

IN THE HIGH COURT OF MADHYA PRADESH**AT JABALPUR****BEFORE****HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL****ON THE 20th OF JULY, 2024****MISCALLENOUS APPEAL No.2423 of 2018*****SMT. ANJUM ANSARI AND OTHERS******Versus******R. RAJESH RAO AND OTHERS***

SHRI R.P. MISHRA – ADVOCATE FOR THE APPELLANT.***SHRI GULAB CHAND SOHANE – ADVOCATE FOR THE RESPONDENT NO.3.***

This appeal coming on for admission this day, the court passed the following:

ORDER

With the consent of both learned counsel for the parties, heard finally at motion stage.

2. This appeal has been filed by the claimants/appellants under Section 173 (1) of the Motor Vehicles Act, 1988 against the award dated 15.01.2018 passed in Claim Case No.62/2017 by 5th Additional Member to First Additional M.A.C.T., Bhopal, seeking enhancement of compensation.

3. Learned counsel for the appellants submits that deceased was in a permanent job. Therefore, 15 % should have been added as future prospects but learned tribunal has added 10% as future prospects. Learned counsel for the

appellants further submits that tribunal has awarded consortium to appellant No.1 only and no compensation as consortium has been awarded to appellant No.2 to 4. On above grounds, it is urged that compensation awarded by the Tribunal be suitably enhanced.

4. Learned counsel for the respondent/insurance company submits that deceased was working as teacher in private college affiliated to Rajiv Gandhi Technical University, Bhopal. Therefore, job of deceased would not come within purview of permanent job. Government employee would be treated person in permanent job. Learned counsel for the respondent/insurance company also submits that it is a case of head on collision. Therefore, amount of contributory negligence should also have been deducted. On above ground, it is urged that appeal filed by the appellants be dismissed.

5. I have heard the learned counsel for the parties and perused record of the case.

6. From para 14 to 19 of the impugned award, it is evident that deceased was working as Assistant Professor in Corporate Institute of Science and Technology, Bhopal. Thus, admittedly, deceased was not in government job.

7. In view of rival submissions of parties, primary issue involved in the case is whether only government servant can be treated as being in “permanent job” for the purpose of grant/award of future prospects?

8. In this court's opinion, above issue stands settled by Five Judges Bench of Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Pranay Sethi, AIR 2017 SC 5157** as under:-

“55. Presently, we come to the issue of addition of future prospects to determine the multiplicand.

56. In Santosh Devi (AIR 2012 SC 2185) the Court has not accepted as a principle that a self-employed person remains on a fixed salary throughout his life. It has taken note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries of those who are employed in private sectors also with the passage of time increase manifold. In Rajesh's case, the Court had added 15% in the case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition has been made in respect of self-employed or engaged on fixed wages.

57. -----In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of “standardisation” so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary

would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. -----.

61. In view of the aforesaid analysis, we proceed to record our conclusions:

(i) XXX XXX XXX XXX

(ii) XXX XXX XXX XXX

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be

the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.-----“.

9. Thus, from observations as well as principle of law laid down by Hon'ble Apex Court in **Pranay Sethi (Supra)**, it is clearly evident that if a person is in such a job wherein his salary is increased periodically/receives annual increment etc., then, such person would be treated as being in “ permanent job”. Hence, in view of principle of law laid down in **Pranay Sethi (Supra)**, it is not correct that only government servant would be treated as being in “permanent job”.

10. Now facts of present case would be examined in the light of principle of law laid down by Hon'ble Apex Court in **Pranay Sethi (Supra)**.

11. From evidence on record, it is clearly established that deceased was working as Assistant Professor in Corporate Institute of Science and Technology, Bhopal. From salary certificate Ex. P/12 and P/13, it is also evident that salary received by deceased was subject to periodical revision/hike etc. Therefore, in view of law laid down by Hon'ble Apex Court in **Pranay Sethi (Supra)**, deceased would be treated as being in “permanent job”. Hence, submission of learned counsel for the respondent/insurance company with respect of above is hereby rejected.

12. So far as learned counsel for the respondent/insurance company's submission regarding contributory negligence is concerned, respondent/

insurance company has not filed any appeal/cross objection. Therefore, above submission of learned counsel cannot be taken into consideration. Hence, disallowed.

13. Hence, in the instant case, learned tribunal has erred in adding 10% as future prospects. Thus, in view of age and nature of job of deceased and having regard to **Pranay Sethi (Supra)**, 15% is to be added as future prospects. Further, appellant No.2 to 4 are also entitled to receive Rs. 40,000/- as consortium.

14. Hence, in view of above, compensation is recalculated as under:-

TABLE-DEATH CASE-GENERAL

S. N.	HEADS	COMPENSATION
1.	Monthly Income of the deceased- (A)	Rs. 30,789/-
2.	Monthly Income after adding future Prospects- (B) { Future Prospects = 15% of monthly income }	Rs. 35407/-
3.	Monthly loss of dependency (B -Personal & living expenses of the deceased) -Personal & living expenses= 1/4	Rs. 26,555/-
4.	Annual loss of dependency-(monthly loss of dependency x 12)	Rs. 3,18,660/-
5.	Total loss of dependency-(Annual loss of dependency x 11 Multiplier) -(C)	Rs. 35,05,260/-/-
6.	Compensation for loss of spousal/parental/filial consortium- (D)	Rs.1,60,000/-
7.	Compensation for loss of estate- (E)	Rs.15,000/-
8.	Compensation towards funeral expenses- (F)	Rs.15,000/-
9.	TOTAL COMPENSATION- {C+D+E+F=H}	Rs. 36,95,260/-
10.	Total Compensation awarded by the Tribunal- (I)	Rs.34,23,000/-
11.	ACTUAL ENHANCEMENT-(H-I=J)	Rs.2,72,260/-

15. Hence, compensation awarded by the Tribunal is enhanced by Rs. 2,72,260/-.

16. Enhanced compensation (Rs. 2,72,260/-) shall carry interest at the rate awarded by the Tribunal. Other findings of the Tribunal shall remain intact.

17. Appellants have valued present appeal for Rs.2,00,000/- & have paid court fees accordingly. Therefore, appellants shall be entitled to receive enhanced amount only after payment of deficit court fees.

18. Appeal filed by the appellants is partly **allowed** to the extent as indicated above & disposed of accordingly.

(ACHAL KUMAR PALIWAL)
JUDGE

L.R.