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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: 8<sup>th</sup> January, 2021**

+ MAC.APP. 623/2019

INDRAWATI & ANR.

..... Appellants

Through: Mr. Santosh Kumar Chauriha,  
Advocate

versus

RANBIR SINGH & ORS.

..... Respondents

Through: Mr. Atul Nigam, Advocate along with  
Mr. Anubhav Tyagi and Mr. Randhir  
Kumar, Advocates for R-3

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**J U D G M E N T**

1. The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs.2,42,382.16 along with interest @ 9% per annum from 30<sup>th</sup> October, 2013 has been awarded to appellants. The appellants seek enhancement of the award amount.

2. The accident dated 08<sup>th</sup> October, 2008 resulted in the death of Naveen. The deceased was aged 23 years at the time of the accident and was survived by his parents who claimed compensation. As per the claim petition, the deceased was self employed as a Contractor earning Rs.55,000/- to Rs.60,000/- per month.

3. Appellant No.1 is the mother of the deceased who appeared in the witness box as PW-1 and deposed that the deceased was working as a

Manager under a Government Contractor and drawing a salary of Rs.30,000/- per month. She further deposed that she was dependent upon the deceased as well as her husband. She proved the Ration Card, Election Card, Matric Certificate as well as the passbook of the savings bank account of the deceased as Ex.PW-1/9 to PW-1/12. PW-2 is the eyewitness and he deposed that the deceased was hit by the offending vehicle (Dumper) bearing No. HR-63A-0270 from behind in front of NDPL Office near Plywood Factory, Karala, Delhi-110081 on 08<sup>th</sup> October, 2008 at 04:05 PM and the accident occurred due to the rash and negligent driving of the Dumper. PW-3 deposed that the deceased was working in his construction company as a Supervisor since 16<sup>th</sup> April, 2004 at a salary of Rs.12,000/- per month besides expenses of petrol, mobile and other miscellaneous expenses. PW-3 produced the certificate, Ex.PW-1/6. He further deposed that he had shown the salary of employees in his Income Tax Return. He produced the Income Tax Return for the assessment year 2009-2010 along with the statement of accounts as Ex.PW-3/1. PW-3 in cross examination deposed that he was paying the salary in cash against vouchers but the vouchers for 2008 were not traceable. He further deposed that he is an Income Tax Assessee since 1998 and he can produce the Income Tax Record for the relevant period.

4. The Claims Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle bearing No. HR-63A-0270 driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. The Claims Tribunal held that PW-2, father of the deceased, was working with the Delhi Police as Sub-Inspector and was, therefore, not dependent upon the deceased. The Claims Tribunal further held that petitioner No.1, mother of the deceased, cannot be said to be

dependent upon the deceased as her husband was employed with the Delhi Police. The Claims Tribunal held that the appellants were not entitled to compensation for loss of dependency but only to compensation for loss of the estate in terms of the principles laid down in *Keith Rowe v. Prashant Sagar*, 2011 ACJ 1734.

5. The Claims Tribunal held that the income of the deceased has not been duly proved. The appellants claimed in the claim petition that the deceased was self employed as a Contractor earning Rs.55,000/- to Rs.60,000/- per month. PW-1, mother of the deceased, deposed in the witness box that the deceased was working as a Manager under a Government Contractor earning Rs.30,000/- per month whereas PW-3 deposed that the deceased was working in a company as a Supervisor drawing a salary of Rs.12,000/- per month but he could not produce any document to show the employment or the payment of salary. The Claims Tribunal did not believe the salary certificate, Ex.PW-1/6 issued by PW-3 in the absence of any documentary proof of employment. The Claims Tribunal, therefore, took the minimum wages of Rs.4,131/- per month as income of the deceased, added 40% towards future prospects, applied the multiplier of 18 and awarded 15% as loss of estate to the appellants. The Claims Tribunal awarded Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of love and affection. Total compensation awarded is Rs.2,42,382.16.

6. The claim petition was filed on 01<sup>st</sup> September, 2010 but the Claims Tribunal awarded interest with effect from 30<sup>th</sup> October, 2013 when the amended petition was filed.

#### **Submissions of Appellants**

7. Appellant No.1 is the mother and Class-I legal heir of the deceased

and was dependent upon the deceased and, therefore, entitled to the compensation as loss of dependency.

8. The appellants duly proved the income of the deceased as Rs.12,000/- per month by examining PW-3 and the Claims Tribunal erred in taking the minimum wages instead of the income of Rs.12,000/- per month. The appellants are entitled to future prospects of 50% on the income of Rs.12,000/- per month.

9. The interest be awarded from date of institution of the claim petition i.e. 01<sup>st</sup> September, 2010.

**Submissions of Respondent No.3**

10. The compensation awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any enhancement.

**Findings**

11. The first question arises for consideration is whether appellant No.1 (mother of the deceased) is entitled to compensation for death of her son. Appellant No.1 is the mother of the deceased and she has no independent source of income. She deposed that she was dependent upon the deceased as well as on her husband.

12. This Court is of the view that the parents of the deceased are considered in law as dependent on their children, considering that the children are bound to support their parents in their old age, when the parents would be unable to maintain themselves and the law imposes a responsibility on the children to maintain their parents. Even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their

initial years. It would therefore be unfair as well as inequitable to deny compensation for loss of dependency to a parent, who may not be dependent on his/her child at the time of accident per se but would become dependent at his/her later age.

13. Section 125 of Code of Criminal Procedure, 1973; Section 20 of Hindu Adoption and Maintenance Act, 1956, and Maintenance and Welfare of Parents and Senior Citizens Act, 2007 cast an obligation on the children to maintain their parents. These legislations recognize the legal rights of parents to be maintained by their children.

14. In *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, (1987) 2 SCC 278, the Supreme Court noted the moral obligation of children to maintain their parents. Relevant portion of the judgment is as under:-

*“6. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.”*

15. In *Mahendrakumar Ramrao Gaikwad v. Gulabbai Ramrao Gaikwad*, 2001 CriLJ 2111, the Bombay High Court referred to the ancient scripture of *Manu* which recognizes the right of the aged parents to be maintained by their children even if the children are unable to maintain themselves. Relevant portion of the said judgment is reproduced hereunder:-

*11. It is not out of place to remember the mandate of Manu in the matter of maintenance of parents, wife and child. Manu said, “the aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred*

*misdeeds” Manu does not speak of solitary duty. It is moral duty of a person to maintain aged parents, virtuous wife and infant child. In discharge of this pious duty, Manu went to such an extent that he made hundred misdeeds pardonable.*

*During course of time, this moral duty assumed a legal character. The need was felt to introduce an enactment in this behalf.*

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*13. Under the circumstances, son is legally bound to maintain his mother if it is shown that mother is unable to maintain herself. It is not at all desirable that an earning son, who is well placed in the society, having possessed of sufficient means, shall allow his penniless mother to face starvation. The Indian Society casts a moral obligation on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is bounden duty of a son to look after his parents when they become old and infirm.*

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*25.....Because of his mother, he has seen this beautiful world. Parents give each child name, places the child in a social class and gives national and religious identity. Parent plugs child into society in which he or she will live and grow.”*

16. In ***Magma General Insurance Co. Ltd. v. Nanu Ram***, (2018) 18 SCC 130, the Supreme Court held that parents are entitled to *Filial* consortium as compensation for accidental death of a child. Relevant portion of the said judgment is reproduced hereunder:-

*“21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to*

*consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse: [Rajesh v. Rajbir Singh, (2013) 9 SCC 54]*

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*21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

*22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

*23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74]. However, there was no clarity with respect to the principles on which compensation*

*could be awarded on loss of filial consortium.”*

17. In *United India Insurance Company Ltd. v. Satinder Kaur*, SLP (C.) No. 28548/2014 decided on 30<sup>th</sup> June, 2020, the Supreme Court re-affirmed *Magma General Insurance Co. Ltd.* (supra) with respect to the rights of parents to compensation in case of accidental death of a child. Relevant portion of the said judgment is reproduced hereunder:-

*“In Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*

*Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.*

*Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.*

*Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.*

*The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or*



*daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.*

*Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.”*

18. In *New India Assurance Company v. Somwati*, (2020) 9 SCC 644, the Supreme Court awarded *Filial* compensation in terms of principles laid down in *Magma General Insurance Company Ltd* (supra) and *United India Insurance Company Ltd. v. Satinder Kaur* (supra).

19. In *Sarla Verma v. D.T.C.*, (2009) 6 SCC 121, the Supreme Court held that the mother of the deceased bachelor is entitled to compensation by taking 50% of his income as loss of dependency on the premise that the deceased would not contribute more than 50% to his mother after marriage. The Supreme Court further observed that the mother would be considered as dependent even if the father was employed and earning. In *Sarla Verma* (supra), the Supreme Court has laid down clear principles for computation of compensation in respect of death of a parent as well as a spouse by applying the multiplier method and the application of those principles have not been made subject to any condition meaning thereby that no further evidence is required to prove the dependency in the aforesaid cases.

20. In view of the law well settled by the Supreme Court in the aforesaid judgments, this Court holds that the parents of the deceased child are considered as dependents for computation of compensation. The principles laid down in *Keith Rowe* (supra) and *Dinesh Adhlak v. Pritam Singh*, ILR (2010) 5 Del 463, would not apply to the claim for compensation by the parents in respect of their child, as it is in the present case. The principles

relating to the loss to the estate referred to in *Keith Rowe* (supra) and *Dinesh Adhlak* (supra) would also not apply in respect of the claim of a spouse for compensation in respect of death of his/her spouse, as well as children's claim for compensation in respect of death of their parents. In that view of the matter, the principles relating to the loss to the estate shall apply only to claimants other than parents, children and spouse.

21. Applying well settled principles enunciated above, this Court holds that appellant No.1 (mother of the deceased) is entitled to the compensation for loss of dependency according to the multiplier method.

22. In the present case, the deceased Naveen was aged 23 years at the time of accident. The appellant stated in the claim petition that the deceased was working as a Contractor earning Rs.55,000/- to Rs.60,000/- per month. However, appellant No.1 in the witness box deposed that the deceased was working as a Manager under a Government Contractor earning Rs.30,000/- per month. During evidence, the appellants produced PW-3 who deposed that deceased was working as Supervisor since 16<sup>th</sup> April, 2004 and the last drawn salary was Rs.12,000/- per month. However, PW-3 could not produce any document to prove the employment of the deceased with him. In view of the inconsistent stands taken by the appellant in the claim petition and the evidence, the Claims Tribunal rightly disbelieved the testimony of PW-3 and took the minimum wages of Rs.4,131/- per month as income of the deceased.

23. Taking the income of the deceased as Rs.4,131/- per month, adding 40% towards future prospects, deducting 50% towards personal expenses and applying the multiplier of 18, the loss of dependency is computed as Rs.6,24,607.20. The Claims Tribunal has awarded Rs.40,000/- towards loss

of love and affection and Rs. 15,000/- towards funeral expenses which is upheld. The total compensation is computed as Rs.6,80,000/- (Rs.6,79,607.20 rounded off).

24. The claim petition was instituted on 01<sup>st</sup> September, 2010 by appellant No.1 (mother of the deceased). On 30<sup>th</sup> October, 2013, the Claims Tribunal directed appellant No.1 to implead the father of the deceased as a claimant whereupon appellant No.1 filed a formal application for amendment which was not opposed and the amendment was allowed. Since the amendment was formal in nature, there is no justification for not awarding the interest from the date of institution i.e. 01<sup>st</sup> September, 2010.

25. The appeal is allowed and the award amount is enhanced from Rs.2,42,382.16 to Rs. Rs.6,80,000/- along with interest at the rate of 9% per annum from the date of institution of the original petition i.e. 01<sup>st</sup> September, 2010 till realization.

26. Respondent No.3 is directed to deposit the enhanced award amount along with up to date interest with the Registrar General of this Court within four weeks.

27. List for disbursement of the compensation amount on 18<sup>th</sup> February, 2021.

28. Appellant No.1 shall remain present in Court before the next date of hearing along with passbook of her savings bank account near the place of her residence as well as PAN card and Aadhaar card. The concerned bank of Appellant No.1 is directed not to issue any cheque book or debit card to her and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on her passbook to this effect. Appellant No.1 shall produce the copy of this order to the concerned bank, whereupon

the bank shall make an endorsement on her passbook that no cheque book and/or debit card shall be issued to Appellant No.1 without the permission of this Court. Appellant No.1 shall produce the original passbook of her individual savings bank account with the necessary endorsement on the next date of hearing. However, the concerned bank shall permit appellant No.1 to withdraw money from her savings bank account by means of a withdrawal form.

29. Copy of this judgment be sent to the Registrar General who shall circulate it to all Motor Accident Claims Tribunals. The Claims Tribunals shall note that the principles relating to the loss to the estate in *Keith Rowe* (supra) and *Dinesh Adhlak* (supra) are not applicable to the claim of the parents in respect of the death of their child, claim of children in respect of death of their parents and claim of a spouse in respect of death of his/her spouse in a motor accident.

30. Copy of this judgment be sent to Delhi Judicial Academy to sensitize the Claims Tribunals about the principles laid down by this Court in this judgement.

31. The judgment be uploaded on the website of this Court forthwith.

**JANUARY 8, 2021**  
**ds/ak**

**J.R. MIDHA, J.**