HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 392 of 2010

Smt. Kamla Devi And Others

.....Appellant(s)

Versus

The Oriental Insurance Co. Ltd. And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Sharve Singh, Neerja Singh
Counsel for Respondent(s)	:	Ashutosh Vaish

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Sri Sharve Singh, learned counsel for the appellants and Sri Ashutosh Vaish, learned counsel for respondents are present.

2. The instant appeal has been filed against the judgement dated 31.10.2009 and decree dated 11.11.2009 passed by Additional District Judge/ M.A.C.T. Court No. 2, in C.P. No. 442 of 1999.

3. Briefly stated, the accident took place on 15.05.1999 at about 2:00 a.m. on Allahabad-Rai Bareilly Road near village Malakiya, within the limits of Police Station Nawabganj, District Allahabad. Truck No. UGH-457, being driven rashly and negligently, collided with Tata Sumo No. UP-70L/1004 coming from the opposite direction. Nand Lal Singh Patel, who was travelling in the Tata Sumo, sustained fatal injuries and died on the spot.

4. The Tribunal found that the deceased was aged about 48 years and was an Advocate. He was also a member of a political party and had earlier served as a Cabinet Minister in the State of Uttar Pradesh. On the basis of his Income Tax Return for the assessment year 1999-2000, his annual income was assessed at Rs.90,000/-. After deducting 1/3rd towards personal expenses and applying the multiplier of 13, the Tribunal assessed the loss of dependency at Rs. 78,000/-. It further awarded Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate. Accordingly, an award of Rs. 784500/ was passed by Tribunal.

Arguments on behalf of the appellant-claimants

5. Learned Counsel for the appellant-claimants submitted that the annual income assessed by the Tribunal was not commensurate with the profession and social status of the deceased. His Income Tax Return showing an annual income of Rs. 1,60,000/- was wrongly ignored. Future prospects were also

not added. It was further submitted that as the deceased left behind a large number of dependants, deduction towards personal expenses should have been 1/5th instead of 1/3rd. The compensation awarded under the non-pecuniary heads was also inadequate and required enhancement in accordance with the principles laid down in Pranay Sethi.

Arguments on behalf of the respondent

6. Learned Counsel for the respondent submitted that the income of the deceased was not duly proved. The Income Tax Return relied upon by the claimants was also not properly proved. The income assessed by the Tribunal was already on the higher side and, therefore, there was no justification for any further enhancement of the compensation.

Discussions and Conclusion

7. I have considered the submissions advanced by learned counsel for the parties and perused the record.

8. The first question which arises for consideration is whether the income of the deceased was correctly assessed by the Tribunal and whether the claimants are entitled to enhancement on that basis.The deceased was admittedly an Advocate and had also held the office of Cabinet Minister in the State of Uttar Pradesh. However, the profession, social status or stature of a person, by itself, cannot be made the basis for determining his income in a claim for compensation. The income has to be established on the basis of evidence available on record. The fact that a person occupied a high position may be a relevant circumstance while appreciating the evidence, but it cannot substitute proof of actual income.

9. The Supreme Court has consistently held that determination of income for the purpose of compensation must be based upon the evidence brought on record and cannot be founded upon conjecture or assumptions divorced from such evidence. Thus, even in a claim arising out of a motor accident, the ordinary principles governing appreciation of evidence cannot be completely dispensed with merely because the deceased was a person of high social or professional standing. Presumption cannot take the place of proof.

10. The claimants relied upon the Income Tax Return to contend that the income of the deceased was Rs.1,60,000/- per annum. An Income Tax Return is certainly a relevant piece of evidence and, where duly proved and supported by other material, may furnish a reliable basis for determining income. However, filing of an Income Tax Return by itself does not make the income stated therein conclusively proved in every case. Its evidentiary

value has to be examined in the light of the surrounding material, the manner in which it was proved and whether the income disclosed therein bears reasonable correlation with the actual income of the deceased.

11. In the present case, apart from the Income Tax Return relied upon by the claimants, there is no satisfactory evidence establishing the alleged income of Rs. 1,60,000/- per annum. The Tribunal, therefore, cannot be said to have acted illegally in not accepting the said figure merely on the basis of the return.

12. On the contrary, the Tribunal has already assessed the annual income at Rs. 90,000/-. Having regard to the evidence available on record, this assessment itself appears to be on the higher side. There is, therefore, no justification to further increase the income to Rs.1,60,000/- merely on the basis of the status of the deceased or the income disclosed in the Income Tax Return, which has not been satisfactorily established by other reliable evidence.

13. The next question is whether, despite the aforesaid finding, the compensation is required to be enhanced by adding future prospects, applying a different deduction towards personal expenses and awarding higher amounts under conventional heads.

14. The object of awarding compensation under the Motor Vehicles Act is to grant just compensation for the loss suffered by the dependants on account of the death of the deceased. Such compensation is intended to provide reasonable monetary recompense for the pecuniary and non-pecuniary loss suffered by the claimants. At the same time, compensation cannot be permitted to become a source of unjust enrichment or a windfall.

15. The aforesaid principle was explained by the Supreme Court in **Helen C. Rebello (Mrs.) v. Maharashtra State Road Transport Corporation, (1999) 1 SCC 90**, wherein it was held that the expression "just compensation" connotes fairness, reasonableness and equitability and that the discretion of the Tribunal has to remain within such limitations.

16. The above principle was again explained in **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121**, wherein the Supreme Court held that "just compensation" means adequate compensation which is fair and equitable on the facts and circumstances of the case to make good the loss suffered. It was further held that compensation is not intended to be a bonanza, largesse or source of profit. The assessment, though involving certain hypothetical considerations, should nevertheless be objective and based upon fairness and consistency.

17. So far as the claim for addition towards future prospects is concerned, the submission of learned counsel for the appellants cannot be accepted in the manner in which it has been advanced.The Constitution Bench in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, has standardised the addition towards future prospects. In the case of a self-employed person or a person on fixed salary aged between 40 and 50 years, addition of 25% of the established income has been prescribed.

18. The expression "established income" is of significance. Future prospects are to be added to the income which is first determined on the basis of evidence. The principle of future prospects cannot itself be made a substitute for proof of income.The question, therefore, is not whether a self-employed person is ordinarily entitled to addition towards future prospects; the question is as to the income upon which such addition is to be made.

19. In the present case, the claimants sought to establish the annual income of the deceased at Rs.1,60,000/- on the basis of the Income Tax Return. However, as discussed above, the said income has not been satisfactorily established by independent and reliable evidence. The deceased being an Advocate and a former Cabinet Minister may undoubtedly demonstrate his professional and social standing, but such status by itself cannot determine his actual income for the purpose of computation of compensation. The Court cannot presume an income merely on the basis of status.

20. On the contrary, the Tribunal has already taken the annual income at Rs. 90,000/-, which, on an overall consideration of the evidence, is found to be on the higher side. Once the foundational figure of income adopted by the Tribunal itself is higher than what is established from the evidence, there is no justification for substituting the unproved figure of Rs. 1,60,000/- and thereafter adding future prospects to such enhanced figure. Such an exercise would result in enhancement not on the basis of proved loss but on the basis of an income which the claimants have failed to establish.

21. It is, therefore, not a case where the benefit of future prospects is being denied to the deceased merely because he was self-employed. Rather, the claim for enhancement has to fail because the higher income claimed by the appellants, upon which they seek to calculate future prospects, has not been satisfactorily proved, whereas the Tribunal has already adopted an income which is itself on the higher side.

22. The claimants have also sought reduction of the deduction towards personal expenses from 1/3rd to 1/5th on the ground that the deceased left behind a large number of dependants. The accident in the present case occurred in the year 1999 and the Tribunal, while determining the

compensation, adopted the method prescribed under the Second Schedule to the Motor Vehicles Act. The deduction towards personal expenses was accordingly made in terms of the method then being followed by the Tribunal. The claimants have not demonstrated any error in the application of the said method or brought on record any material which would justify interference with the deduction so made. The subsequent principles laid down in **Sarla Verma (Supra)** cannot, by themselves, furnish a ground to reopen the deduction adopted by the Tribunal in respect of an accident which occurred in the year 1999. The contention, therefore, does not call for interference.

23. Moreover, as noticed above, the Tribunal has already proceeded on an income which is higher than what has been satisfactorily established. The overall assessment made by the Tribunal, therefore, does not warrant interference merely by mechanically recasting each component of the calculation.

24. The claimants have also sought enhancement under the conventional and non-pecuniary heads in light of the principles laid down in **Pranay Sethi (Supra)**. There can be no dispute that the principles laid down by the Supreme Court regarding the conventional heads are required to be kept in view while determining just compensation. However, the appellate Court has to examine the award as a whole and determine whether the compensation awarded represents a just and reasonable recompense for the loss established on record.

25. The principles relating to future prospects and conventional heads are intended to ensure that the compensation does not fall short of just compensation. They do not require the Court to mechanically enhance every individual component of the award irrespective of the overall assessment. The ultimate object remains to award compensation which is fair, reasonable and commensurate with the loss established by the claimants.

26. In the present case, the Tribunal has already proceeded on a favourable assessment of income and, as noticed above, the income itself has been assessed on the higher side. In these circumstances, merely enhancing individual components of the award, without establishing any corresponding inadequacy in the overall compensation, would not advance the object of awarding just compensation.

Conclusion

27. On an overall consideration of the evidence, this Court finds that the Tribunal has already assessed the annual income of the deceased at Rs.

90,000/-, which, having regard to the evidence available on record, is itself on the higher side. The income of Rs. 1,60,000/- claimed by the appellants has not been satisfactorily established. The status of the deceased as an Advocate and former Cabinet Minister cannot, in the absence of reliable proof, furnish a basis for further enhancement of income. The Income Tax Return relied upon by the claimants, in the facts of the present case, does not by itself establish the higher income claimed.

28. Consequently, there is no justification to substitute the unproved income of Rs.1,60,000/- for the income adopted by the Tribunal and thereafter calculate future prospects on such enhanced figure. The principle of future prospects laid down in Pranay Sethi operates upon the income determined in accordance with the evidence; it cannot be employed to enlarge an income which itself has not been proved.

29. Similarly, the claim for reduction of deduction towards personal expenses and enhancement under the conventional and non-pecuniary heads does not persuade this Court to interfere with the award. The appellate exercise is intended to ensure just compensation and not to mechanically increase each component of the award irrespective of the overall compensation already determined.

30. Thus, on the facts and evidence of the present case, the compensation awarded by the Tribunal cannot be said to be inadequate so as to warrant further enhancement.

August 21, 2026
Ujjawal

(Anil Kumar-X,J.)