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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14th December, 2018

+ MAC.APP. 100/2018

OM VATI

..... Appellant

Through: Mr. A.S. Rana, Advocate.

versus

BAJAJ ALLIANZS GENERAL
INSURNACE CO LTD & ORS

..... Respondents

Through: Mr. A.K. Soni, Mr. Pavan Kumar and
Mr. Rajiv Bajaj, Advocates.

+ MAC.APP. 131/2018 & CM No.4100/2018

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. A.K. Soni, Mr. Pavan Kumar and
Mr. Rajiv Bajaj, Advocates.

versus

OM VATI & ORS

..... Respondents

Through: Mr. A.S. Rana, Advocate for R1.

JUDGEMENT

1. The award dated 26th September, 2017 passed by the Claims Tribunal whereby compensation of Rs.4,55,000/- has been awarded to Om Vati is under challenge in these appeals. In MAC.APP.100/2018, the claimant is seeking enhancement of the award amount whereas in MAC.APP.131/2018, the insurance company is seeking to set aside the impugned award.

2. Om Vati, mother of Anoop Singh claimed compensation for the death of Anoop Singh. According to the claimant, her son, Anoop Singh was hit

by a car bearing No.DL-7-CE-9502 on 14th March, 2012 near Jahangir Puri Bus Stand in respect of which the police registered FIR No.75/2012 under Section 279/304A IPC at P.S. Jahangirpuri against Anuj Bedi. The Claims Tribunal held that the accident occurred due to the rash and negligent driving of car bearing No. DL-7-CE-9502 by Anuj Bedi.

3. The Claims Tribunal took the minimum wages of Rs.6,656/- per month, deducted 50% towards his personal expenses and applied multiplier of 7 according to the age of the mother of the deceased to compute the loss of dependency as Rs.2,79,552/-. The Claims Tribunal awarded Rs.1,50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.4,54,552/- (rounded off to Rs.4,55,000/-).

4. Learned counsel for the appellant in MAC.APP.100/2018 urged at the time of hearing that the Claims Tribunal has not added the future prospects of 40%. It is further submitted that the Claims Tribunal has applied multiplier of 7 instead of 17 according to the age of the deceased. It is further submitted that the compensation for loss of estate has not been awarded by the Claims Tribunal. Reliance is placed on *National Insurance Co. Limited v. Pranay Sethi* (2017) 16 SCC 680.

5. Learned counsel for the appellant in MAC.APP.131/2018 urged at the time of hearing that the insured vehicle has been wrongly implicated in the accident. It is submitted that no accident took place with the insured vehicle and, therefore, the appellant is not liable to pay any compensation. Without prejudice, it is submitted that the compensation for loss of love and affection is no more a permissible head and is liable to be set aside.

6. With respect to the contention of the appellant in MAC.APP.131/2018 that no accident took place from the offending vehicle, it is noted that the Claims Tribunal examined two eye witnesses in the witness box as PW-2 and PW-3 who both deposed that they were standing on the side of the road for crossing the road to go to the coaching centre - CNC Programming at Jahangir Puri, Delhi when the offending vehicle driven rashly and negligently by Anuj Bedi, hit the deceased. The driver of the car stopped the car, looked behind through the window and ran away from the spot. Both the witnesses noted down the car number and informed the police. The witnesses tried to stop a vehicle to take the deceased to the hospital but no car stopped whereupon they stopped a *rikshaw (rehra)* and took the deceased to BJRM Hospital at Jahangir Puri, Delhi where PCR van came and they handed over the injured, Anoop Singh to the PCR. PW-2 deposed that he made a call to the police at 100 number from the mobile no. 958239XXXX. PW-3 deposed that a call was made by PW-2 from his mobile i.e. from the mobile of PW-3. Both the witnesses could not be shaken in the cross-examination. Both the eye witnesses are not related to the claimant in any manner. This Court agrees with the discussion and reasoning of the Claims Tribunal. The Claims Tribunal rejected the contrary evidence of the driver and the owner. The relevant portion of the award of the Claims Tribunal is reproduced hereunder:-

“11. That petitioner has also examined two eye witness namely Mukesh as PW-2 and Sh. Rohit Kumar as PW-3 who have deposed that on dated 14.03.2013, both eye witnesses were present at the spot of the accident and it has been deposed that one white colour Chevrolet Car coming from bypass road and going towards the Burari side in rash and negligent manner and hit the person i.e. deceased/petitioner who got serious

injuries and the driver of the offending car stopped the car and look behind through window and ran away from the spot, in between they have noted down the number of the car and i.e. DL-1-CE-9502.

12. It has also been deposed by PW-2 that he made a 100 number call to the police by the mobile no. 9582391566 and the said mobile was of his friend Rohit Kumar who is PW-3 herein. That in the cross examination of both these eye witnesses, there has not been any iota of evidence to disprove of the presence of PW-2 and PW-3 at the spot of the accident.

13. Therefore, the testimony of PW-1, PW-2 and PW-3 are very material and inspire the relevancy.

14. That, the accident took place because of rash and negligent driving of R-1 who is driver of the offending vehicle bearing no. DL-7CE-9502 (Car) and an FIR No. 75/2012, U/s 279/304A of IPC was registered against the R-1 who is driver of the offending vehicle and charge sheet u/s 173 Cr.P.C filed by the police and is facing trial before the Court of Ld. M.M and therefore, these are the sufficient material to prove that the accident took place because of rash and negligent driving of the offending vehicle bearing registration no. DL7CE-9502 being driven by R-1 Sh. Anuj Bedi in a rash and negligent manner and without observing the traffic rules.”

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16. That, in view of the aforesaid discussion and keeping in view the material proved on record, it stands duly proved by way of preponderance (sic) of probability that the deceased Sh. Anoop Singh met with an accident on 14.03.2012 at about 07:00 P.M and because of the road traffic accident Sh. Anoop Singh died and the said accident caused by the rash and negligent driving of the R-1 Sh. Anuj Bedi who was driving the offending vehicle in rash and negligent manner.

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18. It has also been argued by Ld. Counsel for R-1 and R-2 that R-1, driver of the offending vehicle has been falsely implicated by the IO of the case FIR No. 75/12, u/s 279/304A of IPC, PS Jahagir Puri, Delhi. This argument of Ld. Counsel for the Insurance company as well as the evidence of R-1 and R-2 are

immaterial and cannot be substantiated in the eyes of law inasmuch as the vehicle number was provided by PW-2 and PW-3 and are not related either to the deceased or the family of the deceased or would not have any other consideration.

19. That the manner in which, IO of this case has investigated the case FIR No. 75/12, U/s 279/304A of IPC, PS Jahagir Puri is marvelous and appreciable, the scientific and technical efforts have been made by the IO. It is pertinent to mention that the report was called by my Ld. Predecessor from the IO in respect of the manner carried out the investigation of the case FIR and the IO of the case FIR has submitted his report on dt. 26.07.2012 and after perusal of the said report it reveals that as and when PW-2 and PW-3 who are the eye witnesses has brought to the notice of the IO of the number of offending vehicle i.e. DL-7-CE-9502, Chevrolet (white colour) and he immediately issued the notice u/s 133 of M.V Act to the registered owner of the said vehicle who is R-2 herein and father of the R-1, who has stated in the reply of the said notice that the son Anuj Bedi was having the vehicle on the said date and thereafter, R-1 was interrogated and was arrested on 21.03.2012 in this case FIR on the identification of eye witness PW-2 Mukesh Kashyap and mechanical inspection of the vehicle was carried out and it was found that left light of the offending vehicle was damaged and was repaired recently with white colour.

20. It has also been stated that as per the documents, supplied by R-1 before the Court were scrutinized and the register (security guard and receptionist) maintained at the office of Kochcar & Company Gurgaon, Haryana revealed that the said register was non paginated and not duly signed by any authorized signatory at any stage. Even the entries of register have been found to be bearing blank rows and repeated numbering and the same has been done with alterier motive. The IO of the case has also tried to collect the CCTV Footage of the office of the Kochar & Company on the date of the accident and the time to preserve has already been lapsed.

21. R-1 could have taken the defence of his presence in the office of Kochar & Company and can provide CCTV Footage

to prove that he was not driving the offending vehicle at the time and date of the accident but he has not been able to place on record the same. Therefore, the testimony of R-1 cannot be relied upon.”

7. With respect to the MAC.APP.100/2018, there is merit in the contentions urged by the learned counsel for the claimant that the Claims Tribunal erred in not adding 40% towards future prospects and applied the lower multiplier of 7 instead of 17. The deceased was aged 30 years at the time of accident and the multiplier of 17 has to be applied and 40% has to be awarded towards future prospects. The Claims Tribunal awarded Rs.1,50,000/- towards loss of love and affection which is no more a permissible head and is, therefore, set aside. The compensation of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. The compensation of Rs.15,000/- is awarded towards loss of estate.

8. Taking the income of the deceased as Rs.6,656/- per month, adding 40% towards future prospects, deducting 50% towards personal expenses and applying the multiplier of 17, the loss of dependency is computed as Rs.9,50,476.8. Adding Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, the total compensation is computed as Rs.9,80,476.8 (rounded off to Rs.9,80,500/-).

Conclusion

9. The compensation amount is enhanced from Rs.4,55,000/- to Rs.9,80,500/- along with interest @ 9% from the date of filing of the claim petition i.e. 10th April, 2012. Both the appeals are disposed of in the above terms. CM No.4100/2018 is disposed of.

10. Bajaj Allianz General Insurance Co. Ltd. is directed to deposit the enhanced award amount with the Registrar General of this Court within four weeks.

11. Vide order dated 02nd February, 2018 in MAC.APP.131/2018, Bajaj Allianz General Insurance Co. Ltd. was directed to deposit the entire award amount in pursuance to which Bajaj Allianz General Insurance Co. Ltd. deposited Rs.6,18,407/- with the Registrar General of this Court which was kept in FDR. UCO Bank, Delhi High Court Branch is directed to send the status report as to the present value of the said FDR on the next date of hearing.

12. List for disbursement of the enhanced compensation amount to the claimant on 18th January, 2019.

13. The claimant, Om Vati shall remain present in Court on the next date of hearing along with the passbook of her savings bank account near the place of her residence as well as PAN card and Aadhaar card. The concerned bank of the claimant is directed not to issue any cheque book or debit card to the claimant and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on the passbook to this effect. The claimant shall produce the copy of this judgment to the concerned bank, whereupon the bank shall make an endorsement on the passbook of the claimant that no cheque book and/or debit card shall be issued to the claimant without the permission of this Court. However, the concerned bank shall permit the claimant to withdraw money from her savings bank account by means of a withdrawal form. The claimant shall produce the original passbook of her individual savings bank account with the necessary endorsement on the next date of hearing.

14. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

DECEMBER 14, 2018

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