REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7046 OF 2022
[Arising out of Special Leave Petition (C) No. 31931 of 2017]

K. Ramya & Ors. … Appellant(s)

VERSUS

National Insurance Co. Ltd. & Anr. … Respondent(s)

JUDGMENT

Surya Kant, J.

1. Leave Granted.

2. The present appeal is directed against the judgment dated 30.06.2017 passed by the High Court of Judicature at Madras, Madurai Bench whereby the appeal preferred by the National Insurance Co. Ltd. (Respondent No.1; hereinafter, "Insurance Company") against the award dated 06.10.2012 passed by Motor Vehicle Accident Claims Tribunal, Tiruchirappalli (hereinafter, "Tribunal") was allowed and the compensation granted to Apellants was reduced from Rs. 4,29,37,700/- to Rs. 57,90,000/- along with requisite interest. The factual matrix is succinctly discussed below before delving into the issue of law regarding determination of quantum of compensation which requires adjudication before us.

A. FACTS

3. S. Kumareshan (hereinafter, "Deceased") was a resident of Tiruchirappalli, Tamil Nadu. On the fateful day, at about 4 PM in the evening, he was travelling alone in a Lancer Car bearing Registration No. TN 45 S 9199 and met with an unfortunate accident with an Ambassador Car bearing Registration No. TN 59 E 9288 along the stretch of road between Sethathupatti and Soriampattti. The collision was so powerful that the drivers of both vehicles passed away before any medical assistance could reach them. The sole survivors of the collision were occupants of the Ambassador Car, who miraculously escaped death but were saddled with multiple injuries.

4. The Deceased was aged above 31 years at the time of death and was an income tax assessee. He was a businessman who held diverse interests in arenas such as jewellery, textiles, exports and transport. Furthermore, he also drew income from his agricultural lands and leased out real estate. At the time of his demise, he left behind a widow, two minor children and parents who were stated to be dependent on him. It is to be noted that among these dependents, the father of the Deceased passed away during the proceedings before the High Court.

5. The Deceased's dependents filed a claim petition for Rs. 7,00,00,000/- in August 2004, alleging, *inter alia*, that he died as a result of the injuries suffered in the abovementioned accident of 10.06.2004, which occurred due to the rash and negligent driving of the Ambassador Car which the Insurance Company had insured. Before the Tribunal, the Insurance Company took the stance that the Deceased was the one who was responsible for the accident and that the compensation sought by the Deceased was exorbitant. It is worth noting that the injured occupants of the Ambassador Car who survived the crash also filed their respective claim petitions.

6. In reaching its verdict, the Tribunal relied upon the statements of the abovementioned injured occupants to conclude that it was the driver of the Ambassador Car who was solely responsible for the crash and therefore assigned liability for the accident to him, which ultimately was to be borne by the Insurance Company. As a result, the claim petition of the Deceased's dependents was allowed partly, and compensation of Rs 4,29,37,700/- was granted along with interest at the rate of 7.5% per annum. The Tribunal relied on the Deceased's income tax returns and other financial documents, which were supported by the testimonies of the chartered accountant, auditor, and wife of the deceased (Appellant No. 1).

7. The aggrieved Insurance Company filed its appeal which was decided through the impugned judgement dated 30.06.2017. The High Court although being in total agreement with the Tribunal's reasoning in finding that the Ambassador Car driver was solely liable for the accident, disagreed with the approach of the Tribunal in respect to the computation of compensation, primarily under the head of 'loss of income'. It emphasized that the Deceased before his death had transferred his interest in some of the partnership firms in favour of his minor children. Furthermore, it highlighted that almost all of the Deceased's income consisted of returns he received on his capital assests. Even after his death, the same assets were transferred to his legal heirs who continued to enjoy the benefits derived from them. The impugned judgement's reasoning was hinged on the premise that income derived from capital assets cannot be said to be income earned out of the Deceased's personal skills as there was no real contribution by him. Consequently, the High Court concluded that the Deceased's dependants suffered no loss of income and instead computed the compensation by fixing his salary at Rs 25,000/- per month on a notional basis as per his educational qualification. Furthermore, it also made minor alterations under other conventional heads and accordingly, the compensation was reduced to Rs 57,90,000/- along with interest of 7.5% per annum.

B. CONTENTIONS

8. We have heard the learned counsel for parties and perused the documents produced on record. It must be noted that Learned counsels for both sides have not disputed the finding concerning the Insurance Company's liability to pay the compensation. The only limited question that remains disputed before us in the present proceedings pertains to concerning the quantum of compensation that is to be granted to the Appellants.

9. Mr. K. Radhakrishnan, learned senior counsel for the Appellants contended that – *Firstly,* High Court via impugned decision has erred by computing the compensation on the basis of notional income despite the fact that the Appellants adduced specific evidence to ascertain the income earned by Deceased. He strongly asserted that the Tribunal rightly relied on the income tax returns and the audit reports of the Deceased to compute the amount under the head of 'loss of income' and stated that relevant testimonies supported the same; *Secondly,* he contended that the Deceased was actively involved in running multiple businesses and even undertook specialized courses to achieve success. Hence, the High Court has unjustly concluded that the Deceased has earned no income from his personal skills; *Thirdly,* it is argued that the only deduction allowed while computing an individual's income is the tax payable by him in terms

of the decision of the Constitution Bench in ***National Insurance Co. Ltd. v Pranay Sethi***.[1]; *Finally*, he contended that the computation of compensation under Section 168 of Motor Vehicles Act, 1988 (hereinafter, "The Act") must be 'just' and the same must co-relate to the standard of 'fairness, reasonableness and equitability' as per the decision in ***Pranay Sethi***.[2]

10. On the contrary, learned counsel for the Insurance Company argued that High Court has rightly reduced the compensation in view of the fact that the income tax returns and the audit reports highlight that the Deceased's income essentially constituted of returns from his capital assets which have been duly bequeathed to the Deceased's dependents. It was argued that loss of income must be equivalent to only that portion which corresponds to the skill of the deceased, as a consequence of which there has been no loss of income to the Appellants in the present case. High Court has rightly taken notional income as the basis of determination of compensation under the head of 'loss of income'. The learned counsel has placed substantial reliance on the decision of this court in ***Rani Gupta v United India Insurance Limited***[3] to advance the argument that in the case of accidental death of people in business, the genuine determination for

1 *National Insurance Co. Ltd. v Pranay Sethi* (2017) 16 SCC 680, para 59.3.
2 ibid, para 55.
3 *Rani Gupta v United India Insurance Limited* (2009) 13 SCC 498, para 24.

loss of income depends on ascertaining the Deceased's contribution in running the business and the same is a factual enquiry which varies on the facts and circumstances of each case.

C. ANALYSIS

C.1 DETERMINATION OF 'JUST' COMPENSATION UNDER A SOCIAL WELFARE STATUTE

11. At the outset, it is pertinent to reiterate the concept of 'just' compensation under Section 168 of the Act. It is a settled proposition, now through a catena of decisions[4] including the one rendered by the Constitution Bench in ***Pranay Sethi***[5] that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact-dependent exercise which must be liberal and not parsimonious. It must be emphasized that compensation is a more comprehensive form of pecuniary relief which involves a broad-based approach unlike damages as noted by this court in ***Yadava Kumar v Divisional Manager, National Insurance Co. Ltd***[6]. The discussion in the abovementioned cases highlights that Tribunals under the Act have

4 *Helen C. Rebello v Maharashtra State Road Transport Corporation* (1999) 1 SCC 90; *United India Insurance Co. Ltd. v Patricia Jean Mahajan* (2002) 6 SCC 281; *New India Assurance Co. Ltd. v Charlie* (2005) 10 SCC 720; *National Insurance Co. Ltd. v Indira Srivastava* (2008) 2 SCC 763.
5 *Pranay Sethi* (n 1), para 55.
6 *Yadava Kumar v Divisional Manager, National Insurance Co. Ltd.* (2010) 10 SCC 341, para 17.

been granted reasonable flexibility in determining 'just' compensation and are not bound by any rigid arithmetic rules or strict evidentiary standards to compute loss unlike in the case of damages. Hence, any interference by the Appellate Courts should ordinarily be allowed only when the compensation is 'exorbitant' or 'arbitrary'.

12. Furthermore, Motor Vehicles Act of 1988 is a beneficial and welfare legislation[7] that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking.[8] Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future.[9] Keeping the abovementioned principles in the backdrop, we now move on to the facts at hand.

C.2 Reliability on Income Tax Returns and Audit Reports to Determine 'Loss of Income'

13. The Deceased in the present case was a businessman and during the proceedings before the Tribunal, the Appellants produced the relevant income tax returns, audit reports and other relevant

7 *Ningamma v United India Insurance Co. Ltd.* (2009) 13 SCC 710, para 34.
8 Peter Cane, *Atiyah's Accidents, Compensation and the Law* (7th edn, Cambridge University Press 2006) 411-412.
9 ibid.

documents pertaining to the commercial ventures of the Deceased to prove the loss of income attributable on account of his sudden demise. The Tribunal relied on the same and computed the income by taking an average of the income recorded in three prior financial years (FY 2000-2001, FY 2001-2002 and FY 2002-2003) to determine the compensation under the head of 'loss of income'.

14. In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in ***Amrit Bhanu Shali v National Insurance Co. Ltd.***[10] and ***Kalpanaraj v Tamil Nadu State Transport Corpn.***[11] wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the

10 *Amrit Bhanu Shali v National Insurance Co. Ltd.* (2012) 11 SCC 738, para 17.
11 *Kalpanaraj v Tamil Nadu State Transport Corpn.* (2015) 2 SCC 764, para 8.

stand taken by the Insurance Company that the said reports inflated the income.

15. At this stage, to facilitate our analysis, it would be pertinent to divide the income as mentioned in the audit reports into two parts – (a) Income from Business Ventures and other Investments and (b) Income from House Property and Agricultural Land. It should be emphasized that these audit reports only showcase amounts which specifically stem from the shares and interest held by the Deceased in the businesses and it is not a case wherein the entire turnover of businesses are depicted as Deceased's income. Moreover, it deserves to be clarified that the income under the abovementioned two parts have been computed at gross value as per the audit reports and includes the deductions such as interest paid on loans and expenses incurred by the deceased.

C.2.1 – Treatment of Income from Business Ventures and other Investments

16. As per the audit report and other documents, the income under this part was attributable to the amounts earned from the deceased's multiple business ventures, which included the partnership firms and other investments such as shares and bank interests. On perusal of the documents on record, it is to be noticed that almost all business

ventures were the result of the initiatives taken by the Deceased, and he was actively involved in the day-to-day management of these entities. In fact, the testimony of the Deceased's wife points out that the Appellants had to sell the buses which were utilized in the transport business because they were not able to take care of the vehicles on account of the demise of the Deceased and even the export business was shut down due to the same reason.

17. The mere fact that the Deceased's share of ownership in these businesses ventures was transferred to the Deceased's minor children just before his death or to the dependents after his death is not a sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependents. On the contrary, it has come on record that the Deceased was actively involved in the day-to-day administration of these businesses from their stage of infancy, had undergone specialized training to administer his business and that the audit reports neatly delineate Deceased's share of income from the businesses. These facts necessitate that the entire amount from the business ventures is treated as income. Similarly, the amount earned from the bank interests and remaining investments must also be included as income.

18. The Appellants have produced audit reports for the last four financial years which highlight the amounts under 'Income from Business Ventures and other Investments' which is as per follows – (i) for FY 2000-2001 is Rs. 8,95,812/- (ii) for FY 2001-2002 is Rs. 10,31,091/- (iii) for FY 2002- 2003 is Rs. 14,65,060/- and (iv) for FY 2003-2004 is Rs. 9,79,099/-. The average of these amounts comes up to Rs. 10,92,765.50/-, which is rounded off to Rs 10,93,000/- and the same is awarded to the Appellants as loss of income derived under 'Income from Business Ventures and other Investments'.

C.2.2 – Treatment of Income from House Property and Agricultural Land

19. As per the audit reports, the Deceased used to draw all his rental income from the share he held in a commercial building known as 'Lakshmi Complex' and the remaining income was from his agricultural lands, which have been bequeathed to his legal heirs on his death. The audit reports indicate the amounts under the 'Income from House Property and Agricultural Land' as per follows – (i) for FY 2000-2001 is Rs. 6,90,396/- (ii) for FY 2001-2002 is Rs. 6,47,127/- (iii) for FY 2002- 2003 is Rs. 6,14,329/- and (iv) for FY 2003-2004 is Rs. 4,78,240/-. The average of these amounts comes up to Rs. 6,07,523/-.

20. At this juncture, we must note the decision in ***Shashikala v Gangalakshmamma***[12] whereby this court deducted the entire amount earned as income from house property while determining the compensation under the Act. The decision in ***Shashikala***[13] was a split decision because of disagreement between the bench on whether future prospects are to be considered for awarding compensation when the deceased is a self-employed person. Accordingly, the matter was tagged and heard along with ***Pranay Sethi***[14] , wherein this court had conclusively decided the abovementioned issue regarding future prospects. After that, the matter was remitted back to a three-judge bench for redetermination of compensation, wherein this court again deducted the entire amount earned as income from house property.[15]

21. Now, the sole issue which remains before this court is whether the entire amount under 'Income from House Property and Agricultural Land' should be deducted or not. In this respect, we are guided by the observations of this court in ***State of Haryana v Jasbir Kaur***[16] wherein it was noted that –

8. x-x-x-x

12 *Shashikala v Gangalakshmamma* (2015) 9 SCC 150.
13 ibid.
14 *Pranay Sethi* (n 1).
15 *Shashikala v Gangalakshmamma* (Civil Appeal No 2836 of 2015, 14 February 2019).
16 *State of Haryana v Jasbir Kaur* (2003) 7 SCC 484.

> ***The land possessed by the deceased still remains with his legal heirs. <u>There is however a possibility that the claimants may be required to engage persons to look after agriculture.</u> Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. <u>Attendant circumstances have to be considered.</u>***
>
> (Emphasis Applied)

In our opinion, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.

22. In the instant case, documents produced on record indicate two salient aspects with respect to 'Lakshmi Complex', which was the sole source of rental income for the deceased. The partition deed related to the land on which the commercial building is situated, highlights that the building was constructed on account of the joint investment made by the Deceased and his partners. Furthermore, as per the rental records, 'Lakshmi Complex' was leased out to more than ten different

commercial entities. Hence, keeping in mind that – *first,* the rental amount which is sought to be deducted partakes the character of investment; and *second,* that the managerial skills required for supervising the said building would require sophisticated contract management skills and goodwill among the business community, it is necessary that we determine the value of managerial skills of the Deceased on the higher side.

23. Accordingly, we deem it appropriate to award Rs 2,50,000/- as the amount for the Deceased's managerial skills. It is clarified that the said amount would also include the amount for the managerial skills in respect of the Deceased's agricultural lands. It is further clarified that the remaining amount which has been deducted by us includes the tax which has to be deducted in terms of the decision in ***Pranay Sethi***[17].

D. CONCLUSION

24. In light of the above discussion, income of the Deceased is computed by adding the amount awarded under the two parts (Rs 10,93,000/- + Rs 2,50,000/-), which comes to Rs 13,43,000/-. In terms of ***Pranay Sethi***[18], forty per cent of the income has to be added towards future prospects, which would come to Rs 18,80,200/-. After

17 *Pranay Sethi* (n 1), para 59.3.
18 *Pranay Sethi* (n 1), para 59.3.

deducting one-fourth towards personal expenses as per ***Sarla Verma***[19], the net amount comes to Rs 14,10,150/- per annum. Applying the multiplier of 16, the total loss of dependency on account of the Deceased's income is calculated at Rs 2,25,62,400/-. We further grant compensation under the remaining conventional heads as per the decisions in ***Pranay Sethi***[20] and ***Satinder Kaur***[21].

25. Hence, the compensation is determined as per follows -

	Head	**Amount**
1.	Loss of Income = [(Income + Future Prospects computed at 40%) – 1/4th Deduction for Personal Expense] x Multiplier	**Rs 2,25,62,400/-**
2.	Funeral Expenses	**Rs 15,000/-**
3.	Loss of Estate	**Rs 15,000/-**
4.	Loss of Spousal Consortium	**Rs 40,000/-**
5.	Loss of Parental Consortium	(Rs 40,000 x 2) = **Rs 80,000/-**
	Total compensation (1+2+3+4+5)	**Rs 2,27,12,400/-**

26. We also direct that the interest at the rate of 7.5% per annum shall be payable on the aforesaid amount from the date of filing the claim petition till the date of realization. The enhanced amount shall be paid to the claimants within three months from today. Needless to

19 *Sarla Verma v DTC* (2009) 6 SCC 121.
20 *Pranay Sethi* (n 1), para 59.8.
21 *United Insurance Company Ltd. v Satinder Kaur* (2021) 11 SCC 780, para(s) 33-37.

say, that the amount already paid or deposited shall be adjusted while depositing the enhanced compensation awarded by this court.

27. Hence, the judgment under appeal of the High Court is set aside and the Appellants are held entitled to enhanced compensation as determined above.

28. The appeal stands disposed of along with any pending applications in above terms.

..... J.
(SURYA KANT)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI
DATED: 30.09.2022