

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

**Reserved on : 15.10.2024
Pronounced on : 18.10.2024**

Case No. :- MA No. 98/2013
CM No. 3064/2022
CM No. 1180/2022
IA No. 139/2013
c/w
MA No. 94/2013

MA No. 98/2013 :

United India Insurance Company Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi, Jammu
Through it's Divisional Manager,
Dr. Raj Pal Sharma, Aged 58 years.

..... Appellant(s)/Petitioner(s)

Through: Mr. Ravinder Sharma, Advocate.

Vs

1. Fatima Begum
W/o Late Rafeeq Ahmad,
R/o Maligam Pogal,
Tehsil Banihal, District Ramban.
2. Fiza Tabassum
D/o Rafeeq Ahmad,
R/o Maligam Pogal,
Tehsil Banihal District Ramban.
3. Insha Tabassum
D/o Rafeeq Ahmad,
R/o Maligam Pogal,
Tehsil Banihal District Ramban.
(Respondent Nos. 2 & 3 through
respondent No.1 being their
mother).
4. Davinder Kumar,
S/o Nabu Ram,
R/o Jawahar Nagar,
Talab Tillo, Jammu
C/o Karan Motors Service
General Bus Stand, Jammu
Owner of Vehicle No.
4595/JK02M.

..... Respondent(s)

Through: Mr. K.S.Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate.
Mr. Narinder Kumar Attri, Advocate.

MA No. 94/2013 :

United India Insurance Company Ltd.
 Divisional Office-II,
 Naseeb Bhawan,
 Purani Mandi, Jammu
 Through it's Divisional Manager,
 Dr. Raj Pal Sharma, Aged 58 years.

..... Appellant(s)/Petitioner(s)

Through: Mr. Ravinder Sharma, Advocate.

Vs

1. Zulekha Begum
 W/o Late Khalid Hussain,
 R/o Maligam Pogal,
 Tehsil Banihal, District Ramban.
2. Heena Tabassum
3. Rukaya Tabassum
4. Babbar
5. Mehvish Tabassum
 Respondent Nos. 2, 3 and 5
 daughters and Respondent No.4
 son of Khalid Hussain,
 All residents of Maligam Pogal
 Tehsil Banihal District Ramban
 (Respondent Nos. 2 to 5 through
 respondent No.1 being their
 mother).
6. Davinder Kumar,
 S/o Nabu Ram
 R/o Jawahar Nagar,
 Talab Tillo, Jammu
 C/o Karan Motors Service,
 General Bus Stand, Jammu
 Owner of Vehicle No.
 4595/JK02M

..... Respondent(s)

Through : Mr. K.S.Johal, Sr. Advocate with
 Mr. Supreet Sigh Johal, Advocate.
 Mr. Narinder Kumar Attri, Advocate.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Both the appeals are taken up together for common disposal as they arise from the same common Award dated 16.07.2012 of the Learned Motor Accident Claims Tribunal, Ramban (hereinafter referred to as the MACT,

for short) *inter alia* passed on the File Nos. 45/2008 titled “Fatima Begum and others Vs. United India Insurance Company and others” and File No. 36/2008 titled “Zulekha Begum & Ors. Vs. United India Insurance Company and others” which came to be filed before the learned MACT owing to an unfortunate accident that took place on 20.04.2008 at 5 PM in the area of Banihal, Ramban, which took the lives of several passengers including the deceased involved in the claim petitions in question namely Rafeeq Ahmad and Khalid Hussain.

2. The common impugned Award dated 16.07.2012 came to be passed by learned MACT in as many as seven claim petitions including the claim petitions filed by the respondents (claim petitioners) of the instant appeals.
3. The learned MACT after culminating the enquiry proceedings in all the claim petitions including the two pertinent petitions filed by the respondents/claim petitioners awarded a total compensation amount of Rs.27,25,000/- along with interest @ 7.5% per annum from the date of filing of the claim petitions till the realization of the amounts in each of the claim petitions filed by the respondents/claim petitioners.
4. Aggrieved by the common Award dated 16.07.2012 as regards the claim petitions bearing File Nos. 45/2008 and 36/2008, the appellant-Company (respondent) in the claim petitions assailed the same through the medium of the instant appeals filed under the provisions of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the ‘Act’, for short) on the grounds *inter alia* that the learned MACT has wrongly calculated the loss of dependency in both the cases by taking the income of the deceased as Rs.20,000/- in each case instead of Rs.2000/- which was

being received by them at the time of the accident; that the learned MACT while computing the amount of the compensation admissible in the cases unjustifiably deviated from the guiding principles laid down from time to time by the Hon'ble Apex Court especially passed in the landmark judgments titled "*Sarla Verma and others Vs. Delhi Transport Corporation and another*" and "*National Insurance Company Limited Vs. Pranay Sethi and others*" and that the learned MACT further underestimated the material particular of the case to the effect that the appellant-Company is not liable for indemnification in the cases as the driver of the offending vehicle was not holding a valid and effective driving licence as on the date of the accident.

5. The fateful accident which has taken the lives of the deceased in both the cases along with so many other persons has occurred on 20.04.2008 at 5 PM when Banihal bound passenger vehicle bearing No. JK02M-4595 being driven by one Krishan Gopal in a rash and negligent manner met an accident upon reaching at Anokhifall near Battery Chashma rolling down 100 ft from the National Highway.
6. I have heard learned counsel for both the parties.
7. The learned counsel for the appellant-Company, Mr. Ravinder Sharma, Advocate, while reiterating his grounds already taken in the memo of appeals contended that the impugned common Award dated 16.07.2012 suffers from patent illegality and perversity as the learned MACT has fallen in error while taking the income of the deceased in both the claim petitions as Rs.20,000/- instead of Rs.2000/-. The learned counsel contended that the deceased in both the cases were serving as Rehbar-e-

Taleem teachers, who admittedly as on date of accident were in receipt of the monthly honorarium/salary of Rs.2000/-. He contended that under the SARV SIKSHA ABHIYAN, unemployed educated persons having minimum qualification of 10+2 are engaged as Rehbar-e-Taleem and are paid an honorarium of Rs.1500/- for the first-two years followed by an amount of Rs.2000/- per month for next three years on the basis of their satisfactory performance. That such Rehbar-e-Taleem candidates after completion of 5 years satisfactory service can only be considered for their regularization. Thus, the learned MACT was absolutely wrong in taking the income of the deceased as Rs.20,000/- instead of the actual income of Rs.2000/- received by them per month.

8. Learned counsel for the appellant-Company further contended that the findings of the learned MACT regarding fixing of income in both the cases is against law and guidelines laid down by the Hon'ble Supreme Court. That it is a settled legal position that a Tribunal is supposed to award a "Just Compensation" which is reasonable and based on the evidence.
9. Learned counsel for the appellant in support of his contentions relied upon the authoritative judgments of the Hon'ble Apex Court cited as "*Sarla Verma vs. Delhi Transport Corporation & another AIR 2009 SC 3104*" and "*National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*".
10. The learned counsel during his arguments assailed the impugned award also on the ground that the respondents/claim petitioners in both the cases claimed a compensation amount of only Rs.10 lacs when the learned

Tribunal awarded an amount of Rs.27,25,000/-. That the learned Tribunal has also failed to adjudicate the issues systematically which had already been framed in the cases.

11. Per contra, the learned counsel for the contesting respondents/claim petitioners in rebuttal argued that the impugned common Award dated 16.07.2012 does not suffer from any illegality or perversity as alleged because the learned MACT has passed a “just and reasonable award of compensation” in the cases. He submitted that the income of both the deceased who at the time of fateful accident were serving as Rehbar-e-Taleem teachers was necessarily to be taken as Rs.20,000/- on minimum side as they were going to be regularized after the completion of their 5 years satisfactory service only within the next year. He submitted that respondents/claim petitioners examined the immediate controlling Officer/DDO of the deceased i.e. concerned Zonal Educational Officer (ZEO) who testified that the deceased were to be regularized within some months after the completion of their 5 years of service upon which they shall be given the salary of Rs.20,000/- per month.
12. The learned counsel submitted that the Claims Tribunal is supposed to pass a “Just Compensation” and has to accord a balanced and justice orientated approach while holding the enquiry proceedings. He submitted that the income of the deceased at the time of the accident has to be taken in a just manner and no technical consideration needs to be made. The learned counsel contended that in the facts and circumstances of the case, there were cogent and certain grounds to believe that the deceased would have been in receipt of a monthly salary of more than Rs.20,000/- just

within a year of the fateful accident. He submitted that the immediate controlling Officer and the DDO of the deceased has testified during his cross-examination that as per the grade to which the deceased upon their regularization within some months of the accident would have been entitled to, they would have been in receipt of more than Rs.20,000/- as monthly salary. It was also contended by the learned counsel that the appellant-Company has failed at the enquiry proceedings before the learned MACT to prove that the driver of the offending vehicle was not holding a valid and effective driving license as the onus to prove such issue was on it. The learned counsel further submitted that since the Claims Tribunal is required to pass an Award of "Just Compensation", therefore, the Tribunal is not bound by the amount claimed by the petitioners and can award the appropriate and reasonable amount in excess of amount claimed.

13. The learned counsel in support of his contentions placed reliance on the authoritative judgments cited as **"Suresh Chandra Bagmal Doshi and another Vs. New India Assurance Company Limited and others"**, reported as (2018) 15 SCC 649 decided on 18.04.2018, **"Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors."**, decided by the Hon'ble Supreme Court on 13.10.2022, **"K. Ramya & Ors. Vs. National Insurance Co. Ltd. & anr."** 2022 (4) Law Herald (SC) 2862 decided on 30.09.2022 and **"Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation"**, 2023 (1) Law Herald (SC) 166, decided on 09.12.2022.

14. This Court has perused the record of the instant appeals, the record of the learned MACT in digital form and especially the impugned Award dated 16.07.2012.
15. Keeping in view the aforementioned perusal and the consideration of the rival contentions of the learned counsel for the parties in the light of the law on the subject, as interpreted by the Hon'ble Apex Court and various High Courts of the Country, this Court is of the considered opinion that there appears to be no illegality or perversity in the impugned Common Award dated 16.07.2012 as regards the pertinent Claim Petitions bearing Nos. 45/2008 and 36/2008.
16. The appellant-Company seems to be mainly aggrieved of the income of the deceased-Rehbar-e-Taleem teachers having been fixed by the learned MACT as Rs.20,000/- per month for working out the loss of dependency. The deceased admittedly on the date of accident were serving as Rehbar-e-Taleem teachers in education department and were in receipt of monthly honorarium of Rs.2000/- each. It is undisputed that the deceased were highly qualified MA/BA, B.Ed/M.Ed, who in search of their employment had necessarily to submit themselves to the Rehbar-e-Taleem Scheme floated by the Government for recruitment of the teachers in education department. They had almost completed four years of their temporary/contractual service and were going to be regularized as General Line Teachers within the next year of the accident. So many teachers in the same department with the assignment of the same work, who may be less qualified than them would have been in receipt of the monthly salary of more than Rs.50,000/- as per the 7th Pay Commission. The learned

Tribunal has examined the ZEO concerned as witness produced by the respondents/claim petitioners in both the cases who has clearly and unequivocally deposed before the learned MACT that he deceased were going to be regularized within some months and their grade was to be fixed upon their regularization as per which they would have been in receipt of monthly salary of more than Rs.20,000/-.

17. In the peculiar facts and circumstances of the instant case, the learned Tribunal appears to be fully justified in taking the monthly income of the deceased/teachers as Rs.20,000/-.
18. No doubt, for the purposes of arriving at a decision to award “Just Compensation”, a Claims Tribunal is required to take the income of a deceased or an injured as the case may be, as he or she was earning on the date of accident but some rare circumstances cannot be excluded where such a person having been employed as per a Scheme is being paid less income during initial years with the provision within the Scheme of his or her regularization after completion of certain tenure and especially when he or she is assigned the same job from the very beginning.
19. The deceased, in the instant case, were engaged as Rehbar-e-Taleem teachers and they had to get regularized as per the Scheme of their engagement after 5 years which tenure they were going to complete satisfactorily without any sort of adverse record within some months of the accident. They were discharging the same function as a teacher on regular establishment. They being highly qualified were under a compulsion to opt for the Scheme of Rehbar-e-Taleem as otherwise it would have been difficult for them to get employment. So when a higher

income is certain and sure to be gained within an immediate time as backed by an acknowledged Government Scheme then there appears to be no bar in taking such income for the purpose of computation of the compensation under the Motor Vehicles Act.

20. Under the said special circumstances, a balance, however, can be struck by considering the age of the deceased as on the date on which the said higher income was likely to be received by him, for the purpose of applicability of the suitable multiplier.
21. Giving any narrow minded and technical interpretation and meaning to the term, "income" – determination of which is the first and important factor in making the calculation to reach an Award of just compensation defeats the very object of the said legislation. An awakened owner of a motor vehicle especially in case of a heavy passenger vehicle remains always voracious about taking the comprehensive insurance policy in respect of his vehicle, to avert the further suffering of the victims of any untoward/unfortunate road traffic accident. The Act also provides for heavy penalty for driving of uninsured vehicles. A Claims Tribunal which is supposed to take a view in between conservative and liberal approach and accordingly not to be exclusively guided by the aspect of windfall or pittance, shall, however, at the same time bear in mind that, it (MACT) has to measure the balance of convenience in between the legal representatives of the deceased victim/insured and the financially sound insurer.
22. The fixing of income of the deceased being the nation builders in their capacity as teachers, at the rate of two thousands (Rs.2000/-) per month

appears to be totally illogical. Even a skilled labour as per the minimum wages in vogue gets Rs.15000/- to Rs.20,000/- per month. The notional income of an unemployed person even goes much higher than Rs.2000/-. Courts shoulder the responsibility of awarding adequate compensation on a case to case basis. It is, thus, imperative for a Claims Tribunal/Court to grant such compensation which has nexus to actual loss.

23. Just compensation is not possible unless the income of the deceased is taken on just basis having nexus to the loss in long run, being the main underlying component for assessment of the compensation.
24. Section 168 of the Motor Vehicles Act, 1988 provides that the claims Tribunal shall make an award to determine the amount of compensation which appears to be "just".

In Divisional Controller, KSRTC v. Mahadeva Shetty and Anr., 55
the Hon'ble Supreme Court held that:-

"The Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measures of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a disc Rehbar-e-Taleemion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and

arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

In **Helen C. Rebello & Ors. vs. Maharashtra State Road Transport Corpn. & Anr.**, 56 the Hon'ble Supreme Court held that:-

The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just”.

25. The larger Bench of the Hon'ble Apex Court in **National Insurance Co. vs. Pranay Sethi AIR 2017 SC 5157** has commented on the just compensation in its judgment at Para's 57 to 60 which are reproduced as under for ready reference:-

*57. Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the disc Rehbar-e-Taleemion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression that is “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in **Sarla Verma vs. Delhi Transport Corporation & another AIR 2009 SC 3104** and it has been approved in **Reshma Kumar & Ors vs. Madan Mohan & another (2013) 9 SCC 65**. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort*

has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavor has been made by this Court for standardization 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 standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

58. *The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category. The same has been allowed in Pranay Sethi's case.*

59. *Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, 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 parts there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increased 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 standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors namely, passage of time, the changing society escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

26. The criteria for working out just compensation due to the petitioners in respect of the claims being made by the legal representatives of the victims of road traffic accidents has been laid down by the Hon'ble Apex Court in a catena of judgments *inter alia* cited as ***Sarla Verma and others***

v/s Delhi Transport Corporation and another AIR 2009 (SC) 3104, Ningaama and another v/s United India Insurance Company Ltd AIR 2009 SC 3056, Santosh Devi v/s National Insurance Company Ltd and others, AIR 2012 SC 2185, Rajesh and others v/s Rajbir Singh and others, (2013) 9 SCC 54, Reshma Kumari and others v/s Madan Mohan and another (2013) 9 SCC 65, Kanhsingh and another v/s Tuka Ram and others 2015 ACJ decided on 13.01.2015, Munna Lal Jain and another v/s Vipin Kumar Sharma and others (2015) 6 SCC 347, National Insurance Company Ltd v/s Pushpa and others (2015) 9 SCC 166 and National Insurance Company Ltd v/s Pranay Sethi and others AIR 2017 SC 5157 decided by the larger Bench of Hon'ble Supreme Court on October 31,2017; Magma General Insurance Co. Ltd vs. Nanu Ram (2018) 18 SCC 130, New India Assurance Co. Ltd vs. Somwati 2020 (9) SCC 644; Janabai Wd/o Dinkarrao Ghorpade & Ors vs. M/S ICICI Lambord Insurance Co. Ltd 2022 Live Law (SC) 666 and Meena Pawaia vs. Ashraf Ali 2022 ACJ 528, Kirti Vs.Oriental Insurance Company Limited, AIR 2021 SC353, Manusha Sreekumar & Ors. Vs. The United India Insurance Co. Ltd., 2022 Live Law (SC) 858, Chandra alias Chanda alias Chandraram and anr. Vs. Mukesh Kumar Yadav and Ors. (2022) 1 SCC 198, Sidram Vs. The Divisional Manager, United India Insurance Co. Ltd. and anr., 2022 Live Law (SC) 968.

27. It is very needful to mention that the learned MACT has not made the permissible additions as per the authoritative law passed by the Hon'ble Apex Court in Constitution Bench Judgment of "National Insurance

Company Ltd v/s Pranay Sethi and others”, AIR 2017 SC 5157. The Hon’ble Apex Court in Pranay Sethi’s case (cited supra) issued a rule of thumb for assessment of the future prospects in order to maintain uniformity and to avoid imponderabilities and un-certainties as under :-

- (i) *An addition of 50% of actual salary to 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. 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.*
- (ii) *In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established should be the warrant where the deceased was below the age of 40 year. An addition 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. The established income means the income minus the tax competent.*

28. A balance appears to have been struck by the learned MACT while not making permissible additions for computation of the income of the deceased having regard to the taking of their income as Rs.20,000/- per month.
29. The learned MACT has made a deduction of 1/4th from the income of the deceased in File No. 45/2008 on account of his personal and living expenses, when only 1/3rd was to be deduced given the number of dependents of the deceased-Rafeeq Ahmad as only three. In respect of the deceased-Khalid Hussain in File No. 36/2008 the learned MACT has

rightly deducted 1/4th on account of the personal and living expenses in view of the number of dependents of the deceased being five.

30. Here also a balance appears to be struck as the learned MACT has in case of File No. 45/2008 deducted 1/4th instead of 1/3rd. So, if on one hand the learned MACT has felt itself justified in the given circumstances of the case to take the income of the deceased in both the cases as Rs.20,000/-, yet the learned Tribunal has not made the permissible additions on account of the future income in both the cases and in case of the deceased-Rafeeq Ahmed being covered by File No. 45/2008, the deduction on account of personal expenses has been made 1/4th instead of 1/3rd. The learned MACT has rightly applied the multiplier of 15 in both the cases given the age of the deceased in both the cases as 36 years.
31. The learned counsel for the contesting respondents/claim petitioners invited the attention of this Court towards the authoritative pronouncements of the Hon'ble Apex Court cited as **“Suresh Chandra Bagmal Doshi and another Vs. New India Assurance Company Limited and others”**, reported as (2018) 15 SCC 649, decided on 18.04.2018 and **“Hem Raj Vs. Oriental Insurance Co. Ltd.”**, decided on 22.11.2017” to the effect that percentage for calculating future rise in income is no bar to future prospects being taken at a higher level where the assessment is based on actual evidence led to the satisfaction of the Tribunal/Court that the future prospects were higher than the standard percentage. On the analogy of these relied upon judgments, in respect of the addition on account of future prospects, there appears to be no bar in maintaining the income of Rs.20,000/- taken by the learned Tribunal on

the basis of concrete evidence of the ZEO concerned, who came to be recorded as witness by the contesting respondents/claim petitioners before the learned Tribunal to the effect that the deceased persons had already completed four years of their Scheme tenure and were sure to be regularized as General Line Teachers within some months of the accident, who upon their regularization were likely to receive their monthly salary exceeding Rs.20,000/- as per the pay commission in vogue.

32. The objection of the appellant-Company to the effect that the common Award was passed in respect of the claim petitions in question for the amounts much higher than was claimed by the contesting respondents/claim petitioners is unworthy of consideration as there is no bar under law in awarding the compensation in excess of the amount claimed when a Claims Tribunal is convinced to do so, so as to make its award just, fair and reasonable. The legal heirs of a deceased RTA victim, are supposed to be calculating their sufferings/worries and not meticulously working out compensation amount, being valueless for them. The illiteracy of the legal heirs/dependants or the incompetence of legal assistants approached cannot be allowed to further aggravate the sufferings. This Court is fortified in its opinion with the authoritative judgments of the Hon'ble Apex Court cited as **“Nagappa Vs. Gurdayal Singh and others” (2003) 2 SCC 274** and **“Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors.” Civil Appeal No. 7255 of 2022 decided on 13.10.2022** in which it was observed that under the Motor Vehicles Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed as an award of

“just compensation” which is reasonable in the facts, relying upon the evidence produced on record is needed to be passed by the said Tribunal/Court.

33. The observations of the Hon’ble Apex Court made in “**K. Ramya & Ors. Vs. National Insurance Co. Ltd. & Anr.**” **2022 (4) Law Herald (SC) 2862 decided on 30.09.2022** in respect of the concept of the “just compensation” made at paras 11 and 12 of the judgment deserve a needful mention as under:-

“11. At the outset, it is pertinent to reiterate the concept of ‘just’ compensation under Section 168 of the Act. It is a settled proposition, now through a catena of decisions including the one rendered by the Constitution Bench in Pranay Sethi that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact-dependent exercise which must be liberal and not parsimonious. It must be emphasized that compensation is a more comprehensive form of pecuniary relief which involves a broad-based approach unlike damages as noted by this court in Yadava Kumar v Divisional Manager, National Insurance Co. Ltd. The discussion in the abovementioned cases highlights that Tribunals under the Act have been granted reasonable flexibility in determining ‘just’ compensation and are not bound by any rigid arithmetic rules or strict evidentiary standards to compute loss unlike in the case of damages. Hence, any interference by the Appellate Courts should ordinarily be allowed only when the compensation is ‘exorbitant’ or ‘arbitrary’.

12. Furthermore, Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples’ lives in the future. Keeping the abovementioned principles in the backdrop, we now move on to the facts at hand.”

34. It has been laid down by the Hon’ble Apex Court in “**Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation, decided on 09.12.2022**” that even if the income of the

appellant (injured therein) had increased after the accident, he would have been entitled for claiming future prospects.

35. The contention of the appellant raised in the memo of appeal to the effect that the appellant is not liable to indemnify the owner of the offending vehicle who had caused the violation of the Policy conditions does not appear to be tenable because the appellant-Company (respondent before the learned MACT) has failed to prove any such assertion.
36. Thus, this Court is of the considered opinion that the learned Tribunal has rightly addressed to the Claim Petitions in accordance with law and the common award in relation to the petitions in question giving rise to the instant appeals, appears to be "Just and reasonable".
37. For the foregoing discussion, both the appeals are dismissed as meritless. The compensation in both the cases if still undisbursed to the respondents/claim petitioners and whether deposited in this Court or before the learned MACT is ordered to be forthwith disbursed to the respondents/claim petitioners strictly in accordance with the terms of the impugned award along with interest having been accrued thereon.

(Mohd. Yousuf Wani)
Judge

JAMMU :
18.10.2024
Pawan Chopra

- i) Whether the Judgment is speaking: Yes
- ii) Whether the Judgment is reportable: Yes