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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Decided on: 23.10.2019*
\+ MAC.APP. 840/2019

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr.Amit Kumar Singh, Advocate with Ms.K. Enatoli Sema, Advocate.

versus

RAJMANI DEVI @ RAJMANI & ORS ..... Respondents
Through: Ms.Laveena Arora, Advocate for Ms.Avnish Ahlawat, Advocate for DTC.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 46777/2019 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

CM APPL. 46776/2019 (for condonation of delay)

3. This application seeks condonation of delay of 7 days in filing the appeal. For the reasons mentioned in the application, the delay is condoned.

4. The application stands disposed-off.

MAC.APP. 840/2019 & CM APPL. 46775/2019 & CM APPL. 46778/2019

5. This appeal impugns the award of compensation dated 06.07.2019 passed by the learned MACT in MACP No. 171/2017, on the ground that some amount of contributory negligence ought to have been apportioned

upon the deceased because he was in a highly inebriated condition and the same is evident from his Forensic Examination Report which concluded that he had ethyl alcohol in his blood of 152 mg and methyl alcohol of 18 mg per 100 ml of blood, and this must have clouded his judgment as to where he was walking.

6. The aforesaid contention, though attractive on the face of it, is untenable for the reason that presence of such degree of alcohol in the blood would not necessarily mean that the person was not conscious of his whereabouts or that he could not distinguish between the red and green light of a zebra crossing. The police officers at the traffic red light/zebra crossing saw the offending vehicle speeding at immense velocity and being driven rashly and negligently; it had overtaken another vehicle at a traffic red light and resultantly crushed the deceased under its wheels. The latter was crossing the street at zebra crossing, when the light was green for the pedestrians. Quite clearly, the deceased was not at fault in the accident, therefore, the issue of his judgment becoming impaired because of the level of alcohol in his blood, becomes academic. He was crossing the road on the green light for pedestrians at a zebra crossing when the offending vehicle jumped its red light and crushed the innocent pedestrian. The tort of the offending vehicle is evident and established.

7. With reference to the internet, the Court would note that ethanol's (ethyl alcohol) acute effects are largely due to its characteristic as a central nervous system depressant, and are dependent on blood alcohol

concentrations such as: 80–199 mg/dL – binge drinking: Ataxia, poor judgment, labile mood.[1]

8. Be that as it may, the appellant has not been able to prove that the said person had reached that acute stage where he could not differentiate between a red light and a green light at a traffic pedestrian crossing. More importantly, the appellant neither filed a reply to the claim petition nor has it brought any evidence apropos impairment of judgment of the deceased. They have relied upon the documents filed by the Investigating Officer with respect to the FIR including the charge sheet and the MLC as well as FSL report. The impugned order has discussed as under: -

> *"9. The petitioners have examined on record total three witnesses in support of their case and out of these witnesses, PW-1 ASI Narender Pal Singh of Delhi Traffic Police is alleged to be an eye witness of the above accident. He has specifically stated on record that on the day of accident, he was on duty at Sunehri Masjid T Point and was checking the vehicles coming from Boat Club Red Light side at around 3.20 pm, when he had seen the offending bus coming from the aforesaid side. He also stated specifically that the said bus driven by its driver overtook the vehicles, jumped the red light and drove into a wrong lane after crossing the yellow divider line and had hit one pedestrian, who was crossing the road on zebra crossing. He further stated that he stopped the offending vehicle and apprehended its driver at the spot, whose name was disclosed as Narender Kumar. He further claims to have made a call to police at 100 number, deposes about arrival of police at the spot and removal of injured to hospital. He also claims that the site plan Ex. PW-1/1 of place of accident was prepared subsequently by police at his instance and he further identifies the place from where the*

[1] Schuckit, Marc A. (2013). Drug and Alcohol Abuse: A Clinical Guide to Diagnosis and Treatment. Springer Science & Business Media. p. 117. ISBN 9781475732320.

offending bus came and the pedestrian was hit in the above said site plan.

10. It has been observed that this witness has not been cross examined at all by the learned counsel for R-1 and R-2 and learned counsel has simply adopted the cross examination of witness conducted by learned counsel for R-3/insurance company. Though this witness is found to have been cross examined on behalf of R-3, but it is also observed that during his such cross examination, nothing material could be extracted out from the witness to challenge or controvert his testimony on the above issues. Hence, the entire depositions made by this witness on the above aspects have almost gone unchallenged and uncontroverted. The witness has specifically denied the suggestions given to him which were contrary to his above depositions and has also denied the suggestions that the said accident took place due to negligence of the pedestrian or that the pedestrian was under the influence of alcohol at that time. There is nothing on record to suggest or infer that the pedestrian was under any such influence. This witness is though from Delhi Traffic Police, but his testimony has to be interpreted like an independent witness as there is nothing on record to show that he is related to the deceased or his family members or has any motive or reason to depose falsely against the respondents or to implicate them in a false case. Even otherwise, no such specific submissions have been made in the reply filed on behalf of R-1 and R-2 nor the witness has been given, any such suggestions on behalf of the said respondents. Hence, the testimony of this witness as made before this court with regard, to the manner in which the above accident took place is held to be completely trustworthy and inspiring confidence and there is no reason or ground as to why this Tribunal should disbelieve the same. This testimony clearly establishes that the above accident took place only due to rash and negligent driving of the said bus by R-1. Though the issue of contributory negligence on the part of deceased has also been raised by learned counsels for the respondents, but in this regard also, there is no material on record to substantiate the same or to draw any such inference about contributory *negligence on part of the deceased as the depositions of this witness clearly rule out the same."*

(emphasis supplied)

9. The aforestated unshaken testimony of the police eye-witness clearly establishes that the deceased was crossing the street at zebra crossing at Boat Club Red Light and he was crushed under the bus which was being driven at immense speed in a rash and negligent manner after it had jumped a traffic red light.

10. The other argument raised by the learned counsel for the appellant is that the deduction of $1/4^{th}$ towards 'personal expenses' is unjustified because there are three claimants in terms of the letter issued by the employer of the deceased. The said letter, annexed as Annexure A-4 (at page 73 of the paperbook) was issued on 16.09.2019 much after the demise of the deceased, who was a RFN/STEWARD with Indian Army. According to the said letter, the dependents of the deceased are his wife and their two sons. However, that document concerns only his employer, apropos for his dependents regarding his salary but his mother too would be considered as a dependant under the Motor Vehicles Act, 1988 and under the Hindu Succession Act, 1956 as a Class-I heir of the deceased. In the circumstances, the deduction of $1/4^{th}$ share towards 'personal expenses' of his earning was justified.

11. The awarded amount was directed to be paid within 30 days from the date of Award and if it was not so done, an interest @ 12 % would come into operation. Therefore, if the appellant was aggrieved by the impugned

order, they should have approached the Court for modification of the latter penal amount.

12. At this stage, the Court would note that no compensation has been granted towards 'loss of love and affection', but towards 'loss of consortium' only Rs. 40,000/- has been granted. The compensation under the aforesaid two heads i.e. 'loss of love and affection' and 'loss of consortium' ought to have been granted to each of the claimants @ Rs. 50,000/- and Rs. 40,000/-, respectively, in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** 2018 SCC OnLine SC 1546. It is so granted. The claimants are also entitled to compensation towards 'Loss of Estate' and 'Funeral Expenses' @ Rs. 15,000/- under each of the heads, in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680. The same is granted.

13. Accordingly, the amount payable under the aforesaid four non-pecuniary heads shall be as under:

S.No.	**Particulars**	**Amount**
1.	Loss of love and affection [Rs. 50,000/- x 4 (claimants)]	Rs. 2,00,000/-
2.	Loss of consortium [Rs. 40,000/- x 4 (claimants) less Rs. 40,000/- (already awarded)]	Rs. 1,20,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
	TOTAL	**Rs. 3,50,000/-**

14. Let the aforesaid amount, alongwith interest @9% from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be disbursed to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

15. The appeal is dismissed.

16. The statutory amount, along with interest accrued thereon, shall be deposited into the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

OCTOBER 23, 2019

"shailendra"