



**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**AT JODHPUR**

S.B. Civil Misc. Appeal No. 1039/2004

1. Smt. Sudha, w/o late Rajesh Kumar Ajmera
2. Shreyansh, s/o late Rajesh Kumar Ajmera
3. Priyansh, s/o late Rajesh Kumar Ajmera
4. Rameshwarlal, s/o Shyam Sunder Ajmera

All are r/o B-19, Ramesh Chandra Vyas Colony, Bhilwara  
Appellant-claimants no. 2 and 3 are minors through their  
natural Gaurdian and mother Smt. Sudha appellant-  
claimant no. 1

----Appellants/Claimants

Versus

1. Prakash Chandra, S/o Paras Ram Neelmani, r/o Chittorgarh Fort, Chittorgarh.
2. Bhagchand, s/o Soram Gujar, r/o Nahargarh Tehsil Bhadesar District, Chittorgarh through Prakash Chandra Neelmani, r/o Chittorgarh Fort, Chittorgarh.
3. United India Insurance Company Ltd., Near Bus Stand, through its Divisional Office, Bhilwara.

----Respondent

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For Appellant(s)	:	Mr. Ravi Bhansali, Sr. Advocate assisted by Mr. Shubham Modi, Mr. Rohin Bhansali, Mr. Udit Mathur & Mr. Mohd. Amaan, Advocates.
For Respondent(s)	:	Mr. Jagdish Vyas, representing the Insurance Company

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**HON'BLE DR. JUSTICE NUPUR BHATI**

**Judgment**

**Reserved on: 19/10/2024**

**Pronounced on: 22/10/2024**

1. The present civil misc. appeal has been preferred by the appellant-claimants under Section 173 of the Motor Vehicles Act, 1988 ('MV Act') assailing the judgment and award dated



02.08.2003 passed by learned Judge, Motor Accident Claims Tribunal, Bhilwara, ('Tribunal') in MAC Case No.126/2000, whereby the learned Tribunal partly allowed the claim petition filed by the appellant/claimants under Section 166 of the MV Act and awarded compensation of Rs. 8,30,000/-, in favour of appellants/claimants along with interest @ 6 % p.a. from the date of filing the claim petition, while fastening the liability jointly and severally upon the respondents.

2. Briefly stated, the facts of the case are that on 04.12.1999, the deceased Rajesh Kumar, who used to work as Deputy Manager ('Dy. Manager') in Vikramnagar Post, Grasim Industries, Vikram Cements, Khor, Neemuch, Madhya Pradesh, while coming from Chittorgarh to Vikramnagar, Khor, Neemuch, Madhya Pradesh in his car bearing number RJ-06-C-4742 was hit by a truck bearing number RJ-09-G-1176 near the Mangrol Bus Stand at 10:00 PM, on account of which he sustained injuries and thereafter succumbed to injuries. His legal representatives filed a claim under Section 166 of MV Act before the learned Tribunal seeking compensation to the tune of Rs. 78,16,000/-. Learned Tribunal after hearing both the parties, partly allowed the claim and awarded Rs. 8,30,000/- to the appellant-claimants with interest @ 6% from the date of filing the petition, i.e. 18.04.2000, while observing that the accident took place on account of the rash and negligent driving of the driver of the offending vehicle. Aggrieved of the same, the appellant-claimants have preferred the present appeal.

3. Learned counsel for the appellant-claimants submitted that the learned Tribunal has erred in taking account the income of the



deceased as Rs. 8,565/- per month, without taking into consideration the allowances such as conveyance, education, soft furnishing, newspaper, uniform, medical and jeep, etc. while relying upon Ex. 26, i.e. the Income Tax Returns ('ITR') furnished by the appellant-claimants for assessment year 1999-2000 inasmuch as AW2, Mr. Ramgopal Sharma, who was working as the Dy. Assistant Officer in Vikram Cements, Grasim Industries, Khor, Neemuch, Madhya Pradesh, had clearly deposed that the deceased used to earn Rs. 16,500/- per month and every year, an annual increment of Rs. 1,000/- was payable. He also placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. v. Indira Srivastava and Ors.** reported in **(2008) 2 SCC 763** and **Sunil Sharma and Ors. Bachitar Singh and Ors.** reported in **(2011) 11 SCC 425** wherein the Hon'ble Apex Court has calculated the income of the deceased while taking into consideration the perks and allowances including House-Rent, Dearness & City Compensatory and thus, he submits that the learned Tribunal has erred in calculating the income of the deceased without considering the allowances payable to him as a part of his salary.

4. Learned counsel for the appellant-claimants also submitted that the learned Tribunal has erred in not taking into consideration the salary certificate, which had been duly signed by the Assistant Vice President (P&A) of Vikram Cements, which clearly mentions the consolidated salary of the deceased to be Rs. 1,97,272.00 per annum, including all the perquisites, which was also deposed by the appellant-claimant no. 1/wife of the deceased (AW1) in her statements. He thus submitted that in the light of sufficient



evidence available before the learned Tribunal coupled with the fact that the deceased was a First Division Graduate in B.Com, First Division Post-Graduate in M.Com and had also achieved First Rank in the state of Rajasthan in the Chatered Accountant (C.A.) Examination, the learned Tribunal erred in not considering the allowances while completely disregarding the other evidence produced on record by the appellant-claimants.

5. Learned counsel for the appellant-claimants also submitted that the learned Tribunal ought to have applied a multiplier of 17 instead of 10, as the age of the deceased was 30 years, in light of the judgment passed by the Hon'ble Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation** reported in **AIR 2009 SC 3104**. He further submitted that the learned Tribunal has erred in calculating the income added with the future prospects to the tune of Rs. 10,000/- per month, instead of taking 40% of his income as future prospects in the light of **National Insurance Company Limited vs. Pranay Sethi & Ors.** reported in **(2017)16 SCC 680**. He also submitted that the compensation awarded by the learned Tribunal towards the non-pecuniary heads is also on the lower side and thus, deserves to be enhanced in the light of **Pranay Sethi** (supra).

6. *Per contra*, learned counsel for the respondent-Insurance Company submitted that although AW2, Shri Ramgopal Sharma had deposed in his statement that the deceased used to earn Rs. 16,500/- per month, however, there is a statutory document which has been produced by the appellant-claimants, signed by the deceased himself, i.e. the ITR which is inclusive of the allowances and perks and thus, the learned Tribunal has rightly



considered the income of the deceased in accordance with the ITR (Ex.26). He also places reliance upon the judgment passed by the Hon'ble Apex Court in the case **Smt. Anjali v. Lokendra Rathod** [Civil Appeal No. 9014 of 2022 decided on 06.12.2022] wherein the Hon'ble Apex Court has categorically observed that the ITR is a statutory document on which reliance has to be placed, where it is available, for the purpose of computing the annual income of the deceased.

7. Learned counsel for the respondent-Insurance Company also submitted that the multiplier of 17, as pleaded by the learned counsel for the appellant-claimants cannot be applied inasmuch as even in the judgments passed by the Hon'ble Apex Court in the case of **Sarla Verma** (supra) and **Pranay Sethi** (supra), which arise from claims filed under Section 166 of the MV Act, for the purpose of calculating the multiplier, the Hon'ble Apex Court has not parted with the First Column of the II Schedule, which used to provide for deciding the claims filed under Section 163-A, and thus, the multiplier has to be taken keeping in mind the age brackets, which have been provided under the Second Schedule, only for the reason that the same have not been altered in the judgments passed by the Hon'ble Apex Court in the case of **Sarla Verma** (supra) and **Pranay Sethi** (supra). He thus submitted that the multiplier of 16 should be taken instead of 17, inasmuch as the deceased was 30 years and 3 months old and thus, the age bracket of 31-35 years would be applicable and not, 26-30 years.

8. Heard learned counsel for the parties, perused material available on record and judgments cited at the Bar.



9. This Court, upon perusal of the record, finds that there are two documents produced as evidence in order to demonstrate the income of the deceased at the time of his death, which include the ITR filed for the Financial Year 1998-1999 and the assessment year 1999-2000 (Ex.26) and the Salary Certificate of the deceased as issued by the Assistant Vice-President (P&A) of Vikram Cement, unit of Grasim Industries Ltd., Vikramnagar P.O. Khor, Neemuch, Madhya Pradesh, Mr. S.K. Pandit who has also been examined by the appellant-claimant no. 1 and thus, the precise question before this Court, with regard to the income of the deceased is, which document is to be taken into consideration, while calculating the loss of income of the deceased in the present case.

10. For the purpose of the same, this Court deems it fit to examine the nature of the documents so produced by the appellant-claimants for demonstrating the proof of income of the deceased. Upon perusal of the ITR (Ex.26) for the assessment year 1999-2000, this Court finds that it is a statutory document which has been filed by the deceased himself, showing his income for the assessment year 1999-2000 to be Rs.1,22,953/- without deducting Rs.21,000/- as standard deductions as provided under Section 16(i) of the Income Tax Act, 1961, in a prescribed format, i.e. Form No. 16, as stipulated by the statute, the Income Tax Act, 1961. Nevertheless, this Court is also conscious of the fact that the deceased had expired 9 months after the period for which the said ITR (Ex.26) had been filed, however, it is seen from the record that subsequent to the death of the deceased, no statutory document has been placed on record as he died on 04.12.1999.



11. Contrary to this, this Court finds that a Salary Certificate has been produced by the appellant-claimants issued by Mr. S.K. Pandit, Assistant Vice President (P&A), Vikram Cement and bears his signature too, however, it becomes imperative to note here that out of the two documents produced before this Court, ITR (Ex.26) is a statutory document, presented in a format as prescribed under the Income Tax Act, 1961 while the Salary Certificate is a document issued by the Mr. S.K. Pandit and thus, looking into this peculiar fact and taking into consideration the nature of both these documents, this Court deems it just to consider the ITR (Ex.26), which is a statutory document for the purpose of determining the income of the deceased. The ITR was filed on 25.06.1999, almost six months prior to the date of accident. This Court is thus of the considered view that the learned Tribunal has erred in not taking into consideration the ITR for the A.Y. 1999-2000 for the purpose of assessing the salary of the deceased. This Court finds that the ITR (Ex.26), which is statutory document, is required to be considered for the purpose of assessing the income of the deceased, which is inclusive of perquisites and allowances, in the light of judgment rendered by Hon'ble Apex Court in the case of Meenakshi v. Oriental Insurance Co. Ltd. : Civil Appeal No.8473 of 2024 decided on 06.08.2024.

The relevant paragraphs of the said judgment reads as under:

“10. Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future



prospects, while calculating the total compensation payable to the appellant.”

12. At this juncture, this Court also takes into consideration the judgment passed by the Hon'ble Apex Court in the case of **United India Insurance Company Ltd. v. Indiro Devi** reported in **2018 AIR SC 3107** wherein there were two documents presented before the Hon'ble Apex Court for the purpose of determining the income of the deceased, i.e. the Salary Certificate as well as the ITR, however the Hon'ble Apex Court concurred with the finding of the High Court and took into consideration the ITR, for determining the income of the deceased. The relevant para of the judgment in **Indiro Devi** (supra) is reproduced as under:

“9. We have given our anxious consideration to this contention. There is no doubt that if the salary certificate is taken into account the salary of the deceased should be taken as Rs. 1,06,176/- since the gross salary was Rs.8848 per month. **That, however, in our view does not mean that the income of the deceased as stated in the Income Tax return should be totally ignored.** It is not possible to agree with the observation of the Tribunal that it was necessary for the claimants to “explain the said contradiction” between two figures of income. **The claimants had led reliable evidence that the deceased had returned an income of Rs. 2,42,606/- for the assessment year 2004-05. This piece of evidence has not been discredited.** Indeed, it was possible that the deceased had income from other sources also. There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life.”





13. Therefore, this Court deems it fit to take the income of the deceased as mentioned in the ITR (Ex.26) Rs.1,22,953/- after deducting the tax paid i.e. Rs.407 viz. **Rs.1,22,546/-**, inasmuch as it was a statutory and reliable evidence produced by the appellant-claimants themselves. This Court also deems it fit calculate the future prospects while taking the income of the deceased, inclusive of the allowances and perquisites as mentioned in the ITR (Ex.26).

14. Further, this Court does not find merit in the contention of the respondent-Insurance Company that the multiplier of 16 ought to have been applied inasmuch as the age of the deceased at the time of death was 30 years and 3 months, i.e. he had not reached the age of 31 years, which implies that multiplier specified for the bracket of age group 31-35 years, as prescribed by the law laid down in the case of **Sarla Verma** (supra), cannot be applied. This Court also takes into consideration the judgment passed by the Hon'ble Apex Court in the case of **Shashikala and Ors. v. Gangalakshamma and Ors. : Civil Appeal No.2836/2015 decided on 13.03.2015**, wherein the Hon'ble Apex Court has categorically observed that when the age of the deceased was 45 years 5 months and 28 days, he was considered to be of 45 years and not 46 years. The relevant para of the judgment passed by the Hon'ble Apex Court in the case of **Sarla Verma** (supra) reads 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.”

The relevant part of the judgment passed by the Hon'ble Apex Court in the case of **Shashikala** (supra) is reproduced as under:

“17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs. 16,82,310/- (Rs. 1,20,165/- x 14).”

Thus, in the light of the judgments cited hereinabove, this Court deems it fit to apply a multiplier of 17, while calculating the loss of income of the deceased.

15. This Court also finds that the compensation awarded towards the future expenses, loss of consortium and funeral expenses is also towards a lower side and thus, deserves to be enhanced in the light of the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra).

16. Thus, the award passed by the learned Tribunal deserves to be modified and requantified as under:

Particulars	Awarded by the Tribunal	Awarded by the Court
<b>Loss of Income [A]</b>		
Income of the deceased	Rs. 8,565/- per month	Rs. 1,22,546/-
Adding 40% future prospects (i.e. 40% of 1,22,546)	Rs. 10,000/- per month after adding future prospects = Rs. 1,20,000 p.a.	Rs. 1,71,564/



Deducting $\frac{1}{4}$ towards personal expenses (i.e. 1,71,561 – $\frac{1}{4}$ of 1,71,564)	Rs. 80,000/-	Rs.1,28,673/-
Applying a multiplier of 17, (i.e.1,28,673 x 17) [A]	Rs. 8,00,000/-	Rs. 21,87,441/-
<b>Non-Pecuniary Heads</b>		
Consortium (4 x 48,400) [B] (payable to wife, 2 children and the father)	10,000/- (to wife) + (Rs. 5,000 x2) i.e. 10,000/- (to 2 children) Rs. 5,000/- (to father) = Rs. 30,000/-	Rs. 1,93,600/-
Loss of Estates [C]	Not awarded	Rs. 18,150/-
Funeral Expenses [D]	Rs. 5,000/-	Rs. 18,150/-
Total [A+B+C+D]	Rs. 8,30,000/- [E]	Rs. 24,17,341/-[F]
Enhanced amount [F-E] [24,17,341 – 8,30,000 = 15,87,341/-		<b>Rs. 15,87,341/-</b>

17. Accordingly, the appeal is partly allowed and the amount of compensation payable to the appellants/claimants by the respondents jointly and severally, as determined by the learned Tribunal, is enhanced by Rs.15,87,341/- in the terms stated above. The enhanced amount shall carry the same interest, as awarded by the learned Tribunal, from the date of filing of claim petition.

18. The award judgment-cum-award dated 02.08.2003 passed by the learned Judge, Motor Accident Claims Tribunal, Bhilwara in MAC No.126/2000 is modified accordingly.

19. Any amount, if already deposited by the respondents shall be adjusted accordingly. Record be sent back forthwith. No costs.

**(DR. NUPUR BHATI),J**

66-/devesh/-