

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 12540-12541 OF 2024
(@ SLP (CIVIL) NOS. 13099 -13100 OF 2019)**

SARTAJ SINGH **...APPELLANT(S)**

VERSUS

**THE UNITED INDIA INSURANCE
COMPANY LTD. & ORS.ETC.** **...RESPONDENT(S)**

WITH

**CIVIL APPEAL NO. 12542 OF 2024
(Arising from SLP(C) No.21479/2019)**

WITH

**CIVIL APPEAL NO. 12543 OF 2024
(Arising from SLP(C) No.22644/2019)**

O R D E R

1. Leave granted.
2. There are four appeals before us. The appeals arising from Special Leave Petition (C) Nos.13099-13100 of 2019 are arising from a judgement dated 12.03.2019 passed by the High Court of Uttarakhand at Nainital, in Appeal from Order No.26 of 2016 and No.25 of 2015.
3. The appeals arising from Special Leave Petition (C) No.21479 of 2019 and Special Leave Petition (C) No.22644 of 2019 are arising from a judgement dated 31.08.2017 passed by the High Court of Uttarakhand

at Nainital, in Appeal from Order No.93 of 2015 and No.101 of 2015 respectively.

4. The facts to the extent relevant are that there are two deceased, one Jamil Ahmad and one Sartaj Ahmad. On 26.03.2012, Jamil Ahmad stopped his motorcycle on the side of the road to talk to one Shakil Ahmad and Sartaj Ahmad. One tractor trolley dashed into them, and Jamil Ahmad died on the spot. Sartaj Ahmad remained hospitalized for several months and he succumbed to his injuries and died on 27.10.2012. The dependents of Jamil Ahmad filed a claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988¹ before the Motor Accident Claims Tribunal² and claimed a compensation of Rs.10,00,000/-. Similarly, the dependents Sartaj Ahmad also filed a claim petition before the Tribunal for compensation of Rs.2,00,000/. The Tribunal vide two different orders dated 08.10.2014 awarded a sum of Rs.5,57,000/- as compensation to be paid by the Insurance Company, Respondent No.1 herein, to the dependents of the deceased, Jamil Ahmad and a sum

¹ MV Act

² MACT

of Rs.4,86,074/- to be paid by the Insurance Company to the dependents of the deceased, Sartaj Ahmad, both along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual deposit.

5. Aggrieved by these two orders, the Insurance Company filed appeals under Section 173 of the MV Act before the High Court. The High Court vide impugned order dated 31.08.2017 has shifted the liability from the Insurance Company and has wholly fastened it upon the driver and owner of the tractor trolley, jointly, and severally. The High Court also declined to enhance the compensation amounts awarded by the Tribunal wherein future prospects of the deceased were not considered. This judgement was sought to be reviewed by the owner of the tractor trolley. The High Court vide order dated 11.04.2018 recalled the order and revived the proceedings which was then re-heard on merits. Consequently, vide impugned order dated 12.03.2019, the High Court held the compensation awarded by the Tribunal to be just and reasonable and directed that the liability to pay cannot be fastened upon the Insurance Company

and it has to be paid by the owner and driver of the vehicle. Therefore, the claimants and the owner of the vehicle are before us in these appeals.

6. We have heard learned counsel for the parties.
7. We will first address the issue of quantum compensation awarded to the claimants. The deceased Jamil Ahmad was 35 years old when the accident occurred, with three small children. He used to work in agriculture and animal husbandry and was the only earning member of the family. While assessing the quantum of compensation, the Tribunal has considered Jamil Ahmad's income, personal expenses, age, compensation towards dependency and financial loss, companionship loss expenses and compensation payable for funeral expenses in order to calculate the final compensation of Rs.5,57,000/- awarded to him. The deceased Sartaj Ahmad was 19 years old when the accident occurred and was engaged in agriculture and labour work with his parents' dependent on him. The Tribunal has considered Sartaj Ahmad's income, personal expenses, age, dependency and financial loss, funeral expenses, medical expenses and vehicle

expenses for medical treatment in order to calculate the final compensation of Rs.4,86,074/- awarded to him. The High Court is satisfied with the amount of compensation awarded by the Tribunal and has not interfered with the same. However, neither the Tribunal nor the High Court have granted compensation under the head of “future prospects” while doing so.

8. The grant of future prospects was affirmed by this court in National Insurance Company Ltd. v. Pranay Sethi & Ors. (2017) 16 SCC 680 wherein it was held that:

“57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and

sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other, but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees

so that he can live with the same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would be tantamount to remaining oblivious to the marrows of ground reality. And, therefore, a degree test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative

factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

9. It is now a well settled position of law that in cases of motor-accident; while awarding compensation, we must account for future prospects as well. It is not just or fair to assume that the deceased would not progress further in life and accept a stagnant amount of income while computing compensation. In light of increased inflation, the rise of consumer prices and the growing standards and costs of living which inadvertently affect everyone, it is inevitable that a person will make all efforts to keep pace with the same in regard to their income. Therefore, we find it appropriate to modify the compensation awarded to the claimants before by the Tribunal and account for future prospects as well.

10. Now, coming to the appeals filed by the owner of the vehicle. It has been argued by the Insurance Company that the accident occurred with the tractor which was attached to a trolley, and the trolley was not insured by them. According to them, both the tractor and trolley have to be independently insured. The High Court while fixing liability to pay onto the owner of the vehicle relied on a judgement submitted by the Insurance Company being **Fahim Ahmad and others v. United India Insurance Company Limited and others**³. It is however argued by the owner of the vehicle, Appellant herein, that this reliance is wholly misplaced. A perusal of the judgement shows that at the time of the accident in that case, the trolley was attached to the tractor and was carrying sand for the purpose of construction. However, merely carrying sand does not mean that it was being used for commercial purposes, which meant a breach of the insurance policy. However, this Court held that neither any issue was framed nor any evidence was led to prove the breach of policy conditions which was mandatory for the Insurance

³ (2014) 14 SCC 148

Company to do and in the absence of the same, the Court held that breach of conditions of policy cannot be assumed and there was no reason to fasten the liability of payment of compensation on the appellants therein. In light of these observations, this Court had held that the High Court was not justified in transferring the burden of paying the amount of compensation from the Insurance Company to the appellants therein. Therefore, if interpreted correctly, this judgment in fact affirms that the Insurance Company will indemnify the owner of the vehicle and has been wrongly relied on by the High Court to fix liability onto the owner of the vehicle.

11. In the present case, the plea raised by the Insurance Company regarding the liability of the vehicle owner to pay the compensation was not a plea raised before the Tribunal, and neither was any issue framed nor any evidence led on this aspect. Therefore, without any evidence substantiating this claim, the High Court ought not to have gone into this question at all. Furthermore, as evidenced earlier, the judgement of **Fahim Ahmad (supra)** relied upon by the High Court to fix liability onto the owner of the vehicle was wrongly relied upon by them and if interpreted

correctly, supports the argument of the Appellant herein by establishing that the Insurance Company must be liable to pay the compensation to the claimants in such motor accident cases.

12. In view of the above, we are of the view that the High Court was not justified in fixing the burden of payment of compensation onto the owner and driver of the vehicle and shifting the liability away from the Insurance Company. Further, the High Court and Tribunal should have considered future prospects while assessing the quantum of compensation awarded.
13. In SLP(C) Nos.13099-13100/2019, the direction by the High Court fastening the liability on the owner and driver of the vehicle is set aside. It is made clear that the Insurance Company shall indemnify the owner and driver of the vehicle and pay the compensation as determined by the MV Act and modified by this order within three months from today.
14. In SLP(C) No.21479/2019 and SLP(C) No.22644/2019, applications for substitution are allowed condoning the delay and setting aside the abatement. It is directed that the future prospects of

40% in both the cases as per the decision in **National Insurance Company Limited vs. Pranay Sethi and Others⁴**, which have not been awarded, the same may be awarded. MACT to quantify the amount within four weeks.

15. The appeals are accordingly allowed. Accordingly, a calculation be made and payment be done within three months at the same rate of interest as awarded by the Tribunal.

.....**J.**

(VIKRAM NATH)

.....**J.**

(PRASANNA B. VARALE)

NEW DELHI

NOVEMBER 19, 2024

⁴ (2017) 16 SCC 680