, she had stated as follows, with regard to her husband's business:

> *"(4)* ***That deceased was A CLOTH MERCHANT and he was in business of trading cloth/dress material etc. He was running this business from a portion of his house at ground floor by employing 7-8 persons, He was earning RS. 15,000/-P.m. deceased was an income-tax payee.*** *The income of the deceased would have increased at least three times in HIS lifetime. HE was hard working and progressive in nature and used to do his work with utmost care and faith. He was contributing entire amount on the livelihood of Petitioner and other family members. Now the entire family is broken and at the verge of starvation and are suffering and would suffer inconvenience and discomfort throughout life."*[3]

12. The Tribunal disregarded the certified copies of the income tax returns, solely on the basis that the appellant had not filed any proof regarding her husband's business, such as a balance sheet or any proof of transactions. However, the income tax return for the Assessment Year 2007–08 itself contains a disclosure that he carried on a proprietorship business, alongwith the balance sheet of the proprietorship business and the profit and loss account. Similarly, for Assessment Years 2008–09 and 2009–10 also, the deceased declared his gross receipts, gross profits, expenses and net profits, in the columns applicable to a case where regular books of account of business or profession are not maintained. It is clear that the cross-examination of the witness did not challenge the veracity of these returns, but only emphasised that no other books of account or documents had been filed. It must be remembered that the

[3] Emphasis supplied.

Tribunal was not required to come to a finding beyond reasonable doubt, but only on a preponderance of probabilities. When the income tax returns themselves disclosed that the deceased did not maintain regular books of account, insistence upon balance sheets and other business documents was unnecessary to arrive at a conclusion to the standard required.

13. All three income tax returns, including the one for the Assessment Year 2009-10, i.e., for the Financial Year 01.04.2008 to 31.03.2009, were filed before the accident, the latest one having been filed on 07.10.2009. There can therefore be no inflation of the income of the deceased, for the purposes of the present claim for compensation.

14. For the aforesaid reasons, the Tribunal's finding that the income of the deceased was to be assessed on the basis of minimum wages of an unskilled worker is set aside.

15. The question then arises as to the correct computation of the loss of dependency. Having regard to the fact that the accident in question occurred more than 15 years ago, and long pendency of this appeal before this Court, with the assistance of the learned counsel for the parties, I have entered into the question of re-computation in this appeal, instead of remanding the matter to the Tribunal for this purpose.

16. As far as this aspect is concerned, learned counsel for the parties joined issue as to whether the ITR for Assessment Year 2009-10 alone should be taken into account, or whether the income should be estimated on the average of the three ITRs filed. Mr. Maini's contention was that the deceased, at 46 years of age, was in the prime of his career and his returns also show steady business growth. The latest ITR would, according to him, give the nearest estimate of his income at the time of

the accident. Mr. Nath however, argued that the income in Financial Year 2008-09 shows an irregular and steep increase of about 40% over the last financial year, for which it would be prudent to consider the average of three years' income.

17. Mr. Maini referred to the judgment of the Supreme Court in *Shashikala & Ors. v. Gangalakshmamma & Anr.*[4], wherein the Supreme Court, in similar circumstances, disapproved of taking average of two years' income tax returns:

> *"9. The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two Assessment Years 2005-2006 and 2006-2007, as per the income tax returns for the year 2006-2007, the income of the assessee was Rs 2,02,911. The Tribunal did not take the income of the deceased for Assessment Year 2006-2007 on the ground that only xerox copy was filed and the claimants have failed to examine the Income Tax Authorities to prove the same.* ***Instead of taking the income of the deceased as per Assessment Year 2006-2007, the High Court has chosen to calculate the average of the income for two Assessment Years 2005-2006 and 2006-2007. Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years.*** *The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work."*[5]

18. Mr. Nath, on the other hand, referred to *Sangita Arya v. Oriental Insurance Co. Ltd.*[6], wherein, according to him, the Supreme Court did take into account an average of the last two ITRs. He referred to the following observations of the Supreme Court:

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[4] (2015) 9 SCC 150, [hereinafter, "*Shashikala*"].
[5] Emphasis supplied.
[6] (2020) 5 SCC 327, [hereinafter, "*Sangita Arya*"].

> *"12.2. Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 2002-03 at Rs 54,000 p.a., 2003-04 at Rs 52,405 p.a., and 2004-05 at Rs 51,500 p.a.* ***The learned Single Judge disregarded the ITR for the year 2006-07, wherein the income of the deceased was shown as Rs 98,500 p.a.*** *on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect.*
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> *13. A photocopy of the original ITR for the year 2006-07 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20-4-2007, which is prior to the death of the deceased which occurred on 18-6-2007.* ***Hence, the High Court was not justified in disregarding the ITR for the year 2006-07, while assessing the income of the deceased. The appellants have also placed on record a copy of the ITR for the year 2005-06, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs 98,100 p.a. during the previous assessment year.*** *As a consequence, the impugned judgment dated 22-7-2016 [Oriental Insurance Co. Ltd. v. Sangita Arya, 2016 SCC OnLine Utt 970] passed by the High Court is hereby set aside.*
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> *14.* ***On a perusal of the documentary evidence on record i.e. the ITRs for Assessment Years 2005-06 and 2006-07, filed prior to the death of the deceased, which reflect the income of approximately Rs 1,00,000 p.a. (as assessed by MACT in its award dated 22-12-2009), we make this the basis for computing the compensation payable to the claimants.*** *We find that the courts below have not awarded any amount towards future prospects, as mandated by the judgment of the Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi*[7]*. Accordingly, we award future prospects @ 40% of the income of the deceased."*[8]

19. I do not find this case to be an authority for proposition suggested by Mr. Nath. It is clear from paragraph 14 that the Court considered the income of the deceased as approximately Rs. 1 lakh per annum, relying upon the ITRs for Assessment Years 2005-06 and 2006-07, but it may also be noted that the income of the deceased in the said two years, as

[7] (2017) 16 SCC 680, [hereinafter, *"Pranay Sethi"*].
[8] Emphasis supplied.

revealed in the ITRs, was Rs. 98,100/- and 98,500/- respectively. It is therefore incorrect to suggest that the Court derived the figure of Rs. 1 lakh per annum by taking the average of the last two ITRs.

20. Mr. Nath also referred to a judgment of this Court in *ICICI Lombard General Insurance Co. Ltd. v. Ram Chander Yadav & Ors.,*[9] wherein the Court noticed a spurt in the income of the deceased as reflected in the last ITR, and therefore took the average of the last three ITRs.

21. The judgments of the Supreme Court in *Shashi Kala* and *Sangita Arya* have been considered by this Court in *Rajbala & Ors. v. Krishan Kumar Sharma & Ors.*[10], as follows:

> *"6.* ***It need not be re-emphasized that the compensation awarded under the Motor Vehicles Act should be 'just', 'fair', and 'reasonable', and for determining the same, no hard and fast rule can be laid down.*** *In a given fact situation, the Tribunal may very well, for reasons to be recorded, not rely upon the latest Income Tax Return of the deceased and instead may adopt the return which in the opinion of the Tribunal would reflect the true income of the deceased, or may even adopt the average of the income disclosed in the ITRs of the deceased for the preceding few years. However,* ***as a general rule, the latest Income Tax Return of the deceased filed before the date of the accident, except in cases where reasons are shown for disregarding the same, should be taken as a basis for determining the loss of income, as it would be more approximate to the date of the accident and reflect the current income of the deceased on the date of the accident****. To give an example, an ITR filed for the Assessment Year 2021-2022 may be ignored on the ground that it may reflect deflated income of the deceased due to his business being affected by the restrictions imposed due to Covid-19 pandemic and that in such a case, the ITR for the Assessment Year prior thereto or an average of income disclosed in ITRs of one/two/three Assessment Years prior thereto may be found to be a more 'just', 'fair', and 'reasonable' evidence to determine the income of the deceased. The latest ITR may also be disregarded where it is shown that it has reflected an abnormal increase in the income of the deceased due to some abrasion or*

[9] MAC. APP. 400/2011, decided on 19.01.2012, [hereinafter, "*Ram Chander*"].
[10] 2023 SCC OnLine Del 4082, [hereinafter, "*Rajbala*"].

exceptional event, like a windfall gain. However, ***ordinarily, the latest ITR would truly reflect the income of the deceased at the time of the accident, and should be taken by the Tribunal as evidence thereof.*** *The Tribunal must also remember that while compensation is not a bounty to be awarded, at the same time, it must adequately compensate the injured/aggrieved of the loss suffered.*

7. In Shashikla (supra), the Supreme Court, considering the age of the deceased, which was 45 years, and the business of the deceased, which was transport business of supplying newspapers from the head office to other destinations, held that the High Court had erred in taking the average of the ITRs of the preceding two years rather than awarding compensation on the basis of last ITR.

8. In Sangeeta Arya (supra), the issue of whether the latest ITR is to be taken or an average of the ITRs should be taken to determine the loss of income was not raised by the parties and, therefore, the said judgment cannot be cited as a precedent on this issue.

9. In the present case as well, the age of the deceased was 56 years and he was running his own transport business. No reason has been given by the learned Tribunal for not determining the loss of income of the deceased on the basis of the last ITR filed, which was filed prior to the date of the accident. Such ITR did not show a completely unreasonable increase in the income of the deceased for it to be doubted as reflecting the true income of the deceased, nor was it the case of the respondents that it shows an increase in the income of the deceased due to some abnormal event and, therefore, should not be relied upon as reflecting the true income of the deceased.

10. In my view, therefore, the learned Tribunal erred in averaging the income shown in the last three ITRs of the deceased, thereby, in fact, reducing the amount of "just compensation" payable to be claimants."[11]

22. Mr. Nath also drew my attention to an order of this Court dated 25.02.2025, in the present appeal, wherein the Court noticed a substantial growth in the income of the deceased in the last year, and indicated that the notional income of the victim may be taken as the average at the last three ITRs.

23. Having heard learned counsel for the parties, I am of the view that in the facts of the present case, consistent with the judgments in

Shashikala and *Rajbala*, it would be appropriate to consider the last year's ITR alone. In *Shashikala*, the Supreme Court specifically considered this very issue, in the case of a businessman of similar age as the deceased herein, and disapproved of adopting the average of two ITRs. In *Rajbala*, the assessment on the basis of latest income tax return has been regarded as a general rule as it would be proximate to the date of accident and reflect the current income of the deceased on the date of the accident. While the general rule is subject to exceptions, these are contingent upon showing of exceptional circumstances in that particular year. While there is a significant increase in the income of the deceased in the last financial year, there is no material to suggest that it was on account of any exceptional event or windfall gain. No cross-examination was conducted to establish such a fact, and no other evidence has been adduced to arrive at such a factual conclusion.

24. The judgment of this Court in *Ram Chander*, to the extent that it is inconsistent with these principles, is, in my view, overtaken by the later decision of the Supreme Court in *Shashikala*.

25. I am also unpersuaded by Mr. Nath's reliance upon the order of this Court dated 25.02.2025. The said order was an interim order, and the views expressed by the Court was, at the best, a *prima facie* one. It may be noted that the matter was listed for further arguments by the same order.

26. Mr. Nath further submitted that there is some ambiguity in the documents filed by the appellants, to the extent that a computation of income for the Assessment Year 2007-08, which has been filed on record,

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[11] Emphasis supplied.

mentions the income of the deceased from the business of "*Anand Sales*", whereas the accompanying profit and loss account refers to "*Swastik Textile*". This is not, in my view, a material distinction. Each of the names is reflected as the trading names of the deceased, who was the sole proprietor. Legally, there is no distinction between the income of a proprietorship concern (or concerns) and that of the proprietor. There is nothing to suggest that the income reflected in the returns was not that of the deceased. The fact that two different trading names are given, is insufficient to disregard the evidence of his income as contained in the income tax returns.

27. For the aforesaid reasons, the loss of dependency should, in my view, be computed on the basis of the declared income of Rs.1,48,974/- in the deceased's ITR for the Assessment Year 2009-10.

28. In computing the loss of dependency, there is one other error that has crept into the Tribunal's award. The Tribunal has granted future prospects of 30%, whereas the future prospects for a self-employed person of the deceased's age, as laid down in *Pranay Sethi*, should have been 25%. This is accepted by learned counsel on both sides. Applying the deductions of 1/3rd for personal expenses and multiplier of 13 as awarded by the Tribunal and accepted on both sides, the loss of dependency is computed at Rs. 16,13,885/-.

B. OTHER HEADS OF NON-PECUNIARY COMPENSATION

29. Turning now to other non-pecuniary heads of compensation, the Tribunal has awarded Rs. 10,000/- towards loss of consortium. However,

the judgment in *Pranay Sethi*[12] requires an award of Rs. 40,000/- on this ground to each of the entitled dependants, which includes the wife and children of the deceased.

30. Ms. Jain argued that loss of consortium should be granted once, and not in favour of three dependants. I do not accept this contention in view of the judgments of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors.*[13], and *United India Insurance Company Ltd. v. Satinder Kaur & Ors.*[14], wherein three aspects of consortium have been identified - spousal consortium, parental consortium, and filial consortium - payable respectively to the spouse, children, and parents of the deceased. The Supreme Court, in a later decision in *Harpreet Kaur and Others v. Mohinder Yadav and Others*[15], specifically awarded loss of consortium to all the dependants in these three categories. The award on this account is, therefore, enhanced to Rs. 1,20,000/-.

31. The award for loss of love and affection, to the extent of Rs. 25,000/, is set aside in view of paragraphs 34 and 35 of the judgment in *Satinder Kaur*.

32. The Tribunal has awarded loss of estate and funeral expenses of Rs.10,000/- each. These are enhanced to Rs. 15,000/-, each in terms of *Pranay Sethi*.[16]

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[12] paragraph 52.
[13] (2018) 18 SCC 130.
[14] (2021) 11 SCC 780, [hereinafter, "*Satinder Kaur*"].
[15] 2022 SCC OnLine SC 1723.
[16] Paragraphs 52 and 59.8.

C. CONCLUSION

33. As a result of the forgoing discussion, the impugned award is modified to the following extent:

Heads of compensation	**Awarded by Tribunal**	**Awarded by this Court**	**Difference**
Loss of dependency	Rs. 7,11,516/-	Rs. 16,13,885/- [Annual Income: Rs. 1,48,974. Addition for future prospects: 25%. Deduction for personal expenses: 1/3rd. Multiplier: 13.	+Rs. 9,02,369/-
Loss of consortium	Rs. 10,000/-	Rs.1,20,000/-	+Rs. 1,10,000/-
Medical Bills	Rs. 11,666/-	Rs. 11,666/-	Nil
Loss of love and affection	Rs. 25,000/-	Nil	- Rs. 25,000/-
Loss of estate	Rs.10,000/-	Rs. 15,000/-	+ Rs. 5,000/-
Funeral expenses	Rs.10,000/-	Rs. 15,000/-	+ Rs. 5,000/-
Total	Rs. 7,78,182/-	Rs. 17,75,551/-	+ Rs.9,97,369/-

34. In sum, therefore, the impugned award is enhanced by a sum of Rs.9,97,369/-, from Rs. 7,78,182/- to Rs. 17,75,551/-. The entire award will carry interest at the rate of 7.5% per annum, as awarded by the Tribunal.

35. The Insurance Company is directed to deposit the entire amount before the Tribunal within eight weeks, after adjusting any amounts already deposited or recovered by the claimants in execution.

36. The directions for disbursement in the impugned award were as follows:

> *"50. Out of total amount of award 80% shall be awarded to petitioner no.1 widow of deceased and out of her share 30% be released to her and 70% shall be kept in FDR for a period of five years with release of periodical interest. Remaining amount of 20% shall be released to petitioner no.2 and 3 in equal shares. Since the petitioner no.3 is minor son therefore, his share be kept in FDR till the period till he attain the age of majority."*

37. As the period of five years mentioned in the aforesaid direction has already lapsed, and appellant No. 3, who was 16 years old at the time of the accident, has also attained majority, the awarded amount shall be released to the appellants forthwith in the same shares, i.e., 80% to appellant No. 1 and 10% each to appellants No. 2 and 3.

38. The appeal is disposed of with these directions. The pending application also stands disposed of.

PRATEEK JALAN, J

DECEMBER 6, 2025
'pv/ss/Jishnu'/