IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

FMA 342 of 2020
CAN 1 of 2018 (Old No: CAN 3748 of 2018)
CAN 2 of 2019 (Old No: CAN 3254 of 2019)
CAN 3 of 2021
CAN 4 of 2021
CAN 5 of 2022
Universal Sompo General Insurance Company Limited
versus
Bandana Devy & Ors.
With
COT 1 of 2019
Bandana Devy & Ors.
versus
Universal Sompo General Insurance Company Limited & Anr.

For the Appellant-Insurance Company	:	Mr. Rajesh Singh, Advocate
For the Respondent No.2	:	Mr. Krishanu Banik, Advocate
For the Respondent Nos. 1, 3 and 4	:	Mr. Probal Kumar Mukherjee, Senior Advocate Mr. Arnab Mukherjee, Advocate
Heard on	:	11.01.2023, 09.02.2023, 24.03.2023, 03.04.2023
Judgment on	:	21.12.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 9th April, 2018 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 3rd Court, Howrah in MAC Case No. 359 of 2015 granting compensation of Rs. 91,74,950/- together with interest @ 7.5%

per annum in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 23rd November, 2015 at about 18:30 hours while the victim proceeding by a motorcycle reached at Chakundi More on Delhi Road at that time the offending vehicle bearing registration no. WB-04F/2271 (Maruti Taxi) in a rash and negligent manner suddenly dashed the victim with great force, as a result of which the victim sustained severe fatal injuries which caused the death of the victim. On account of sudden demise of the victim, the claimants being the widow, mother, minor daughter and minor son filed application for compensation of Rs. 98,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

3. In order to establish their case, the claimants examined four witnesses including the widow of the deceased-victim and produced documents which have been marked as **Exhibits 1** to **25** respectively.

4. The appellant-insurance company also adduced the evidence of one witness and produced documents which have been marked as **Exhibits A** to **C** respectively.

5. Respondent no.5-owner of the offending vehicle did not contest the claim application despite notice and the case has been disposed of *ex parte* against him. By order dated 27th June, 2019 service of notice of appeal upon the said respondent has been dispensed with.

6. Upon considering the materials on record and the evidence adduced on behalf of the respective parties the learned Tribunal granted compensation

of Rs. 91,74,950/- together with interest @ 7.5% per annum in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

7. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal the insurance company has preferred the present appeal.

8. The respondents-claimants also filed a cross objection being COT 1 of 2019 challenging the impugned judgment and award of the learned Tribunal. Such cross objection has been filed on 02.01.2019, which is within the period of one month of their appearance on 20.12.2018.

9. Both the appeal and cross objection are taken up together for consideration and disposal.

10. Mr. Rajesh Singh, learned advocate for appellant-insurance company submitted that due to the accidental death of the deceased, the claimants neither suffered pecuniary loss nor any loss of dependency and accordingly, the quantum of compensation assessed on the basis of absolute or total loss of income was unwarranted. Referring to the evidence of P.W.3, Vinod Pandey, brother of the deceased, he submitted that the truck bearing registration no. WB-23B/4401, which belonged to the deceased, used to run under the transport company of P.W.3 namely *'Aman Roadways'* and in his cross-examination P.W.3 has admitted that his deceased brother used to earn Rs. 45,000/- per month from running the said truck and after his demise the widow and the mother of the deceased are getting the same amount from running the said truck and therefore there is no pecuniary loss to the claimants. Further such

evidence P.W.3 clearly indicates that even after the death of the deceased there was no difference in the family income of the claimants and as such there is no loss of dependency. Since after the accidental death of the victim, the widow of the deceased is carrying on with the business of her deceased husband and the claimants being the beneficiaries of the income of the said business, the question of pecuniary loss to the claimants does not arise at all and, therefore, the assessment of compensation made by the learned Tribunal on the premise that the claimants suffered total loss of dependency is wrongful and erroneous. At best the loss of dependency may arise out of loss of management capacity or efficiency of the victim in running his said vehicle and as a rule of prudence an individual's managerial skill should lie between 10% to 15% of the total income. In support of his contentions, he relied on the following decisions:

i. ***State of Haryana and Ors. versus Jasbir Kaur and Ors.***[1]

ii. ***Rani Gupta and Ors. versus United India Insurance Co. Ltd and Ors.***[2]

iii. ***New India Assurance Company Ltd. versus Yogesh Devi and Ors.***[3]

iv. ***National Insurance Company Limited versus Birender and Ors.***[4]

v. ***Sushma H.R. & Anr. versus Deepak Kumar Jha and Ors.***[5]

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[1] ***(2003) 7 SCC 484***

[2] ***(2009) 13 SCC 498***

[3] ***(2012) 3 SCC 613***

[4] ***(2020) 11 SCC 356***

[5] ***MANU/SCOR/99373/2022***

vi. ***K. Ramya and Others versus National Insurance Co. Ltd. and Another***[6]

Further relying on the decisions of this Court passed in ***Sri Avijit Sarkar versus National Insurance Co. Ltd & Anr.***[7] and in ***Future General India Insurance Co. Ltd. versus Soumita Roy & anr.***[8], he submitted that in the absence of evidence of future dependency or loss of dependency, no such amount could have been awarded to the claimants.

He further submitted that the learned Tribunal erred in granting future prospect to the claimants on the annual income of the deceased without appreciating the fact that the claimants did not suffer any pecuniary loss because of the accidental death of the deceased. Moreover, since future prospect is with regard to the probable income to be received in the future, hence there is no requirement to compensate the claimants by way of future interest that is to occur in the future. As the future is yet to happen, therefore, there cannot be interest on future prospect as the same relates to income to be given in the future. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***R.D Hattangadi versus Pest Control (India) Pvt. Ltd. and Ors.***[9] and another decision of High Court of Gauhati passed in ***The Oriental Insurance Co. Ltd. versus Champabati Ray and Ors.***[10]

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[6] ***2022 SCC OnLine SC 1338***

[7] ***F.M.A. No. 398 of 2002 (High Court at Calcutta)***

[8] ***FMAT 419 of 2017 (High Court at Calcutta)***

[9] ***(1995) 1 SCC 551***

[10] ***MANU/GH/0730/2019***

Moreover, he submitted that the interest on the compensation amount granted by the learned Tribunal @ 7.5% per annum is excessive and needs to be scaled down bearing in mind the prevalent rate of banking interest.

In light of his aforesaid submissions, he prayed for setting aside and/or modification of the impugned judgment and award of the learned Tribunal.

11. Mr. Probal Kumar Mukherjee, learned Senior advocate appearing on behalf of respondent nos.1, 3 & 4, in reply, submitted that the principle bone of contention of the appellant-insurance company is founded on the evidence of PW3 who claim that after death of the victim in the said accident, the widow and mother are getting the amount which the deceased used to earn and since there is no loss of earnings the claimants are not entitled to receive compensation. However, the lone testimony of P.W.3 cannot be a ground to refuse compensation to the claimants on such ground since the witness neither produced any cogent documentary evidence to fortify the fact that the ownership of the said truck is transferred and registered in the name of the widow of the deceased nor produced any acknowledgement of receipt or any proof of payment of such monthly amount claimed to have been paid to the widow and mother of the deceased. On the contrary the tax audit report and the account statement of the witness P.W.3 lacks entries in support of the claim of payment made to the widow and mother of the deceased. Accordingly, in the absence of cogent documentary evidence the learned Tribunal has rightly ignored such oral testimony of P.W.3 in respect of claim of payment made to the widow and the mother of the deceased. Referring to paragraph no.17 of the

decision of Hon'ble Supreme Court in *K. Ramya (supra)* he submitted that the Hon'ble Court has held that 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 dependants after his death is not sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependants. Thus, there cannot be any deduction of the amount, if at all received by the claimants, from the business left by the deceased for assessment of compensation. In light of his aforesaid submissions, he prayed that the impugned judgment and award of the learned Tribunal should be affirmed.

12. Mr. Krishanu Banik, learned advocate for respondent no.2 submitted that the law is no more *res integra* that the legal heirs of the deceased-victim can file application for compensation and such compensation may be granted in favour of the legal representative even if there is no loss of dependency. Therefore, the argument advanced on behalf of the insurance company raising the issue that since there is no loss of dependency, hence the claimants are not entitled to receive compensation, is short of merit. In support of his contention, he relied on the following decisions:

i. ***Manjuri Bera versus Oriental Insurance Company Ltd. and Anr.***[11]

ii. ***Montford Brothers of St. Gabriel & Anr. versus United India Insurance & Anr.***[12]

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[11] ***(2007) 10 SCC 643***

[12] ***(2014) 1 T.A.C. 970 (S.C.)***

iii. ***Sri Debanshu Guha Roy & Anr. versus The National Insurance Company Ltd. & Ors.***[13]

iv. ***National Insurance Company Limited versus Birender and Ors.***[14]

He further submitted that even if, for the sake of argument, it is considered that the transport business of the deceased-victim is being continued by the claimants and they are receiving the benefit of such business, in such event also, there cannot be any deduction of the amount received against loss of dependency. To buttress his contention, he relied on the following decisions:

i. ***Sharmila Singh & Ors. versus Sri Rabin Ghosh & Anr.***[15]

ii. ***Madhumita Sarkar & Ors. versus Oriental Insurance Com. Ltd. & Ors.***[16]

iii. ***The New India Assurance Company Limited versus Madhumita Banerjee & Ors.***[17]

Moreover, the learned Tribunal failed to grant general damages to the extent of Rs. 70,000/- instead granted only Rs. 10,000/- each under the head of loss of funeral expenses and loss of consortium.

In light of his aforesaid submissions, he prayed for enhancement of the compensation amount.

13. Having heard learned advocates for respective parties, following issues have fallen for consideration:

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[13] ***F.M.A No. 635 of 2004***
[14] ***(2020) 11 SCC 356***
[15] ***2008 (3) WBLR 851 (HC)***
[16] ***(2010) 1 WBLR (Cal) 531***
[17] ***FMAT 333 of 2019 (High Court at Calcutta)***

Firstly, whether in the event the claimants are receiving same amount of income from the selfsame vehicle owned by the victim, it would be presumed that there is no pecuniary loss and/or loss of dependency upon death of the victim.

Secondly, whether the learned Tribunal erred in granting future prospect.

Thirdly, whether the claimants are entitled to interest on future prospect.

Fourthly, whether the claimants are entitled to general damages of Rs.70,000/-.

Fifthly, whether the multiplier should be 16 instead of 17 adopted by the learned Tribunal.

And *lastly*, whether the interest on the compensation amount be scaled down from 7.5% per annum.

Issue No. 1: Whether in the event the claimants are receiving same amount of income from the selfsame vehicle owned by the victim, it would be presumed that there is no pecuniary loss and/or loss of dependency upon death of the victim.

14. With regard to the first issue as aforesaid, it is found upon perusal of the written statement filed by the insurance company that no plea has been taken to the effect that since the widow and the mother of the deceased-victim is receiving Rs. 45,000/- per month by running the vehicle, left by the deceased, in the transport business namely *'Aman Roadways'* of Vinod Pandey (P.W.3), brother of the deceased, hence the claimants are not entitled to receive compensation. Mr. Singh, learned advocate for appellant-insurance company banking on the cross-

examination of P.W.3 Vinod Pandey, indicated that the witness has made a categorical statement in cross-examination that the widow and the mother are earning Rs. 45,000/- per month which the deceased Pankaj Pandey used to earn by running the selfsame vehicle and as such there is no loss of dependency/earnings and that the loss of dependency can at best be 10% to 15% of such income towards managerial skill of the deceased.

14.1. At this stage, it would be apposite to refer to the decision of Hon'ble Supreme Court passed in ***Helen C. Rebello (Mrs) and Others versus Maharashtra State Road Transport Corporation & Another***[18] where the question was whether in adjudicating the amount of just compensation within the meaning of Motor Vehicles Act the Tribunal was justified in deducting the amount of money received by maturity of the life insurance of the deceased. While negating such question, the Hon'ble Apex Court made the following observations:

> *"**32.** So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of*

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[18] (1999) 1 SCC 90

accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is

received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

> *"… for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, …".*

33. *Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no corelation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.*

34. *This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the*

compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no corelation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any corelation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

35. *Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No*

corelation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no corelation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while

> *the amount receivable under the life insurance policy is contractual."*

14.2. Thus, it culls out from the aforesaid decision that any cash, bank balance, shares, fixed deposit etc. though are all pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. It manifest from the proposition laid down that any fixed asset inherited by the claimants from the victim for accidental death should not be taken into consideration for the purpose of assessing loss.

14.3. Following the aforesaid proposition laid down by Hon'ble Supreme Court in *Helen C. Rebello (Mrs) (supra)*, this Court in *Sharmila Singh (supra)* in similar circumstances held as follows:

> *"Thus, if the amount received on maturity of a life insurance policy of the victim (other than benefit of accidental death) or the amount of provident fund or the amount of family pension, or the fixed assets coming into the hands of the heirs are not relevant for the purpose of assessing just compensation, there is no reason why the income of the widow arising out of business run by her alone based on her labour and skill from the motor vehicle inherited by her from the victim should be deducted for assessing the just amount of compensation."*

14.4. Further this Court in *Madhumita Sarkar (supra)* has observed in a case where the widow of the victim was running a petrol pump after the death of the victim, there was no justification of reducing the *"just compensation assessed"* to one-fourth only on the ground that the widow

is at present running the business when such fact is insignificant as pointed out by the Hon'ble Supreme Court in the decision of *Helen C. Rebello (Mrs) (supra)*.

14.5. In *Jasbir Kaur (supra), Rani Gupta (supra), Yogesh Devi (supra)* and *K. Ramya (supra),* the Hon'ble Supreme Court though considered the decision of *Helen C. Rebello (Mrs) (supra),* however, the correctness of the proposition laid down in *Helen C. Rebello (Mrs) (supra)* is never questioned or sent to Larger Bench for considering the correctness of such proposition. Thus, the aforesaid proposition laid down in *Helen C. Rebello (Mrs) (supra)* holds the field and is applicable to the fact situation.

14.6. In *Sushma H.R (supra)*, the decision of the Hon'ble Supreme Court in *Helen C. Rebello (Mrs) (supra)* had not been considered.

14.7. Mr. Singh, learned advocate for the appellant-insurance company relying on *Sri Avijit Sarkar (supra)* and *Soumita Roy (supra)* tried to impress upon the Court that since there is no future dependency of the claimants and they also did not suffer any pecuniary loss or loss of dependency, hence the claimants are not entitled to receive compensation. It is pertinent to note that the facts involved in the cited decisions is quite dissimilar. Further the Hon'ble Supreme Court in *Manjuri Bera (supra)* observed even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. Similarly in *Birender (supra),* it is observed that the legal representatives of the deceased have a right to apply for compensation and

it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.

14.8. In *Montford Brothers of St. Gabriel (supra),* the Hon'ble Supreme Court upheld the findings of the learned Tribunal that the appellant society is the legal representative of the deceased 'Brother' and granted compensation in favour of the society.

14.9. Further in *Debanshu Guha Roy (supra),* the learned Tribunal dismissed the claim application on the ground that none of the claimants was dependent on the victim and in the absence of any dependency, the application was not maintainable. The Bench proceeded to determine the amount of compensation that was payable to the claimants by the insurer following the decisions in *Manjuri Bera (supra)* and in ***Hafizun Begum versus Mohd. Ikram Heque and Others***[19].

14.10. Thus from the aforesaid proposition, it manifest that even if there is no loss of dependency, the legal representatives are entitled to compensation.

14.11. Following the proposition of Hon'ble Supreme Court in *Helen C. Rebello (Mrs) (supra)* and *Sharmila Singh (supra)* and *Madhumita Sarkar (supra)* of this Court, I am of the view that there is no justification to deduct the amount of Rs. 45,000/- per month, if at all received, by the widow and mother from P.W.3 Vinod Pandey, by running the same vehicle left by the deceased for assessing the loss. It is further relevant to note

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[19] (2007) 10 SCC 715

that save and except oral evidence of P.W.3, that the mother and the widow of the victim are getting Rs. 45,000/- per month there is no documentary evidence on record to show that P.W.3 Vinod Pandey is making the payment of Rs. 45,000/- per month. The insurance company has also not adduced any evidence to establish such fact. In *Madhumita Banerjee (supra),* this Court observed as follows:

> *"Even if in a given case there is evidence to demonstrate that there is no pecuniary loss at all to the claimants following the death of the victim, there is hardly any room to make any deductions from the various amounts which have been provided for by Supreme Court judgments in motor accident cases."*

14.12. In the light of the above discussion, the argument advanced on behalf of the insurance company that since the claimants are receiving the earnings of the victim by running the selfsame vehicle as such there is no pecuniary loss or loss of dependency, does not stand to reason.

Issue No. 2: Whether the learned Tribunal erred in granting future prospect.

15. With regard to the second issue as above relating to entitlement of future prospect, it has been strenuously argued on behalf of the appellant-insurance company that the grant towards future prospect to the claimants by the learned Tribunal is erroneous since the claimants did not suffer any pecuniary loss because of the accidental death of the deceased. Since it has already been held that there cannot be any deduction of amount received by the claimants from the selfsame vehicle of the victim and that even there is no loss of dependency, the claimants are entitled to

compensation, thus the argument that they are not entitled to future prospect on the ground that they did not suffer any pecuniary loss falls short of merit. Accordingly, the grant of future prospect by the learned Tribunal is upheld.

Issue No. 3: Whether the claimants are entitled to interest on future prospect.

16. It has also been argued by Mr. Rajesh Singh, learned advocate for the appellant-insurance company relying on *R.D Hattangadi (supra)* and *Champabati Ray (supra)* that since such future prospect is with regard to the probable income to be received in the future, thus there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in the future.

16.1. At the very beginning, the decision of the Hon'ble Supreme Court in *R.D. Hattangadi (supra)* is a proposition that the interest is to be paid over the amount which becomes payable on the date of the award and not which is to be paid for expenditures to be incurred in future. Thus, the said report deals with interest on future expenditure and not on future prospect and, therefore, is distinguishable from the case at hand. While dealing with the issue of future prospect, the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others***[20] at paragraph 55 of the decision has made following observation:

> *"**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*

[20] ***(2017) 16 SCC 680***

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 and it has been approved in Reshma Kumari. 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."*

16.2. The Hon'ble Supreme Court in order to provide just compensation having uniformity of approach approved for standardization which in its ambit includes addition of future prospects on the present proven income. Accordingly, 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. Therefore, future prospect is not to be recorded as probable income which is to be received in the future. The principle laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* is to asses just compensation on the foundation of fairness, reasonableness and equitability. It is pertinent to note that while dealing with future prospect, the Constitution Bench in the aforesaid report never observed that such additional amount of future prospect shall not carry interest. In *Champabati Ray (supra)* the Gauhati High Court negated future interest since future prospect is with regard to probable income which is to be received in the future, however in view of proposition of Hon'ble Supreme Court, I most humbly differ from the observation of Gauhati High Court in *Champabati Ray (supra).* For the aforesaid reasons, the argument advanced by Mr. Singh, learned advocate for appellant-insurance company is not acceptable.

Issue No. 4: Whether the claimants are entitled to general damages of Rs.70,000/-.

17. With regard to the above issue relating to entitlement of general damages, it is found that the learned Tribunal has granted Rs. 10,000/- each under funeral expenses and loss of consortium. However, bearing in mind the proposition laid down by Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

Issue No. 5: Whether the multiplier should be 16 instead of 17 adopted by the learned Tribunal.

18. With regard to multiplier, it is found that the learned Tribunal has adopted multiplier of 17. Admittedly, at the time of accident, the victim was 33 years of age, hence following the observation of Hon'ble Supreme Court in ***Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another***[21], the multiplier should be 16 instead of 17 adopted by the learned Tribunal.

Issue No. 6: Whether the interest on the compensation amount be scaled down from 7.5% per annum.

19. Coming to the last issue relating to grant of interest on compensation amount, it has been urged on behalf of the appellant-insurance company that the learned Tribunal has granted interest @ 7.5% per annum which is excessive and requires to be scaled down bearing in mind the prevailing banking rate of interest. I find substance in the submission advanced on behalf of the insurance company in this regard. Keeping in mind the

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[21] (2009) 6 SCC 121

prevailing banking rate of interest, the compensation amount should carry interest @ 6% per annum from the date of filing of the claim application till realisation.

20. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Annual income	Rs. 4,99,000/-
Add: Future prospect @ 40% of the annual income	Rs. 199,600/-
	Rs. 6,98,600/-
Less: 1/4th towards personal and living expenses	Rs. 1,74,650/-
	Rs. 5,23,950/-
Adopting multiplier 16 (Rs. 5,23,950/- x 16)	Rs. 83,83,200/-
Add: Medical expenses incurred	Rs. 2,45,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs. 70,000/-
Total compensation	Rs. 86,98,200/-

21. Thus, the claimants are entitled to compensation of Rs. 86,28,200/- together with interest at the rate of 6% per annum from the date filing of the claim application till payment.

22. It is found that the insurance company has deposited a sum of Rs.1,09,65,951/- vide OD Challan No. 1099 dated 30th July, 2018 in terms of order of this Court and Rs. 25,000/- towards statutory deposit vide OD Challan No. 268 dated 8th May, 2018. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire compensation amount and the interest thereon.

23. Respondents-claimants are directed to deposit deficit court fees on the compensation amount assessed, if not already paid, which shall be borne equally by all the respondents-claimants.

24. Learned Registrar General, High Court, Calcutta is directed to release the aforesaid compensation amount along with the interest as aforesaid in favour of the respondents-claimants in equal proportion after making payment of Rs. 40,000/- in favour of the respondent no.1-widow of the deceased towards spousal consortium and upon payment of deficit court fees, if not already paid, and satisfaction of their identity.

25. By the order of this Court dated 27th June, 2019 and 15th February, 2021 each of the respondents-claimants have received a sum of Rs. 8,00,000/- each which shall be taken into account while releasing the share of the respondents-claimants.

26. Respondent no.1 being mother and natural guardian of minor-respondent nos.3 and 4 shall receive the share of the said minors on their behalf and shall keep the share of the minors in fixed deposit scheme of any nationalised bank or post office till attainment of majority of the said minors.

27. Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the insurance company.

28. With the above observation, the appeal and the cross objection stand disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

29. All connected applications, if any, stand disposed of.

30. Interim order, if any, stands vacated.

31. Let a copy of this judgment be forwarded to the learned Tribunal along with lower court records for information in accordance with rules.

32. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)