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

% **Date of Decision : 10.04.2019**

+ **MAC.APP. 225/2014 AND CM APPL. 11031/2017**

ORIENTAL INSURANCE COMPANY LTD Appellant
Through **Ms. Neerja Sachdeva, Adv.**

versus

MADHU BALA & ORS Respondents
Through **Mr. S.N. Parashar and Ms. Pankaj
Kumari, Adv. for R-1.**

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant-the insurer of truck bearing registration No. PB 13 G 7371 in short, 'the offending vehicle', which was involved in the motor accident resulting into the fatal injuries to deceased Pankaj @ Bharat, in short, 'the deceased', assails the judgment-award dated 14.12.2013 passed by MACT, Rohini (North), on two counts. Firstly, on the ground of contributory negligence. Secondly, as regards the quantum of compensation.

2. In view of the restricted challenge, the undisputed facts are that the deceased was driving a scooty bearing No. DL 9S W 8457 in short, 'the

scooty', and, his sister Ms. Chanda @ Bhagya was the pillion rider, when the accident took place involving the offending vehicle. The claimants-respondent Nos. 1 and 2 to prove their plea that the accident occurred on account of rash and negligent driving of the offending vehicle, examined PW2 Ms. Chanda @ Bhagya Sharma, who, undisputedly, was an eyewitness to the occurrence of the incident. Of course, as per the stated facts, she was the best witness to the incident. Said PW2, in her deposition by way of affidavit Ex.PW2/A, has given the sequence of the events, as under :

"I say that on 25.11.2010 time at about 1:55 p.m. my brother Late Sh. Pankaj @ Bharat was going on a scooty bearing no.DL-9S-W-8457 from the side of Village Bawana and towards the side of Kanjhawala in very proper manner on which I was sitting as a pillion rider (my MACT matter has been settled with insurance company) when we reached near small canal Kanjhawala road, Bawana all of a sudden the R-1 (Harnek Singh) came with driving the offending vehicle no. PB-13-G-7371 (HTV TRUCK) in very rashly, negligently in very fast speed and hit to that scooty which was being driven by my brother due to the very forceful impact/hitting my brother expired on the spot first of all he was taken in MB Hospital after that the PM was conducted at BJRM Hospital. My brother was very brilliant student. In the said accident I had also suffered some injuries."

Though, cross-examined, from the foregoing deposition of PW2, nothing emerges, which would cast a shadow of doubt on her such deposition. During her cross-examination, but, for a suggestion to the effect that the accident occurred due to rash and negligent driving of the deceased, and, that, he was not holding a valid driving license to drive the scooty, nothing else can be deciphered. The appellant-the insurer on its part did not

examine even the driver of the offending vehicle, which could be the only other best witness to controvert the deposition of PW2. In the given facts and circumstances, there is no reason to disbelieve the deposition of eyewitness PW2 that the accident occurred due to rash and negligent driving of the offending vehicle and the finding to that effect returned by the Tribunal, does not require any interference by this Court.

3. As regards the plea raked-up by the appellant that in the absence of the DL held by deceased, it be construed as his contributory negligence in the occurrence of the accident, the submission raised, this Court observes, does not find support from either any statute or case law. At least, Ms. Sachdeva has not drawn any attention to. In this background, when, in the given facts and circumstances, it is well established that the accident took place on account of rash and negligent driving of the offending vehicle, the mere absence of driving license by the driver of the other vehicle involved in the accident, cannot be assumed to be a case of contributory negligence. Submission raised to the contrary, is therefore, rejected.

4. Coming to the question of quantum of compensation awarded, the Tribunal has proceeded to assess the compensation taking note of the fact that the date of birth of the deceased was 15.08.1992. It is not in dispute. The Tribunal has however, applied the minimum wages prescribed for a matriculate, with the observations in para 18 of the impugned judgment, as under :

“On account of loss of dependency, as no income proof has been furnished to support the claim, considering the fact that deceased was studying in 9th class and was still studying, it is reasonable to presume that deceased would have at least completed his matriculate. It shall be appropriate and

reasonable to assess the income of the deceased on the basis of "notional income" as per minimum wages schedule. The applicable wages to "matriculate category" at the relevant time (25.11.10) are Rs.6,929/-, per month(as on 01.02.2010 minimum wages of matriculate were Rs.6,448/- and on 01.02.11 Rs.7,410/-). Hence, average is taken as Rs.6,929/- Therefore, the notional income of the deceased is assessed @ Rs.6,930/- per month (after rounding off)."

A bare perusal of the foregoing observations of the Tribunal would show that the deceased has been treated to be a matriculate, on presumption. The approach adopted by the Tribunal, is erroneous, on atleast, two counts. Firstly, whether a person possesses a particular qualification or not, is a matter of fact, and, no presumption in that regard can be drawn. Secondly, the claimants did not whisper even a word for the deceased possessing the qualification of matriculate, at the relevant time. On this, Mr. Parashar, Id. Counsel for the respondent Nos. 1 and 2, submits that in the given facts and circumstances, the wages as of non-matriculate, may be applied. The minimum wages of a non-matriculate as on date of occurrence of the accident were Rs.5,850/-, both the Id. Counsel for the parties agree to.

5. The appellant-the insurer then also assails the impugned judgment-award as regards the assessment of income of the deceased on account of future prospect @ 50% of the income in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.***, 2017 SSC Online SC 1270. In ***Pranay Sethi's*** case (supra), the Supreme Court has laid down that upto the age of 40 years, the future prospects could be added to the extent of 40%. The award to that extent would thus require to be modified. Then, it does not require elaboration that the multiplier is to be applied keeping in view the age of the

deceased rather than the claimant, as applied by the Tribunal. As per **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.**, (2009) 6 SCC 121, which is taken note of in **Pranay Sethi's** case (supra), the proper multiplier in the case was 18. Thus, applying the ratio of **Pranay Sethi's** case (supra), the compensation under the head of loss of income/dependency, which is the primary head of challenge, comes to Rs.8,84,520/- instead of Rs.8,73,264/-. In **Pranay Sethi's** case (supra), towards non-pecuniary damages, the Supreme Court has prescribed three heads, and, the compensation payable there-under, is as follows :

“Loss of consortium	Rs. 40,000/-
Loss of estate	Rs.15,000/-
Loss of funeral expenses	Rs.15,000/-”

The impugned award however, proceeds to award compensation under the two heads of funeral and miscellaneous expenses, and, loss of love and affection in the sum of Rs.25,000/- each. When the ratio of **Pranay Sethi's** case (supra) is to be applied, the award would invite modification to that effect, as well. Calculated thus, the compensation payable to respondent No.1, would be, as follows :

S. No.	Head of compensation	Amount
1	Loss of income/dependency	Rs.8,84,520/-
2	Loss of consortium	Rs.40,000/-
3	Loss of estate	Rs.15,000/-

4	Loss of funeral expenses	Rs.15,000/-
	TOTAL	9,54,520/-

6. Ms. Sachdeva, on her part, submits that in the instant appeal, the modification of the award to enhance the compensation may not be allowed, as the claimant-respondent No.1 has not preferred appeal to such enhancement of compensation. This Court does not find merit in the submission so made. Firstly, for the reason that the award has come to be passed by the Tribunal and not a Civil court, and, therefore, the technicalities of procedure, which are attracted in civil proceedings, do not come in the way of the proceedings before the Tribunal, especially, in relation to a proceeding under the beneficial legislation like Motor Vehicle Act. Secondly, the appeal is to be taken to be a continuation of the proceedings initiated for award of just, fair and equitable compensation, for which, formal institution of proceedings alike plaint, is not called for. Contention raised to the contrary is therefore, rejected.

At this stage, Mr. Parashar states that in terms of the orders of this Court passed on 14.03.2014, the appellant had deposited only 80% of the award amount.

7. Keeping in view the totality of the facts and circumstances, it is therefore, directed that the remaining amount including the enhanced compensation shall be deposited by the appellant with the Tribunal within six weeks from today, failing which, such outstanding amount shall carry further interest @ 12% p.a. The entire award amount shall be disbursed to the respondent No.1 in consonance with the terms and conditions of the

impugned award by the Registrar General of this Court or the Tribunal, as the case may be. Statutory deposit with interest, if any, shall be released to the appellant as per norms. Appeal stands disposed off accordingly.

A. K. CHAWLA, J

APRIL 10, 2019

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