

BEBI GIRI V. NATIONAL INSURANCE (2023-4)212 PLR 405 (SC), PLRonline 416684

SUPREME COURT OF INDIA

*Before:- Justice Sanjay Kishan Kaul and Justice Abhay S. Oka, JJ.*

BEBI GIRI – Appellant

*Versus*

NATIONAL INSURANCE CO. LTD. – Respondent

Civil Appeal No. 6551 of 2022 (Arising out of S.L.P.(C) No.8768 of 2018).

**Motor Vehicles Act, 1988 (59 of 1988) S. 166 – Tribunal awarded a sum of Rs.50,000/- towards loss of estate, a sum of Rs.1,00,000/- towards love and affection and a sum of Rs.25,000/- towards funeral expenses- The accident is of the year 2011 – Therefore, the loss of estate and funeral expenses will have to be taken at Rs.15,000/- each – The appellant being the mother of the deceased, is not entitled to the amount payable on account of loss of consortium.**

#### **Cases Referred :-**

1. (2017-4)188 PLR 693(SC), *National Insurance Company Ltd. v. Pranay Sethi*
2. (2009-3)155 PLR 022 (SC), *Sarla Verma (Smt) v. Delhi Transport Corporation*

*For the Appellant:- Mr. Sudhir Naagar, Mr. Anshuman Bal, Mr. Mohit Singh. For the Respondent:- Mr. Abhishek Gola, Mr. Viresh B. Saharya, Mr. Akshat Agarwal and Mr. Anshul Mehral.*

#### **ORDER**

(06.09.2022) – Leave granted.

2. Heard learned counsel appearing for the appellant and the learned counsel appearing for the respondent. The appellant is the mother of one Amit Giri ('the deceased'). On 22nd September 2011, when the deceased was travelling by auto rickshaw, a truck insured with the respondent – Insurer, gave a dash to the auto rickshaw. The deceased succumbed to the injuries sustained in the accident. Initially, a claim petition under Section 166 of the Motor Vehicles Act, 1966 was filed by the appellant and one Ashok, the father of the deceased, who died during the pendency of the claim petition.

3. The age of the deceased was about twenty-two years at the time of the accident. The Motor Accident Claims Tribunal (the Tribunal) proceeded on the basis that the income of the deceased was Rs.6,422/- per month being the minimum wages payable at the relevant time. The Tribunal granted total compensation of Rs.7,14,448/- with interest thereon at the rate of 9 per cent per annum. The appellant filed an appeal for enhancement before the

High Court, which has been dismissed by the impugned judgement.

4. After having heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent, we find that the quantification of compensation made by the Tribunal is not consistent with the law laid down by the Constitution Bench in the case of *National Insurance Company Ltd. v. Pranay Sethi & Ors* (2017-4)188 PLR 693(SC),. The relevant conclusions of the Constitution Bench read thus:

“59. In view of the aforesaid analysis, we proceed to record our conclusions:

59.1.....

59.2.....

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. In case 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.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with para 42 of that judgement.

59.7. The age of the deceased should be the basis for applying the multiplier.

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.”

5. The Tribunal found that the appellant was self-employed. In terms of the decision in the case of *Pranay Sethi*, the High Court ought to have added 40 per cent on account of future prospects of increase in the income. The Tribunal ought to have applied multiplier of 18, as held in the case of *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.*, (2009-3)155 PLR 022 (SC), 2009(6) SCC 121. The Tribunal awarded a sum of Rs.50,000/- towards loss of estate, a sum of Rs.1,00,000/- towards love and affection and a sum of

Rs.25,000/- towards funeral expenses. The accident is of the year 2011. Therefore, the loss of estate and funeral expenses will have to be taken at Rs.15,000/- each. The appellant being the mother of the deceased, is not entitled to the amount payable on account of loss of consortium.

6. The monthly income will have to be taken at Rs.8,990/- by adding 40 per cent to the minimum wages taken at Rs.6,422/- per month. In terms of the decision in the case of *Sarla Verma*, one half of the amount will have to be deducted towards personal and living expenses of the deceased. Thus, by taking multiplier of 18, the total amount payable will be Rs.9,70,920/- ( $\text{Rs.}4495 \times 12 \times 18$ ). In addition, the appellant will be entitled to the total amount of Rs.30,000/- against conventional heads of loss of estate and funeral expenses. Accordingly, the appellant will be entitled to a total compensation of Rs.10,00,920/-.

7. Hence, the appeal is partly allowed. The respondent shall pay balance amount of Rs.2,86,482/- to the appellant with interest as awarded by the Tribunal within a period of three months from today.