



2026:AHC:12444

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1282 of 2017

Laxman Prasad Mishra And Another

.....Appellant(s)

Versus

National Insurance Company Ltd. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Amit Kumar Sinha, Deepali Srivastava Sinha
Counsel for Respondent(s)	:	Rajesh Kumar

Court No. - 38

HON'BLE SANDEEP JAIN, J.

A.F.R.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation has been preferred by the claimants against the impugned judgment and award dated 31.01.2017 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1, Gorakhpur, in MACP No. 322 of 2013 (Laxman Prasad Mishra and another vs. Brijesh Singh and others), whereby, for the untimely death of Smt. Kusumlata Mishra in a motor accident that occurred on 02.05.2013, a compensation of Rs.11,93,204/- along with interest at the rate of 7% per annum has been awarded to the claimants, which has been ordered to be indemnified by the insurer of the offending Bus No.UP53-BT-7702.

2. Since no cross appeal has been filed by the owner, driver and insurer of the offending vehicle, as such, the factum of accident and negligence of the offending driver is not disputed by the respondents.

3. Learned counsel for the claimants-appellants submitted that Kusumlata Mishra (deceased) was employed as a supervisor with the Department of Women and Child Welfare in Hata, District Kushinagar and was getting a gross salary of Rs.40,156/- per month, which was also proved by PW-3 Vijay Laxmi Ojha.

4. It was further submitted that the deceased was about 58 years old at the time of the accident, but no compensation towards future prospects of the

deceased was granted by the Tribunal, whereas the claimants were entitled to get it at the rate of 20%, as per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***.

5. It was further submitted that the Tribunal has illegally not considered the house rent allowance and family planning allowance paid to the deceased for assessing compensation, whereas the gross salary being paid to the deceased should have been considered for assessing the compensation.

6. It was further submitted that on the gross salary of the deceased, which was Rs.4,81,872/- per annum, after claiming rebate of Rs.1,00,000/-, towards Section 80-C of the Income Tax Act, 1961, an income tax of Rs.18,800/- was payable, which should have been deducted by the Tribunal for assessing compensation, but the Tribunal has deducted an amount of Rs.21,543/- towards income tax payable by the deceased, which was excessive.

7. It was further submitted that keeping in view the age of the deceased, which was about 58 years at the time of the accident, a multiplier of 9 was to be applied for assessing compensation, but the Tribunal has applied a multiplier of only 4, which requires enhancement.

8. It was further submitted that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires substantial enhancement.

9. With these submissions, it was prayed that the appeal preferred by the appellants be allowed and enhanced compensation be paid to them.

10. Per-contra, learned counsel for the respondent-Insurance Company submitted that the Tribunal has considered the aspect of grant of compensation for future prospects to the claimants, but has concluded that since the husband of the deceased was getting family pension of Rs.23,632/- per month and the son of the deceased was also offered compassionate appointment, as such, on this ground, the Tribunal refused to award any compensation towards future prospects of the deceased, which was perfectly justified and requires no interference from this Court

in exercise of its appellate jurisdiction.

11. It was further submitted that in the facts and circumstances of the case, the Tribunal has awarded the right amount of compensation to the claimants, which does not warrant any enhancement from this Court in exercise of its appellate jurisdiction.

12. With these submissions, it was prayed that the appeal preferred by the claimants be dismissed.

13. I have heard the learned counsel of both the parties and perused the impugned judgment and documents submitted with the appeal.

14. The Apex Court in the case of ***National Insurance Company Ltd vs Indira Srivastava & Ors (2008) 2 SCC 763*** has held that the amount paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit and from the said amount of income, the statutory amount of tax payable thereupon must be deducted. It was further held that net income would ordinarily mean gross income minus the statutory deductions.

15. The Apex Court in the case of ***Shyamwati Sharma & Ors vs Karam Singh & Ors (2010) 12 SCC 378*** and ***Manasvi Jain Vs. Delhi Transport Corporation Ltd. & Ors. (2014) 13 SCC 22 (By 3 Judges)*** has held that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

16. In view of the above law laid down by the Apex Court, it is clear that all the allowances being paid to the deceased by his employer should be considered while assessing the compensation in a claim case and only the amount deducted towards income tax and surcharge should be considered to arrive at the net income of the deceased.

17. It is well settled that the gross salary of the deceased-employee is to

be considered for assessing the compensation in a claim case, as such, the amount deducted by the Tribunal towards house rent allowance and family planning allowance being paid to the deceased, is erroneous.

18. It is apparent that the gross monthly salary of the deceased was Rs. 40,156/- which amounts to Rs.4,81,872/- per annum, which was duly proved by PW-3, Vijay Laxmi Ojha, and was also accepted by the Tribunal. However, the Tribunal deducted a sum of Rs. 11,040/- towards house rent allowance and Rs. 5,400/- towards family planning allowance and thereafter, assessed the annual income of the deceased as Rs. 4,65,432/-. From the said amount, a further sum of Rs. 21,543/- was deducted towards income tax, and the Tribunal consequently assessed the compensation on the basis of the net annual income of Rs. 4,43,889/-, which is erroneous.

19. It is apparent that no amount being paid to the deceased towards house rent allowance and family planning allowance could have been deducted while assessing the compensation.

20. It is further apparent that after claiming rebate under Section 80-C of the Income Tax Act, 1961, only an amount of Rs.18,800/- was payable by the deceased towards income tax, which should have been deducted from the gross annual salary of the deceased, which was Rs.4,81,872/-, but the Tribunal has deducted an amount of Rs.21,543/-, which was excessive. If an amount of Rs.18,800/- payable towards income tax is deducted from the gross salary of the deceased, which was Rs.4,81,872/- per annum, then the net annual salary of the deceased comes to Rs.4,63,072/-, on the basis, of which, compensation should have been calculated by the Tribunal, but the Tribunal has calculated the compensation by taking the net salary of the deceased at only Rs.4,43,889/-, which requires enhancement.

21. It is further apparent that as per the date of birth 10.12.1954 recorded in the service book of the deceased, she was about 58 years old at the time of the accident and a multiplier of 9 was to be applied for assessing the compensation, as per the decision of the Apex Court in **Pranay Sethi** (supra), but the Tribunal has assessed the compensation by applying multiplier of 4, which requires enhancement.

22. It was further apparent that the Tribunal has awarded inadequate amount of compensation towards non pecuniary heads, which deserves substantial enhancement, keeping in view, the judgment of the Apex Court in **Pranay Sethi** (supra), **Magma General Insurance Company Ltd.** (supra) and **Rahul Ganpatrao Sable** (supra).

23. The Apex Court in the case of **Sebastiani Lakra and others vs. National Insurance Company Limited and another, (2019) 17 SCC 465, (By 3 Judges)**, while discussing the amount which are to be deducted for assessment of compensation has held as under:

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures, etc. The tortfeasor cannot take

advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Parry v. Cleaver [Parry v. Cleaver, 1970 AC 1 : (1969) 2 WLR 821 : 1969 ACJ 363 (HL)] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

24. The Apex Court in the case of **Hanumantharaju B. through LR vs. M. Akram Pasha and another, 2025 SCC Online SC 1106**, while discussing whether the pension payable to the claimant can be deducted for computing his income, has held as under:

19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as “pecuniary advantage” liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in Vimal Kanwar v. Kishore Dan (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90, held as follows:—

“19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance,

shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in Reliance General Insurance Co. Ltd. v. Shashi Sharma (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender (2020) 11 SCC 356.

25. The Apex Court in the case of **National Insurance Co. Ltd. vs Rekhaben & Ors. (2017) 13 SCC 547** held as under:-

22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view

that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no correlation between these two sources. Since the tortfeasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer.

26. It is further apparent that the Tribunal has not awarded any compensation towards future prospects of the deceased on the ground that the husband of the deceased was getting a family pension of Rs.23,632/- per month and the son of the deceased has been given compassionate appointment in place of the deceased, which is erroneous, because the above factors were not at all relevant for considering compensation in this case.

27. It is apparent from the above law laid down by the Apex Court that the family pension being paid to the husband of the deceased and the fact of compassionate appointment of the son is not at all relevant for assessing compensation in a claim case and on this basis, the claimants should not have been denied compensation towards future prospects of the deceased.

28. It is apparent that, as per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants were entitled to get compensation towards

future prospects of the deceased at the rate of 20% of his income, which has not been awarded by the Tribunal.

29. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded (in Rs.)	In Accordance with.
1.	Gross annual salary of the deceased	4,81,872/-	<i>Salary Certificate of the deceased</i>
2.	Less income tax payable on this salary	18,800/-	<i>Salary Certificate of the deceased</i>
3.	Net annual salary of the deceased	4,63,072	<i>Salary Certificate of the deceased</i>
4.	Less 1/3rd deduction towards self expenses of the deceased(2 dependents)	1,54,357/-	<i>Pranay Sethi (supra)</i>
5.	Net annual income on which claimants were dependent	3,08,715/-	<i>Pranay Sethi (supra)</i>

6.	Add future prospects @20% since deceased was aged about 58 years	61,743/-	Rule 220-A of UP Motor Vehicle Rules, 1998
7.	Total annual dependency of claimants on deceased	3,70,458/-	Pranay Sethi (supra)
8.	Multiplier applied since age of deceased was about 58 years at the time of the accident	9	Pranay Sethi (supra)
9.	Total loss of dependency to the claimants	3,70,458X9=33,34,122/-	Pranay Sethi (supra)
10.	Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years (2 claimants)	48,400X2=96,800/-	Pranay Sethi (supra), Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
11.	Loss of estate @	18,150/-	Pranay

	Rs.15,000/- increased by 10% after every 3 years.		Sethi <i>(supra)</i>
12.	Funeral Expenses @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	Pranay Sethi <i>(supra)</i>
13.	Total compensation	34,67,222/-	

30. In this way, the claimants are entitled to total compensation of Rs.34, 67,222/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending Bus No.UP53-BT-7702.

31. Accordingly, the appeal is allowed. The award of the tribunal is modified to the above extent.

32. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants keeping in view their age and dependency.

(Sandeep Jain,J.)

January 16, 2026
Mayank