



2026:AHC:7448

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1995 of 2024

Smt Mugga Devi And 4 Others

.....Appellant(s)

Versus

Makkhan Singh And 2 Others

.....Respondent(s)

Counsel for Appellant(s)

: Mohd. Asim Zulfiquar

Counsel for Respondent(s)

: Nagendra Kumar Srivastava

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal has been preferred by the claimants for enhancement of compensation, under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 12.07.2024 passed by the Motor Accident Claims Tribunal, Moradabad in Motor Accident Claim Petition No.253 of 2018 (Smt. Mugga Devi and others vs. Makkhan Singh and others) whereby for the untimely death of Jaiprakash Singh in a road accident that occurred on 07.02.2018, a compensation of Rs.4,76,620/- along with interest @ 7% per annum has been awarded to the claimants(wife and sons), which has been ordered to be indemnified by the insurer of the offending vehicle No.UP-21-BK-5747.

2. Since there is no cross-appeal by owner, driver and insurer of the offending vehicle as such, the factum of accident and negligence of offending driver is not disputed by the respondents.

3. Sri Abhishek Tripathi holding brief of Mohd. Asim Zulfiquar, learned counsel for the claimants - appellants submitted that Jaiprakash Singh (deceased) was a pensioner, who was getting monthly pension of Rs.23,936/- per month and was about 73 years old at the time of the accident, which was duly proved by the claimants, but on the ground that the wife of the deceased was getting family pension of Rs.14,900/- per month, the Tribunal has assessed compensation on the differential amount of Rs.9,036/- per month, which is erroneous. Learned counsel submitted that in the light of the judgment of the Apex Court in the case of *Hanumantharaju*

B. through LR vs. M. Akram Pasha and another, 2025 SCC Online SC 1106, the compensation should have been assessed on the basis of pension received by the deceased at the time of the accident and tribunal was not supposed to consider the family pension granted to the wife of the deceased after the accident. Learned counsel further submitted that the claimants were also entitled to compensation on future prospects of the deceased @ 20%, keeping in view ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998*** but the Tribunal has not awarded any compensation towards it. It was further submitted that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires enhancement. With these submissions, it was prayed that the appeal be allowed and enhanced compensation be paid to the claimants.

4. Per contra, learned counsel for the respondent-Insurance Company submitted that the deceased was about 73 years old at the time of the accident, who had no future prospects and the wife of the deceased was also getting family pension of Rs.14,900/- per month, which the Tribunal has rightly deducted from the pension of the deceased for assessing the compensation, as such, the claimants are not entitled to any enhancement in compensation awarded by the Tribunal and this appeal deserves no interference from this Court in exercise of its appellate jurisdiction. With these submissions, it was prayed that the appeal is meritless and is liable to be rejected.

5. I have heard learned counsel for the parties, perused the impugned judgment and documents submitted with the appeal.

6. The Apex Court in the case of ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, (2019) 17 SCC 465, (By 3 Judges)***, while discussing the amount which are to be deducted for assessment of compensation has held as under:

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the

legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Parry v. Cleaver [Parry v. Cleaver, 1970 AC 1 : (1969) 2 WLR 821 : 1969 ACJ 363 (HL)] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

7. The Apex Court in the case of **Hanumantharaju** (supra), while discussing whether the pension payable to the claimant can be deducted for computing his income, has held as under:

19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as “pecuniary advantage” liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in Vimal Kanwar v. Kishore Dan (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90, held as follows:—

“19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this

amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of

the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in Reliance General Insurance Co. Ltd. v. Shashi Sharma (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender (2020) 11 SCC 356.

8. It is apparent from the above judgements of the Apex Court that the pension paid to the claimant or family pension being paid to the legal heirs of the deceased employee is not to be considered and deducted while assessing compensation in the claim case and the compensation is to be determined on the basis of salary/pension of the injured/deceased, which he was getting at the time of the accident.

9. In the instant case, the deceased Jaiprakash Singh was about 73 years old at the time of the accident and was getting a gross pension of Rs.23,936/- at the time of the accident and after his death his wife Smt. Muggi Devi was getting family pension of Rs.14,900/- per month, as such, the Tribunal has assessed the compensation on the basis of differential amount of pension and family pension, which was Rs. 9,036/- per month, which is erroneous. It is apparent that the family pension which the wife of the deceased was getting after the death of the deceased was not at all to be considered for assessing the compensation in the instant case but that amount of Rs. 14,900/- per month has been deducted from the pension of Rs.23,936/- per month, which the deceased was getting at the time of the accident, which is erroneous.

10. In view of the above law laid down by the Apex Court, the claimants are entitled to get compensation on the basis of the monthly pension of the deceased, which was Rs.23,936/-.

11. **Rule 220-A of the UP Motor Vehicle Rules,1998** w.e.f. 26.09.2011, mandates that when the deceased was aged above 50 years on the date of accident, the claimants are also entitled to compensation on future prospects @20% of his income.

12. The Constitutional Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.(2017) 16 SCC 680** has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

13. The Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others, (2018) 18 SCC 130***, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

14. Further, the Apex Court in the case of ***Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others (2023) 13 SCC 334***, held as under:-

32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205], the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium.

(emphasis supplied)

15. It is apparent from Rule 220-A of the above Rules, the multiplier for determination of compensation is to be applied as per Second Schedule provided in the Act of 1988. At the time of the accident, the Second Schedule was in force, according to which, where the claimant/deceased was above 65 years old at the time of accident, a multiplier of 5 is to be applied for assessing the compensation in a claims case.

16. The High Court of Tripura at Agartala in the case of ***National Insurance Co. Ltd. vs Sadhana Debnath & Ors 2023 SCC OnLine Tri 846*** held as under:-

19. According to the Pension Payment Order book, on the date of the accident, the age of the deceased was 78 years. So, in terms of the multiplier as made applicable under the table decided at Column No. (4) in Sarla Verma (supra), multiplier 5 is to be applied for the age group of 65 years and above, the same is taken on record. Accordingly, the first point of argument of Mr. Deb, learned counsel appearing for the appellant-Insurance Company is answered in favour of the claimants. Here the argument of Mr. Deb, learned counsel that in Sarla Verma (supra) multiplier 5(five) is allowed up to the age schedule 66 years to 70 years does not stand because the same was said by the Hon'ble Apex Court in the said Judgment in the context of other cases. Therefore, the age of the deceased 78

years is considered as per table 65 years and above and considered the case of the claimants accordingly as there is no restriction up to 70 years. The lifespan as per table can be beyond 70 years. Thus, the argument of the Insurance-counsel is rejected.

17. Similarly, The High Court of Bombay in the case of ***Sumitra Dwarkanath Sirsat & Ors vs Shivanand Hanumantappa Bisirotti and Others 2015 SCC OnLine Bom 276*** held as under:-

15.Admittedly deceased was about 71 years old at the time of death, therefore, appropriate multiplier would be 5, hence compensation towards loss of dependency comes to Rs. 135,000/- (Rupees one lakhs thirty five thousand only).

18. It is further apparent that as per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***, since the deceased was above 50 years old at the time of the accident, the claimants are entitled to compensation on future prospects @ 20% of his income but no compensation has been awarded by the Tribunal on this account, which is erroneous. It is apparent that in the above Rule, there is no upper age limit upto which the compensation towards future prospects of the deceased are admissible, as such, even if the deceased was aged about 73 years at the time of the accident, even then the claimants were entitled to compensation towards future prospects of the deceased @ 20% of his income in accordance with the above Rules. It is further apparent that the claimants are entitled to enhanced compensation under non-pecuniary heads, keeping in view the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra), ***Magma General Insurance Company Ltd.*** (supra) and ***Rahul Ganpatrao Sable*** (supra).

19. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded in Rs.	In Accordance with.
1.	Monthly income of deceased as per his pension	23,936/-	<i>Sebastiani Lakra</i> (supra) and <i>Hanumantharaju</i> (supra)
2.	Annual income of deceased	23,936x12=2,87,232/-	<i>Sebastiani Lakra</i> (supra) and <i>Hanumantharaju</i>

			(supra)
3.	Less 1/4th deduction towards personal expenses of the deceased (5 dependents)	71,808/-	Pranay Sethi (supra)
4.	Net annual income on which claimants were dependent	2,15,424/-	Pranay Sethi (supra)
5.	Add future prospects @ 20% since deceased was aged about 73 years	43,085/-	Rule 220-A of UP Motor Vehicle Rules, 1998
6.	Total annual dependency of claimants on deceased	2,58,509/-	Rule 220-A of UP Motor Vehicle Rules, 1998
7.	Multiplier applied since age of deceased was about 73 years	5	Second Schedule of the Act
8.	Total loss of dependency to the claimants	$2,58,509 \times 5 = 12,92,545/-$	Second Schedule of the Act
9.	Loss of consortium @Rs.40,000/- each (5 claimants)	$40,000 \times 5 = 2,00,000/-$	Pranay Sethi (supra), Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
10.	Loss of estate	15,000/-	As awarded by the tribunal
11.	Funeral Expenses	15,000/-	As awarded by the tribunal
12.	Total compensation	15,22,545/-	

20. In this way, the claimants are entitled to total compensation of Rs.15,22,545/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the

insurer of the offending vehicle No.UP-21-BK-5747.

21. The appeal is allowed. The impugned judgment and award of the tribunal dated 12.07.2024 is modified to the above extent.

22. If any amount has been paid by the insurance company previously, then it is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants, keeping in view their age and dependency.

(Sandeep Jain,J.)

January 12, 2026

Jitendra