



2026:AHC-LKO:21319

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL FROM ORDER No. - 36 of 2016

Nikunj Kishor Mishra And Another

.....Appellant(s)

Versus

Principal Secy.Medical Health And Family Welfare
Thr D.M.And Ors

.....Respondent(s)

Counsel for Appellant(s)	: Manish Kumar Srivastava, Rajesh Kumar Srivastava
Counsel for Respondent(s)	: Dr.Krishna Singh, Anjana Singh, Raghvendra Ojha

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Shri Manish Kumar Srivastava, learned counsel for the appellant as well as Dr. Krishna Singh, learned counsel for the respondent nos.1, 2 and 4 and perused the record.

2. The instant appeal has been preferred against the judgment and award dated 14.10.2015 passed by the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Court No.13, Lucknow (hereinafter referred to as the 'Tribunal') in M.A.C.P. No.1300357 of 2005 for enhancement of compensation.

3. Brief facts of the case are that on 23.04.2005, one Dr. Rekha Mishra, who was working as Chief Medical Officer, Rudraprayag, Uttarakhand, was travelling in the official car Tata (Spacio) bearing registration No.UA07G0716. While she was returning from Srinagar to Rudraprayag after attending a meeting, near Farasu Hanuman Temple, due to rash and negligent driving, as a result of which the vehicle fell into the river, wherein she sustained serious injuries and she was admitted in the Base Hospital and later on she succumbed to death because of the injuries. At the time of alleged accident, the deceased was aged about 55 years and was serving in the State of Uttarakhand as Chief Medical Officer in the Health Department and was drawing a gross salary of Rs.33,508/- per month. The family members of the deceased preferred a claim petition before the Tribunal, wherein written submissions were filed on behalf of respondent Nos.1 and 2, in which the journey of the deceased was put in question and it was stated that the claim has been made on highly inflated amounts.

4. The Tribunal after hearing parties and perusing documentary evidence framed following issues:

"1- क्या दिनांक 23.04.05 को राजकीय वाहन उत्तरांचल सरकार स्वास्थ्य विभाग वाहन सं० यू.-07जी/0716 टाटा स्पेशियो कार से याची सं० 1 की पत्नी तथा याची संख्या 2 डाक्टर श्रीमती रेखा मिश्रा मुख्य चिकित्साधिकारी रुद्र प्रयाग जो मीटिंग में श्रीनगर से रुद्र प्रयाग की तरफ आ रही थीं की कार की स्टेयरिंग फेल होने के कारण वाहन दुर्घटनाग्रस्त हो गया और वाहन में श्रीमती रेखा मिश्रा, भाभी एवं भतीजी की मृत्यु हो गयी?

2- क्या याचीगण प्रतिवादीगण से प्रतिकर की धनराशि पाने की अधिकारी हैं?

3- यदि अन्य कोई अनुतोष जो याचीगण के हित में हों पाने की अधिकारी हैं?"

5. The Tribunal after hearing parties and perusing documentary evidence came to the conclusion that on 23.04.2005, while the deceased was travelling in the official car, she met with an accident, wherein her car fell down in the river and she sustained serious injuries and later on succumbed to the same. The Tribunal further found that at the time of alleged accident, the deceased was 55 years old and was drawing basic salary of Rs.16,500/- per month and accordingly, came to the conclusion that notional income of the deceased would be Rs.1,98,00/- per annum and accordingly, granted a compensation of Rs.14,67,000/- along with simple interest at the rate of 7% vide impugned judgement and order dated 14.10.2015. This order has been assailed by the claimant by means of the instant appeal seeking enhancement of the compensation.

6. Shri Manish Kumar Srivastava, learned counsel for the appellant submits that the Tribunal has wrongly calculated the income of the deceased on the basis of basic pay, whereas the income ought to have been calculated on the basis of gross salary minus (-) income tax. To buttress his argument, he is placing upon a judgement passed by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others; (2017) 16 SCC 680**, wherein it has been held as under:

"59.3. While determining the income, an addition of 50% of 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, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. Incase 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."

7. He further submits that no future prospect has been awarded, whereas future prospect of 15%, as per the ratio laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) ought to have been awarded to the claimant. He further submits that under the conventional head, in which funeral expenses of Rs.5,000/- was given and nothing has been awarded towards loss of estate and only Rs.10,000/- was awarded towards loss of consortium.

8. He also submits that the compensation ought to have been awarded as per the judgement passed in the case of **Pranay Sethi** (supra) and Rs.15,000/- should be awarded towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- each towards loss of consortium. To buttress his argument, he is placing upon the ratio laid down in **Pranay Sethi** (supra), which reads as under:

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

9. Learned counsel for the appellant submits that compensation may be enhanced on the basis of ratio laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra). Learned counsel for the appellant further submits that though the ratio of the **Pranay Sethi** (supra) had made applicable retrospectively in F.A.F.O. No.139 of 2016 passed by a Coordinate Bench of this Court. He further submits that even if the ratio of **Pranay Sethi** (supra) is not applicable, there was an amendment in the **Uttar Pradesh Motor Vehicles Rules, 1988 vide notification dated 26.09.2011**, which reads as under:-

"220-A. Determination of compensation.-(1) The multiplier for determination of loss of income payable as compensation in all the claim cases shall be applied as per Second Schedule provided in the Act.

(2) Deduction for personal and living expenses of a deceased, shall be as follows—

(i) The deduction towards personal expenses of a deceased unmarried shall be 50%. Where the family of a bachelor is large and dependent on the income of the deceased, the deduction shall be 1/3 (33.33%).

(ii) The deduction towards personal and living expenses of a married person deceased shall be 1/3rd where dependent family members are 2 to 3 in number, 1/4th where dependent family members are 4 to 6 in number and 1/5th where dependent family members are more than 6 in number.

(iii) For the purpose of calculation of number of family members in clause (ii) a minor dependent will be counted as half.

(3) The future prospects of a deceased, shall be added in the actual salary or minimum wages of the deceased as under—

(i) Below 40 years of age : 50% of the salary.

(ii) Between 40-50 years of age : 30% of the salary.

(iii) More than 50 years of age : 20% of the salary.

(iv) When wages not sufficiently proved : 50% towards inflation and price index.

(4) The non-pecuniary damages shall also be payable in the compensation as follows-

(i) Compensation for loss of estate: Rs. 5000 to Rs. 10,000.

(ii) Compensation for loss of consortium: Rs. 5000 to 10,000.

(ii) Compensation for loss of love and affection: Rs. 5000 to Rs. 15,000.

(iv) Funeral expenses, costs of transportation of body; Rs. 5000 or actual expenses whichever is less.

(v) Medical expenses : actual expenses proved to the satisfaction of the Claims Tribunal.

(5) For determination of compensation in case of injuries, partial or permanent disability provisions of Second Schedule of the Act shall apply:

Provided that the Claims Tribunal may also award compensation for future prospects according to sub-rule (3) in case of permanent disability depending upon the nature, extent and its effect on the future of disabled claimants.

(6) The rate of interest shall be 7%pendente lite and future till the actual payment."

10. Per contra, Dr. Krishna Singh, learned counsel for the respondent nos.1, 2 and 4 submits that as per the claim petition, the deceased was coming from Srinagar to Rudraprayag. Actually the deceased was not coming from Srinagar to Rudraprayag, but was coming from Bareilly to Rudraprayag. He also submits that the date mentioned in the claim petition about the travel is doubtful as she was travelling even before the period of accident. He further submits that as per claim petition, a first information report was lodged at Police Station Srinagar. However, the same is not correct. He also submits that even as per postmortem report, the alleged accident could not have happened, as the driver of the vehicle

had not sustained any injury and he further submits that the accident is under doubt. The date and circumstance of the alleged accident is seriously doubtful. He further submits that statement of the driver and diesel purchase receipt shows that the vehicle was deviated from the official route. The present appeal for enhancement does not survive and is liable to be dismissed, being vitiated by fraud. No other argument has been raised as to why the compensation should not be enhanced in the instant appeal.

11. Learned counsel for the respondents submits that the ratio of the ***Pranay Sethi*** (supra) would not be applicable in this case as the impugned order in this case was passed on 14.10.2015, but the judgement passed in ***Pranay Sethi*** (supra) was pronounced on 31.10.2017. Hence, the ratio of the ***Pranay Sethi*** (supra) cannot be made applicable retrospectively.

12. In rejoinder, learned counsel for the appellant submits that all the arguments raised by learned counsel for the respondents have no bearing with the instant appeal for enhancement. He has not argued anything about the enhancement of the compensation. He further submits that once the award has been passed in this matter and the same has not been challenged, it is not open for the respondents to raise aforesaid issues on an appeal filed by the claimants for enhancement.

13. He further submits that as per the provision of Section 220A, which was applicable at the time when the impugned order was passed, future prospect ought to have been given and non pecuniary damages ought to be given as per prevailing rules.

14. Heard learned counsel for the parties and perused the record.

15. It is evident that on 23.04.2005, Dr. Rekha Mishra, then Chief Medical Officer in Rudraprayag, Uttarakhand, was traveling in a Tata (Spacio) vehicle bearing registration no.UA07G0716 provided by the Health Department. While returning from Srinagar to Rudraprayag near Farasu Hanuman Temple, the vehicle fell into the river. Dr. Mishra sustained serious injuries and was admitted to the Base Hospital, where she later succumbed to the injuries. At the time of alleged accident, she was 55 years old and was earning gross salary of Rs.33,508/- per month. The family members of the deceased filed a claim petition before the Tribunal seeking compensation.

16. The Tribunal after adducing evidence and documents available on record came to the conclusion that the accident had occurred and the family members were entitled to compensation and accordingly granted a compensation of Rs.14,67,000/- vide impugned judgement and award dated 14.10.2015. This order has been assailed by the claimants by means of the instant appeal for seeking enhancement of the compensation. The Tribunal fixed the notional income of the deceased on the basis of basic

pay, whereas the notional income ought to have been fixed on the basis of gross salary not on the basis of basic pay. As per salary slip, the gross salary received by the deceased was Rs.33,508/- per month and deduction of the income tax was Rs.4,000/-, which translated into Rs.3,54,096/- per annum.

17. It has been brought to the notice of the Court that the order of the Tribunal has not been assailed by the respondents and they have deposited the compensation amount in pursuance of the order passed by the Tribunal.

18. As far as the future prospects is concerned, though the learned counsel for the appellant has sought its determination on the basis of *Pranay Sethi (supra)*, the said judgment had not been pronounced at the time of the alleged accident or the passing of the impugned order. Hence, the ratio thereof would not be applicable. At that point of time, as per Rule 220(A) of the U.P. Motor Vehicle Rules, 1988 future prospect would have been 20%, if the deceased was more than 50 years. Further, non pecuniary damages were under various head i.e. compensation for loss of estate is from Rs.5000/- to Rs.10,000/-, for loss of consortium from Rs.5000/- to Rs.10,000/-, for loss of love and affection is from Rs.5000/- to Rs.15,000/- and funeral expenses is Rs.5000/- or actual expenses whichever is less. Since the amendment came into force in 2011 and the impugned order was passed in 2015, this Court, taking minimum values, feels that compensation for loss of love and affection ought to have been Rs.5,000/-.

19. The impugned judgment and award dated 14.10.2015 passed by the Tribunal in M.A.C.P. No.1300357 of 2005 is accordingly modified and the amount of compensation is enhanced to the following terms:

Head	Amount awarded by the Tribunal	Amount awarded by this Court	In accordance with
Monthly income	Rs.16,500/-	33508-4000= Rs.29,508/-	
Annual income	Rs.1,98,000/-	Rs.3,54,096/-	
Future prospects	Nil	20% of 354096=Rs.70,819.2/-	Rule 220(A) of MV Rules
Deduction	1/3rd of	1/3rd of (354096+70819.2)	

towards personal expenses	198000=Rs.66000/-	= Rs.1,41,638.4/-	
Multiplier applied (age 55 years)	11	11	
Loss of Income	11X(198000-66000) Rs.14,52,000/-	11X(354096+70819.2-141638.4)=Rs.31,16,042.8/-	
Funeral expenses	Rs.5,000/-	Rs.5,000/-	
Loss of consortium	Rs.10,000/-	Rs.10,000/-	
Loss of love and affection	Nil	Rs.5,000/-	Rule 220(A) of MV Rules
Total	Rs.14,67,000/-	Rs.31,36,063/-	
Interest	7%	7%	

20. The Tribunal while providing the amount in terms of this judgment shall adjust the amount, if any, already paid/ provided to the appellants.

21. With the above modification, the instant appeal is **disposed of**.

22. Let lower court record be returned to Court concerned along with the copy of this judgment for necessary compliance.

(Prashant Kumar,J.)

March 25, 2026

Anupam S/-