IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4634 OF 2021
(Arising out of S.L.P. (Civil) No.26687 of 2018)

NEW INDIA ASSURANCE CO. LTD. …APPELLANT(S)

VERSUS

URMILA SHUKLA & ORS. …RESPONDENT(S)

O R D E R

UDAY U. LALIT, J.

1. Leave granted.

2. This appeal challenges the judgment and order dated 24.04.2018 passed by the High Court of Judicature at Allahabad dismissing First Appeal No. 2129 of 2018. Said appeal was preferred by the present appellant challenging the determination by Motor Accidents Claim Tribunal, Allahabad ("the Tribunal", for short) vide its award dated 17.01.2018, whereby compensation in the sum of Rs.24,43,432/- was awarded with 7% interest, while considering the claim in respect of an accident which resulted in the death of one Jairam Shukla.

3. While assessing the compensation, reliance was placed by the Tribunal on Rule 220A of the U.P. Motor Vehicles Rules, 1998 ("the Rules" for short). For the present purposes, we are concerned with Rule 3(iii) of

the Rules which is to the following effect:

> "(3) The future prospects of a deceased, shall be added in the actual salary or minimum wages of the deceased as under:
>
> …
>
> (iii) More than 50 years of age: 20% of the salary."

4. The basic ground of challenge by the appellant is that sub-rule 3(iii) of Rule 220A is contrary to the conclusions arrived at by the Constitution Bench of this Court in *National Insurance Company. Ltd. vs. Pranay Sethi* reported in (2017) 16 SCC 680 ("Pranay Sethi", for short).

5. Considering the importance of the questions involved, this Court appointed Mr. A.D.N. Rao, learned Advocate to assist the Court as Amicus Curiae.

6. Mr. Rao has submitted a note which states that apart from the State of U.P. similar provision exists in the State of Uttarakhand which had adopted the Rules in its application to that State after reorganization.

7. Mr. Rao has invited our attention to the decision of this Court in *Pranay Sethi* and specially paragraphs 31 and 55 to 58 which for facility are quoted hereunder:

> "31. Though we have devoted some space in analyzing the precedential value of the judgments, that is not the thrust of the controversy. We are required to keenly dwell upon the heart of the issue that emerges for consideration. The seminal controversy before us relates to the issue where the deceased was self-employed or was a person on fixed salary without provision for annual increment, etc., what should be the addition as regards the future prospects. In

Sarla Verma [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], the Court has made it as a rule that 50% of actual salary could be added if the deceased had a permanent job and if the age of the deceased is between 40-50 years and no addition to be made if the deceased was more than 50 years. It is further ruled that where deceased was self-employed or had a fixed salary (without provision for annual increment, etc.) the courts will usually take only the actual income at the time of death and the departure is permissible only in rare and exceptional cases involving special circumstances.

…

55. 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 discretion 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* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and it has been approved in *Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . 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 endeavour has been made by this Court for standardisation 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 standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

56. The seminal issue is the fixation of future prospects in cases of deceased who are self-employed or on a fixed salary. *Sarla Verma* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] 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.

57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, 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 apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases 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 standardisation 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.

58. 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* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the same has been approved in]*Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . 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."

8. It is submitted by Mr. Rao that the judgment in *Pranay Sethi* does not show that the attention of the Court was invited to the specific rules such as Rule 3(iii) which contemplates addition of 20% of the salary as against 15% which was stated as a measure in *Pranay Sethi*. In his submission, since the statutory instrument has been put in place which affords more advantageous treatment, the decision in Pranay *Sethi* ought not to be considered to limit the application of such statutory Rule.

9. It is to be noted that the validity of the Rules was not, in any way, questioned in the instant matter and thus the only question that we are called upon to consider is whether in its application, sub-Rule 3(iii) of Rule 220A of the Rules must be given restricted scope or it must be allowed to operate fully.

10. The discussion on the point in *Pranay Sethi* was from the standpoint of arriving at "just compensation" in terms of Section 168 of the Motor Vehicles Act, 1988.

11. If an indicia is made available in the form of a statutory instrument which affords a favourable treatment, the decision in *Pranay Sethi* cannot

be taken to have limited the operation of such statutory provision specially when the validity of the Rules was not put under any challenge. The prescription of 15% in cases where the deceased was in the age bracket of 50-60 years as stated in *Pranay Sethi* cannot be taken as maxima. In the absence of any governing principle available in the statutory regime, it was only in the form of an indication. If a statutory instrument has devised a formula which affords better or greater benefit, such statutory instrument must be allowed to operate unless the statutory instrument is otherwise found to be invalid.

12. We, therefore, reject the submission advanced on behalf of the appellant and affirm the view taken by the Tribunal as well as the High Court and dismiss this appeal without any order as to costs.

13. In the end, we express our sincere gratitude for the assistance rendered by Mr. A.D.N. Rao, learned Amicus Curiae.

…….J.
[UDAY UMESH LALIT]

…….J.
[AJAY RASTOGI]

New Delhi;
August 06, 2021.

ITEM NO.21 Court 3 (Video Conferencing) SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 26687/2018

(Arising out of impugned final judgment and order dated 24-04-2018 in FAFO No. 2129/2018 passed by the High Court of Judicature at Allahabad)

NEW INDIA ASSURANCE CO. LTD. Petitioner(s)

VERSUS

URMILA SHUKLA & ORS. Respondent(s)

(Mr. A.D.N. Rao, learned Advocate as Amicus Curiae.
Mr. Garima Prashad, Standing Counsel for the State of U.P.)

Date : 06-08-2021 This petition was called on for hearing today.
CORAM :
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Viresh B. Saharya, AOR
Mr. C. K. Gola, Adv.
Mr. Abhishek Gola, Adv.

For Respondent(s) Mr. Sharve Singh, Adv
Mr. Gaurav, AOR

Mr. Pradeep Misra, AOR
Mr. Suraj Singh, Adv.
Mr. Manoj Kumar Sharma, Adv.
Mr. Bhuwan Chandra, Adv.

Mr. Annam D. N. Rao, AOR (AC)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH) (VIRENDER SINGH)
COURT MASTER (SH) BRANCH OFFICER
(SIGNED ORDER IS PLACED ON THE FILE)