

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 27.08.2024
Pronounced on: 03.10.2024

Case:- RP No. 26/2024

1. **Ram Prasad Age 65 years**
2. **Subash Chander Age 57 years**
3. **Kaka Ram Age 51 years**
4. **Amrit Sagar Gupta Age 55 years**
All sons of Late Ishtar Das Gupta,
Residents Drabashalla, Kishtwar.

.....Petitioner(s)

Through: Mr. A. A. Hamal, Advocate.

Vs

New India Assurance Co. Ltd.
Divisional Office No. II, Auqaf Market
Gandhi Nagar, Jammu

.....Respondents(s)

Through: Mr. Amrit Sarin, Advocate.

Coram: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of this review petition filed under Section 65 of the J&K High Court Rules, 1999 read with Order 47 Rule 1 of Code of Civil Procedure, 1908, petitioners seek review of judgment dated 12.03.2024, delivered by this Court by a common judgment passed in MA No. 251/2008 titled – **“New India Assurance Co. Ltd. vs Ram Parsad & Ors.”**

02. It has been asserted in the review petition that there is an error apparent on the face of the record which has crept in the judgment dated 12.03.2024 as it appears that inadvertently in MA No. 251/2008 the deceased who was shown as married, and 1/3rd of his income for personal expenses was deducted by this Court to compute the compensation whereas the fact of the matter was that the

deceased was a bachelor and the deduction on account of personal expenses should have been 50% instead of 1/3rd.

- 03.** It has also been contended that the judgment (supra) sought to be reviewed had not taken into account the enhancement under the head **“future prospects”** which the claimants were entitled to the extent of 40% having regard to their age in view of the law laid down by the Apex Court in the judgments titled as **“Magma General Insurance Co. Ltd. vs Nanu Ram alias Chuhru Ram & Ors.”** and **“National Insurance Co. Ltd. vs Pranay Sethi”**.
- 04.** Learned counsel for the review petitioners argued that on both these counts, the judgment under review is required to be reviewed making corrections which are apparent on the face of the record. He has further argued that so far as deduction on account of personal expenses is concerned, it was to be made half of the income, whereas this Court had deducted one-third of the income on the personal expenses, inadvertently treating the deceased as a married, disregard to the fact that deceased was bachelor at the time of death.
- 05.** The learned counsel for the review petitioners argued that this Court has committed an error apparent on the face of the record in the judgment sought to be reviewed to the extent that the deceased in the case was unmarried and the personal expenses from his income should have been deducted @ 50%, whereas the Tribunal and this Court had deducted 1/3rd of the amount from his income to calculate

the compensation. He has further argued that the income of the deceased should have been stepped up by 40% having regard to his age and the future prospects, in view of the Hon'ble Supreme Court Judgments titled as "**Magma General Insurance Co. Ltd. vs Nanu Ram alias Chuhru Ram & Ors.**" and "**National Insurance Co. Ltd. vs Pranay Sethi**".

06. The learned counsel for the respondent has conceded that the deceased in the claim petition filed by the review petitioners was unmarried, however, the Tribunal while deciding the claim petition and this Court while deciding the appeal, had committed errors by deducting 1/3rd of his income on account of his personal expenses whereas the fact of the matter is that the deceased at the time of his death was a bachelor, as such, 50% of his income should have been deducted on his personal expenses so as to calculate the loss of dependency to the claimants.

07. The 2nd contention with regard to stepping up of the income of the deceased by 40% in the case is concerned the Hon'ble Supreme Court in various judgments particularly in "**Magma General Insurance Co. Ltd. vs Nanu Ram alias Chuhru Ram & Ors.**" reported as **2018 Legal Eagle (SC) 786** and "**National Insurance Co. Ltd. vs Pranay Sethi**" reported as **(2017) 16 SCC 680** observed that having regard to the future prospects of increase in income in case of self-employed, as the deceased was in this case

up to the age of 40 years, an addition of 40% of the established income should be granted towards future prospects. These judgments passed by the Apex Court ought to be followed by the High Courts and the Tribunals as a legal precedent and cannot be deviated. Therefore, on this count also, the judgment is required to be reviewed to correct the error apparent on the face of the record.

08. When a case is decided, the Court considers the claim and the relief sought applies the statute which is applicable and the law which is laid down particularly when it is by a Constitutional Bench in deciding the case, just as in the case of a judgment where the applicable statute not being applied would result in a judgment which becomes amenable to be corrected and reviewed, when a binding judgment of Supreme Court which is enlisted by the parties ignored, it should not have a different consequence, in fact, the power of review is to be exercised based on provision of Order 47 Rule 1 of the Code of Civil Procedure, 1908. Any such refusal to follow the decision binding on it would undoubtedly disclose an error which would be palpable being self-evident.

09. For the foregoing reasons and observations made hereinabove, this Court, in review, is of the view that an error apparent on the face of the record while passing the judgment sought to be reviewed to the extent of treating the deceased as a married though admittedly the deceased was

a bachelor, as such, instead of 1/3rd of his income 50% of his income should have been deducted on his personal expenses to work out the loss of dependency to the claimants.

- 10.** The deceased – Madan Lal Gupta being bachelor and having a monthly income of Rs. 8,000/-, with the stepping up of his income by 40%, his monthly income comes to Rs. 11,200/- and annual income comes to Rs. 1,34,400/-.
- 11.** The annual income, however, is to be deducted by 50% having regard to the deceased being bachelor, therefore, the annual loss of dependency to the claimants as dependents comes to Rs. 67,200/-.
- 12.** The deceased at the time of his death was shown to be 32/33 years, therefore, the multiplier of 16, as per “**Sarla Verma**” *judgment* (*supra*) passed by the Hon’ble Supreme Court and reiterated in “**Pranay Sethi’s case**” (*supra*) is to be applied. Therefore, the annual loss of dependency to the claimants is worked out as (67200 x 16), i.e., Rs. 10,75,200/-.
- 13.** The amount of compensation to which the claimants/review petitioners are found entitled to is, thus, detailed as follows:-

1.	Loss of Dependency	Rs. 10,75,200/-
2.	Loss of Estate	Rs. 5,000/-
3.	Cremation expenses	Rs. 2,000/-
4.	Loss of consortium	Rs. 5,000/-
Total		Rs. 10,87,200/-

14. The total compensation to which review petitioners as claimants are entitled is, thus, enhanced from Rs. 10,35,360/- to Rs. 10,87,200/-. The interest component will remain the same as was awarded by the Tribunal, while deciding the claim petition.
15. The awarded amount deposited by the respondent – Insurance Company with the Registry is ordered to be released in favour of the claimants on their proper identification and after deduction of Court fees under rules. The balance amount, if any, shall be paid by the respondent – Insurance Company to the claimants within a period of three weeks from the date of pronouncement of this judgment.
16. Viewed thus, the judgment sought to be reviewed is, accordingly, reviewed and the review petition is **allowed**.

(M A CHOWDHARY)
JUDGE

JAMMU
03.10.2024

Bunty

Whether the order is speaking: Yes
Whether the order is reportable: Yes