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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Reserved on: 02.08.2023******Date of decision: 10.08.2023***+ **MAC.APP. 833/2018****RAGHAV SINGH**

..... Appellant

Through: Mr.Arun Sharma, Adv.

versus

**DINESH KUMAR & ORS (BHARTI AXA GENERAL
INSURANCE CO LTD)**

..... Respondents

Through: Mr.Pankaj Gupta, Adv. for
Ms.Suman Bagga, Adv. for R-
3.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. The present appeal has been filed by the appellant, who was the Claimant in Claim Petition bearing No. 261/2016 titled ***Raghav Singh v. Dinesh Kumar & Anr.*** before the learned Motor Accidents Claims Tribunal, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal'), challenging the Award dated 31.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Tribunal.

2. The wife of the appellant/claimant, that is, Smt. Prem Lata, aged 27 years (hereinafter referred to as the 'deceased') was employed as a Constable with the Uttar Pradesh Police. She died as a result of the injuries suffered by her in the motor vehicle accident that occurred on 27.07.2013 on the road leading to Shastri Nagar in front of PS Kavi Nagar, Ghaziabad, Uttar Pradesh, while she was riding pillion on the motorcycle being



driven by her colleague, Constable Prashant Kumar, and while being on her way to the Traffic Police Office, Police Line, from PS Kavi Nagar. The accident was with a truck bearing No. UP-14AH9578 (hereinafter referred to as the 'Offending Vehicle') that came at a high speed from Hapur Chungi side and hit the motorcycle from behind, leading to the fall of the deceased and crushing the deceased under its tyre. At the time of the accident/death, the deceased was in the 8th month of pregnancy.

3. The learned Tribunal, by its Impugned Award, has held that the deceased died due to the negligent driving of the offending vehicle. For the award of compensation, the learned Tribunal determined the net salary of the deceased as Rs.17,052/- per month. The learned Tribunal, placing reliance on the judgment of this Court in *Keith Rowe v. Prashant Sagar & Ors.*, Neutral Citation no. 2010:DHC:234, held that as the appellant herein is employed as a Constable in the Uttar Pradesh Police and is admittedly drawing a salary in the sum of Rs.19,500/- per month, therefore, he was not financially dependent on the deceased and cannot seek loss of dependency, however, would be entitled to loss of estate, which was calculated as 1/3rd of the income of the deceased.

4. The first challenge of the appellant herein flows from the above finding of the learned Tribunal. The learned counsel for the appellant submits that the loss of the estate should have been considered by deducting 1/3rd of the income of the deceased for her personal expenses, rather than taking it at 1/3rd of the income of the deceased.



5. I find no merit in the said submission of the learned counsel for the appellant. In **Keith Rowe** (Supra), this Court, placing reliance on the judgment of the Karnataka High Court in the case of **A. Manavalagan v. A. Krishnamurthi and Ors.**, 2005 (1) ACC 304 : 2005 ACJ 1992, held as under:-

*“9. The appellant was not financially dependent upon the deceased and, therefore, the appellant is not entitled to the compensation for loss of dependency. However, the appellant is entitled to the loss of estate. The law in this regard is well settled by the judgment of the Karnataka High Court in the case of **A. Manavalagan Vs. A. Krishnamurthy and Ors.**, 2005 (1) ACC 304/2005 ACJ 1992, wherein it was held as under:-*

“8. On the contentions urged, the following questions arise for consideration:

(i) What are the principles for determining compensation, where the claimant is not a dependant?”

*“12. In **GOBALD MOTOR SERVICE v. R.M.K. VELUSWAMI**, MANU/SC/0016/1961: [1962]1SCR929 referring to Sections 1 and 2 of the Fatal Accidents Act (Sections 1A and 2 after 1951 amendment to the said Act), the Supreme Court pointed out the difference between damages recoverable under the said two Sections. It was held that while under Section 1 (new Section 1A) damages are recoverable for the benefit of the persons mentioned therein, under Section 2, compensation goes to the benefit of the estate; whereas under Section 1, damages are payable in respect of loss sustained by the persons mentioned therein, under Section 2 damages can be claimed inter alia for*



loss of expectation of life and loss to the estate. The Supreme Court held that persons who claim benefit under Section 1 and 2 need not be the same as the claims under the said two Sections are based upon different causes of action. The Supreme Court held:

"The principle in its application to the Indian Act has been clearly and succinctly stated by a division bench of the Lahore High Court in SECRETARY OF STATE v. GOKAL CHAND (AIR 1925 Lah 636). In that case, Sri SHADILAL CJ observed thus:

"The law contemplates two sorts of damages: the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered from part of the assets of the estate.

An illustration may clarify the position X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependants (we will ignore the other expenditure incurred by him). X-Y, i.e., Z is the amount he saves every year. The capitalised value of the income spend on the dependants, subject to relevant deductions, is the pecuniary loss sustained by the members of his family though his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants



under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation under Section 1, representing the amount that the deceased would have spent on them, if alive, to that extent there should be deduction in their claim under Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently, if under Section 1 they got capitalised value of Y; under Section 2 they could get only the capitalised value of Z, for the capitalised value of Y+Z, i.e., X, would be the capitalised value of his entire income."

"The rights of action under Section 1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the Sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of personal loss under Section 1 of the Act, the portion shall be excluded in giving compensation under Section 2 and vice versa." ...

"15. Where a breadwinner dies and his wife, children and parents, who are normally depending on the deceased, claim compensation, the method of computation is now standardized. The Court first finds out the income of the deceased, then estimates how much he would have spent for himself (for his personal and living expenses). The



balance is taken as the contribution to the dependents (family). The said estimate of the amount contributed to the family per year, which is the annual dependency, becomes the basis for arriving at the compensation. It is converted into a lump sum by multiplying it by the number of years during which he would have contributed to the family (duly scaled down to take several uncertainties into account). Thus, the annual dependency becomes the multiplicand and the number of years' purchase becomes the multiplier. As it is well settled that there cannot be a duplication of award under Sections 1A and 2 of the FA Act, where the main head for award of compensation is loss of dependency, the Courts will not duplicate the award under the head of loss of estate. Instead a conventional sum (Say Rs. 10,000/-) is awarded under the head of loss of estate, where the income has already been taken note of under the head of loss of dependency.

16. But, what would be the position if the claimant, though a legal heir is not a dependant of the deceased? Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the 'house hold' as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate under Section 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently



what is to be awarded under the head of loss of dependency under Section 1A would be nil, as there is no real pecuniary loss to the members of the family.

17. In GAMMELL v. WILSON, 1981(1) ALL ER. 578 the House of Lords held that in addition to the conventional and moderate damages for loss of expectation of life, damages for loss to the estate should include damages for loss of earnings of the lost years. The annual loss to the estate was computed to be the amount that the deceased would have been able to save after meeting the cost of his living and damages for loss to the estate were computed after applying a suitable multiplier to the annual loss. GAMMEL was relied on in SUSAMMA THOMAS (Supra) and by the Madhya Pradesh High Court in RAMESH CHANDRA v. M.P. STATE ROAD TRANSPORT CORPORATION, 1983 ACC. C.J 221".

18. In MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION v. SUDHAKAR, 1977 ACJ 290 the Supreme Court considered a case where an employed husband claimed compensation in regard to the death of his wife who was employed on a monthly salary of Rs. 200/- to Rs. 250/-. The Supreme Court observed:

"We find it difficult to agree that only half of that amount would have been sufficient for her monthly expenses till she retired from service, so that the remaining half may be taken as the measure of her husband's monthly loss. It is not impossible that she would have contributed half of her salary to the household, but then it is reasonable to suppose that the husband who was



employed at slightly higher salary would have contributed his share to the common pool which would have been utilised for the lodging and boarding of both of them. We do not therefore think it is correct to assume that the husband's loss amounted to half the monthly salary the deceased was likely to draw until she retired. If on an average she contributed Rs. 100/- every month to the common pool, then his loss would be roughly not more than Rs. 50/- per month."

19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of



cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family



constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

20. The following illustrations with reference to the case of a deceased who was aged 40 years with a monthly income of Rs. 9000/- will bring out the difference between cases where claimants are dependents and cases where claimants are not dependents.

(i) If the family of the deceased consists of a dependant wife and child, normally one-third will be deducted towards the personal and living expenses of the deceased. The balance of Rs. 6000/- per month (or Rs. 72000/- per annum) will be treated as contribution to the dependent family. The loss of dependency will be arrived by applying a multiplier of 14. The loss of dependency will be Rs. 10,08,000/- plus Rs. 10,000/- under the head of loss of Estate.

(ii) If the family of the deceased was larger, say consisting of dependent parents, wife and two children, necessarily the deceased would spend more on his family and the deduction towards personal and living expenses of the deceased will H.R.ink to one-fifth instead of one-third (Note: In Gulam Khader v. United India Insurance Co., Ltd., - ILR 2000 Kar 4416 details of this illustration have been given). Therefore the deduction toward personal and living expense would be Rs. 1800/- per month (one-fifth of Rs. 9000/-) and contribution to the family would be Rs. 7200/- per month or Rs. 86,400/- per



annum. Thus loss of dependency will be Rs. 12,09,600/- (by applying the multiplier of 14). The award under the head of loss of estate would be Rs. 10000/-.

(iii) If the deceased was a bachelor with dependent parents aged 65 and 60 years, normally 50% will be deducted towards personal and living expenses of the deceased. This is because a bachelor will be more care free as he had not yet acquired a wife or child and therefore would tend to spend more on himself. There was also a possibility of the bachelor getting married in which event the contribution to parents will get reduced. Therefore the contribution to the family (parents) will be Rs. 4500/- per month or Rs. 54000/- per annum. As the multiplier will be 10 with reference to age of the mother, the loss of dependency will be Rs. 5,40,000/-. Loss of Estate would be a conventional sum of Rs. 10,000/-.

Note: The above three illustrations relate to cases where the claimants are dependants. The said illustration demonstrate that even though the income of the deceased and age of the deceased are the same, the 'loss of dependency' will vary, having regard to the number of dependants, age of the dependants and nature of dependency. The ensuing illustrations relate to cases where the legal heirs of the deceased are not dependants.

(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of 'loss of dependency' may not arise. Each will be spending from his/her earning



towards his living and personal expenses. Even if both pool their income and spend from the common income pool, the position will be the same. In such a case the amount spent for personal and living expenses by each spouse from his/her income will be comparatively higher, that is one-fourth of his/her income. Each would be saving only the balance, that is one-fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27000/- per annum, By adopting the multiplier of 14, the loss to estate will be Rs. 3,78,000/-.

*Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing the expenses. As stated in **BURGESS v. FLORENCE NIGHTINGALE HOSPITAL (1955(1) Q.B. 349)**, 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is Rs.*



3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 = 168,000/-$ and loss to estate would be $36000 \times 14 = 504,000/-$. In all Rs. 6,72,000/- will be the compensation.

(v) If the deceased was a bachelor and the claimants are two non-dependent brothers/sisters aged 47 years and 45 years with independent income, the position would be different. As the deceased did not have a 'family', the tendency would be to spend more on oneself and the savings would be hardly 15%. If the saving is taken as 15% (Rs. 1350/- per month), the annual savings would be Rs. 16,200/- which would be the multiplicand. The multiplier will be 13 with reference to the age of the claimants and the loss of estate would be Rs. 2,10,600/- per annum.

Though the quantum of savings will vary from person to person, there is a need to standardise the quantum of savings for determining the loss to estate (where the claimants are not dependants) in the absence of specific evidence to the contrary. The quantum of savings can be taken as one-third of the income of the deceased where the spouses are having a common establishment and one-fourth where the spouses are having independent establishments. The above will apply where the family consists of non-dependant spouse/children/parents. Where the claimants are non-dependant brothers/sisters claiming on behalf of the estate, the savings can be taken as 15 % of the income. The above percentages, one of course, subject to any specific evidence to the contrary led by the claimants."

10. The learned Tribunal awarded $1/4^{\text{th}}$ of the



income of the deceased as loss of estate to the appellant. However, as per the judgment of Karnataka High Court in the case of A.Manavalagan Vs. A. Krishnamurthy (supra), the loss of estate is to be taken as 1/3rd of the income of the deceased where the husband and wife are living together. The appellant and the deceased were living together and, therefore, the loss of estate is taken to be 1/3rd of the income of the deceased.”

6. By a separate judgment of the same date, the same learned Judge in ***Dinesh Adhlak v. Pritam Singh & Ors.***, 2010 SCC OnLine Del 165, reiterated that where the husband and wife were having common establishment, and the husband was not financially dependent on the wife, the quantum of savings for the purposes of determining the loss of estate shall be taken as 1/3rd of the income of the deceased. However, where the husband and wife were having independent establishments, such savings shall be taken as 1/4th of the income of the deceased.

7. In the present case, the learned Tribunal has proceeded on the basis that the appellant and the deceased were having a common residence and has, therefore, determined the loss of estate at 1/3rd of the income of the deceased. No infirmity can be found in the above assessment of the learned Tribunal.

8. The learned Tribunal has further awarded a sum of Rs.2,50,000/- to the appellant towards the death of the eight month old foetus. In awarding the said amount, the learned Tribunal has placed reliance on the judgment of this Court in ***Prakash & Ors. v. Arun Kumar Saini & Anr.***, 2010 SCC OnLine Del 478.



9. The learned counsel for the appellant submits that the learned Tribunal has erred in restricting the compensation towards the death of the eight month old foetus only to Rs.2,50,000/-. He submits that the learned Tribunal has failed to appreciate that this was going to be the first child of the petitioner with the deceased. With the death of the deceased and the loss of the foetus, the entire family of the appellant stood wiped-out. He submits that, therefore, the appellant was entitled to a higher compensation on account of the loss of foetus.

10. I have considered the submission made.

11. In *Prakash & Ors.* (Supra), this Court has held that an unborn child/foetus of five months onwards in the mother's womb till its birth is treated as equal to a child in existence. It was held that the unborn child to whom the live birth never comes is held to be a '*person*' who can be the subject of an action for damages for his death. The foetus is another life in a woman and a loss of the foetus is actually a loss of a child in the offing. It was held that, therefore, the claimants therein are entitled to compensation for the loss of the foetus. On the question of quantification of damages on account of loss of foetus, this Court held as under:-

“21. The judgment of this Court in National Insurance Company Ltd. v. Farzana (supra) relates to the death of 7 year old child whereas the present case relates to the death of a seven months old foetus. The seven months old foetus cannot be compared with seven years old child and, therefore, this Court is not inclined to award Rs. 3,75,000/- to the appellants. A foetus shall be treated as a child does not mean that the compensation in respect of a



foetus shall be equal to a seven year old school going child. The love and affection of the parents for seven year old child cannot be equated with that of a foetus which has yet to take birth. The love and affection develops after the birth of the child and it keeps on growing and goes deep in the memory. The death of a seven year old child would leave deep memories and, therefore, deeper hurt. In case of death of a child, the photographs of the child and other articles belonging to him/her keep on reminding the parents of the child and make them sad. Memories are also refreshed when parents see other children of same age and it takes a very long time for pain and suffering to dissolve, whereas there are no such memories in case of a foetus and, therefore, lesser hurt. The compensation awarded to a seven year old child, therefore, needs appropriate correction. Considering that Rs. 2,50,000/- was awarded by Madhya Pradesh High Court in the case of Shradha (supra), Rs. 2,00,000/- by Madras High Court in the case of Krishnaveni (supra) and Rs. 1,50,000/- by Karnataka High Court in the case of Bhazvaribai (supra), Rs. 2,50,000/- is awarded to the appellants in the present case.”

12. In view of the above judgment, there can be no doubt that the appellant herein is entitled to compensation that may be found ‘just’ for the loss of the foetus carried by the deceased at the time of the accident/her death.

13. In my view, the learned Tribunal has erred in restricting the compensation to only Rs.2,50,000/-, which was awarded by this Court in **Prakash & Ors.** (Supra), a judgment dated 05.02.2010. In the present case, the accident, as noted hereinabove, had taken place on 27.07.2013, and unlike in the case of the claimants in **Prakash & Ors.** (Supra), who had two



other children, the appellant herein lost his entire family in the accident, including the child whom he could never see. Compensation in each case has to be determined on its own facts, and while the same cannot be arbitrary or result in a windfall gain to the claimant, at the same time it cannot be static for all times to come and for all factual situations.

14. Keeping in view the facts of the present case, I find the compensation of Rs.2,50,000/- awarded by the learned Tribunal to be inadequate. The same shall stand enhanced to Rs.5,00,000/-.

15. As by the Impugned Award, the liability to pay the compensation to the appellant has been fastened on the respondent no.3 alone, the respondent no.3 shall deposit the enhanced amount of compensation and any compensation awarded by the learned Tribunal, which remains to be deposited, along with interest at the rate of the 9% per annum from the date of filing of the Claim Petition till its deposit, if not already deposited, with the learned Tribunal, within a period of six weeks from today. The compensation amount shall be released in favour of the appellant herein by the learned Tribunal in accordance with the 'mode of disbursal' as stipulated in the Impugned Award, with the same being suitably modified in view of the enhancement granted by this judgment.

16. The appeal is allowed in the above terms.

NAVIN CHAWLA, J

AUGUST 10, 2023/rv/AS