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

% *Decided on: 24.04.2019*

\+ **MAC.APP. 488/2019 & CM APPL. 19028/2019**

THE UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr.D.K. Sharma, Advocate

Versus

KAMLA & ORS (BAJAJ ALLIANZ GENERAL INSURANCE CO LTD) ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant - Insurance company impugns the order dated 18.02.2019 awarding compensation of Rs. 27,80,000/- with interest @ 9% *per annum*, from the date of filing of the Detailed Accident Report (DAR) till realization of amount within 30 days, failing which to pay an interest @ 12% *per annum*. The compensation has been awarded to the dependants of Mr. Suresh Chauhan, who passed away on the intervening night of 25th -26th November, 2015, due to fatal collision of his car with a tractor, which was insured by the appellant.

2. It is the appellant's case that there was contributory negligence on the part of the deceased as he had been over-speeding and driving the car in a rash and negligent manner and was unable to stop the car on time, despite the

insured tractor moving at a speed of only 10-15 km/hr, resulting in the car crashing into the tractor.

3. The learned Tribunal, while considering the above contention, has reasoned as under:

> *(v) PW1 Ramesh Chand is the person who accompanied with the driver of tractor. But in his deposition, he did not support the petitioners' version as he testified that on the day of accident, he alongwith his colleague was watering the plants. At about between 1:30 AM to 1:55 AM when they were watering the plants from Laxmi Nagar to ITO side, a car came from behind and hit in their water tanker, consequently, car driver sustained injuries and at that time, tractor was being driven by respondent no.1 Prem Pal Singh. Later on, it was revealed to him that the car driver succumbed to his injuries. He further testified that there was street light on the road and tractor was not moving on the wrong side. However, he admitted that there was no indicator/reflection in the water tanker, but quickly added that there was an indicator in the tractor. He further testified that at the time of accident, tractor moving and he was behind the tractor. As per his testimony, accident was caused due to the negligence of car driver as he was coming from behind. But from his testimony, it is clear that there was no indicator/reflector on the water tanker.*
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> *(vi) PW2 Srikishan, investigating officer testified that during investigation, Ramesh Chand informed him that earlier the tractor was being driven at the extreme left lane but all of sudden its driver drove the tractor diagonally towards the extreme right side lane. At that time, car came from flyover at fast speed, consequently, car collided with the tractor as tractor was changing the lane from extreme left to right lane without giving any indication. He further testified that tractor driver and PW1 ran away from the spot. He further testified that during investigation, it was revealed that there was no reflector at the back portion of*

the tractor/tanker and due to that reason, car driver could not see the tractor. He further testified that after investigation, he filed the chargesheet against the driver of the tractor but also highlighted that there was some negligence on the part of car driver as he failed to apply the brake in time as he was driving the car at fast speed.

(vii) To the court question, investigating officer testified that at the time of accident, approximate speed of the car was about 60 km/h. To the court question, he further deposed that the tractor took about 2-3 seconds from coming to extreme left lane to right lane and admitted that car driver had only 2-3 seconds to apply the brake. He further testified that before the accident, deceased was behind the tractor and distance between tractor and car was approximate 20 meters. From his testimony, it can safely be culled out that the car driver had only 2-3 seconds to apply the brake and the tractor changed its lane all of sudden without giving any indication and there was no reflector at the back portion of the tractor. In these circumstances, it cannot be said that there was any rashness or negligence on the part of car driver.

(viii) During cross-examination, counsel for the insurance company of the tractor gave a suggestion that at the time of accident, tractor was moving at the speed of between 10-15 km/hour, which is admitted by PW2. This establishes that at the time of accident, tractor was not in a stationary position; rather it was moving at the speed of between 10-15 km/h. Though PW2 in his examination-in-chief categorically deposed that at the time of accident, tractor was coming from extreme left lane to right lane, but this portion of his testimony was not challenged or disputed by the counsel for insurance company during the cross-examination of PW2. In other words, testimony of PW2 to the extent that the tractor was changing its lane from extreme left to extreme right remained unrebutted/unchallenged.

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> *(xi) In view of the above, I am of the considered opinion that accident in question had taken place due to the sole rash and negligent driving of respondent no.1 (tractor's driver). Accordingly, Issue No.1 is decided in favour of petitioners and against the respondent no. 1, 3 &5.*

4. The Court is unable to find fault with the aforementioned reasoning because what emanates from the above is that the eyewitness, PW-1- Ramesh Chand, has admitted in his testimony that the tanker attached to the tractor did not have a functioning indicator or reflector in the rear portion. Additionally, as is borne from the testimony of PW-2-Investigating Officer, the tractor was plying on a road near the Delhi Secretariat, when it suddenly swerved from the lane in the extreme left to the extreme right lane, thus causing the deceased to crash into the offending tractor. No element of contributory negligence can be said to be established on the part of the deceased as he barely had a few seconds to maneuver the car, so as to save himself from the sudden change in course of the tractor. The sudden swerve of the tractor, with a trolley-tanker attached to it, from the extreme left to the extreme right, would have virtually blocked the entire carriageway thus making it impossible for the deceased to avoid the collision. Furthermore, the Court would also note that PW-2-Investigation Officer, has in his testimony admitted to have verified the driving license of the driver of the tractor and found it to be valid.

5. The appellant further contends that the impugned order has erred in granting loss of consortium to all four claimants, i.e., the mother, the wife and two minor daughters of the deceased, whereas only the wife of the deceased was entitled to loss of consortium.

6. The learned Tribunal has *inter-alia* held as under-

11. Compensation under non-pecuniary heads:-

*(i) Judgment of **Pranay Sethi (supra)** was considered and clarified by the **Apex Court In Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. Civil Appeal No. 9581/2018 decided by the Apex Court on 18.09.2018.** After considering the **Pranay Sethi's** judgment, Hon'ble Supreme Court pleased to award loss of consortium of Rs. 40,000/- to each dependent of the deceased and further pleased to award a compensation of Rs.50,000/- to each dependent of the deceased towards loss of love and affection. The relevant paragraphs are reproduced as under:-*

> *"A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in) a death case. One of these heads is Loss of Consortium.*
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> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium, 'parental consortium', and 'filial' consortium.*
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> *The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
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> *Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."*
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> *Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."*

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldover have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium. The amount of compensation to be awarded as consortium will be governed by the *principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).*

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium."

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(iii) Since all the petitioners were financially dependent upon the income of deceased, they are also entitled for loss of consortium as well as loss of love and affection.

7. In view of the dicta of the Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram @Chuhru Ram & ors. in Civil Appeal No. 9581/2018***, there is no error in the reasoning of the learned Tribunal granting loss of consortium to the dependants of the deceased.

8. Lastly, the appellant states that it is a matter of record that at the time of the incident, the insured tractor did not have a valid certificate of fitness, which had expired on 21.09.2015, i.e., much prior to the date of the accident on 26.11.2015 and, therefore, the appellant was entitled to grant of recovery rights.

9. The relevant portion of the impugned order reads as under:-

(xiv) Bare perusal of Rule 31 makes it clear that after the expiry of fitness, owner of vehicle is entitled to renew the fitness certificate after paying requisite late fee. From the fitness certificate placed on record it is clear that the fitness was renewed w.e.f. 04.12.2015 and the same was valid upto 03.12.2016. Since owner of the tractor got renewed the fitness after paying the late fee, it cannot be said that the vehicle was being plied without fitness. Further there is nothing on record which may show even prima facie that on the day of accident the tractor was not in a

roadworthy condition. In these circumstances, if there was any technical violation, the same was not so fundamental, which makes insurance company entitle to escape from its liability.

(xv) In view of the aforesaid discussion, 1of the considered opinion that insurance company failed to establish that the tractor was being used in violation of terms and conditions of the insurance policy.

(xvi) Since at the time of accident tractor was being driven by respondent no. 1 Prem Pal Singh and registered in the name of respondent no. 3 Luv Kush Sharma Proprietor of Samadiya Construction Co. and insured with respondent no. 5 United Insurance co. Ltd., all shall be jointly and severally liable to pay compensation to the petitioners.

10. In view of the fact that the offending tractor was insured by the appellant and against third party liability, and the appellant has been unable to show that there was contributory negligence on behalf of the deceased, the learned Tribunal has rightly held that the appellant is liable to pay compensation to the claimants.

11. In the circumstances, no case is made out to interfere with the impugned order. The appeal is without merit and is accordingly dismissed. The pending application also stands dismissed.

NAJMI WAZIRI, J

APRIL 24, 2019