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

% *Decided on: 16.10.2019*

+ MAC.APP. 464/2015 & CM APPL. 41150/2017

UNITED INDIA INSURANCE COMPNAY LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

MAMTA DUTTA & ORS Respondents

Through: Mr. S.N. Parashar, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 27.02.2015 passed by the learned MACT in Case No. 669/2014, on the ground that the impugned order has not discussed the facts of the case in detail and has concluded that the alleged offending vehicle was involved in the motor vehicular accident and/ or that the said vehicle was solely responsible for causing the said accident. Secondly, it is argued that there was an element of contributory negligence on the part of the deceased, therefore, some degree of such negligence ought to have been fixed upon him. Thirdly, that compensation for future prospects have been awarded @ 30%, when the deceased was 43 years of age and was working in a private job. Lastly it is argued that his ITR has not been filed and there is an error in the computation of 'loss of dependency' because the income tax had not been

deducted from the gross amount claimed to have been paid and/or payable by the employer to the deceased.

2. The facts of the claim have been discussed in the impugned order as under:

“2. The case of the petitioners is that on 22.03.2012 at about 08:55 AM while the deceased was coming from Rajouri Garden towards Punjabi Bagh on his scooter bearing No. DL IS F 7885 and when he reached at opposite site of ESI Hospital, Punjabi Bagh, side at Ring Road, Delhi in the meantime a Tempo bearing No. DL 1L E 2930 which was being driven by respondent no. 1 at a very high speed hit the scooter of the deceased from back side and as a result deceased fell down on the road. Deceased was removed to ESI Hospital and was declared brought dead. In total the petitioners have claimed a total sum of Rs. 55,00,000/- on account of compensation.

13. PW 2 explained the mode and manner of the accident vide Ex PW 2/A that on 22.03.2012 at about 08:55 AM while the deceased was coming from Rajouri Garden towards Punjabi Bagh on his scooter bearing No. DL IS F 7885 and when he reached at opposite site of ESI Hospital, Punjabi Bagh, side at Ring Road, Delhi in the meantime a Tempo bearing No. DL 1L E 2930 which was being driven by respondent no. 1 at a very high speed hit the scooter of the deceased from back side and as a result deceased fell down on the road. Deceased was removed to ESI Hospital and was declared brought dead. The cross-examination carried on by the respondents is not suggestive of anything which may discard the claim of the petitioners that the driver of the offending vehicle was not rash and negligent at the time of accident.”

3. The learned Tribunal had arrived at the aforesaid conclusion on the basis of evidence of PW-2, Head Constable Ram Diya, who had stated as under:

“PW-2 H. Ct. Ram Diya No. 177/W, PIC No. 28821313 recalled for further statement in continuation of his earlier statement dated 12/07/2013.

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xxxxxx by Sh. Vishal Vimal, Ld. Counsel for respondents No.1 & 2

It is correct that the tempo was coming from my behind side and scooter was ahead of mine. It is wrong to suggest that I am deposing falsely, it is wrong to suggest that offending vehicle was not rash and negligent at the time of accident. It is wrong to suggest that I have not seen the accident or I was not present there on my duty. It is wrong to suggest that I was on duty at the gate of Rajdhani College. I had received the summons for last of hearing also.

xxxxxx by Sh. V. P. Malhotra, Ld. Counsel for respondent No.3

I am a summoned witness. I have received the summons 5/6 days before today's date. My affidavit Ex. PW2/A has not been prepared by me. The aforesaid affidavit was prepared by advocate. The advocate who has prepared the affidavit is not mine. I have seen the affidavit for the first time on the last date of hearing and today I have seen the affidavit second time. I am matriculate. I can read the contents of the affidavit. My duty starts from 8 a.m to 8 p.m daily. Today, I have not brought any proof regarding my duty on 22/03/2012. On that date I was patrolling my duty on foot. I started from police station at about 7.45 a.m. The place of accident is about less than half kilometer from Police Station. It takes about 10 to 12 minutes from P.S to reach at the place of accident.

I saw the tempo for the first time from a distance of about 20 ft. I saw the scooter at the time of accident for the first time. The site plan placed on record pertains to the accident in question. It is correct that there is side lane attached to the main road. It is correct that scooter was coming from side lane. The accident took place 5/6 ft ahead from the entry of the side lane of the main road. It is wrong to suggest that I am deposing aforesaid statement wrongly as the same is not as per the site plan. It is correct that there was medium rush on the road at the

time of accident. Somebody from the crowd had called the police through 100 number dial . PCR Van came in my presence. The scooter was hit by the tempo from the back side. I remained present at the spot after the accident for a period of half an hour. The tempo was coming from the side of Ring Road. The number of scooter”

4. This deposition is on the lines of the FIR, which was lodged at his instance. It had recorded everything that had been deposed by PW-2, Head Constable Ram Diya, before the learned Tribunal. Therefore, there was sufficient material on record which was examined by the learned Tribunal, the case was duly discussed and the conclusion as noted hereinabove was arrived at. It does not call for any interference.

5. The deceased was employed at a fixed salary of Rs. 32,000/- with M/s Brand Buzz as a Store Manager, only 10 days prior to the accident. The proprietor of the said firm, PW-1, Manish Sharma, had deposed that the Attendance Register of the firm from April 2010 to 2013 showed that the deceased had worked with the firm from 12.03.2012. Unfortunately, he died on 22.03.2012. He was employed at a monthly salary of Rs. 30,000/- and Rs. 2,000/- as conveyance allowance. After his demise, his wife was paid a salary of Rs. 10,000/- in cash. He was 43 years of age at the time of the motor vehicular accident (i.e. between the age of 40 to 50 years). In terms of the dicta of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**, (2017) 16 SCC 680, para 59(iv), the deceased would be entitled to addition of 25% towards ‘loss of future prospects’ instead of 30% as has been granted by the impugned award.

6. Thus, computation of “loss of dependency” shall be made on the net income of the applicable income tax, but after making provision for deductions permissible under Chapter VIA of the Income Tax Act, 1961. The Court would note that the non-pecuniary damages had been awarded @ Rs. 1,00,000/- each for ‘loss of consortium’, ‘loss of love and affection’ and ‘funeral charges’. In terms of the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546 compensation for “loss of love and affection” and for “loss of consortium” is payable @ 50,000/- and Rs. 40,000/- respectively to each of the four claimants. It is so granted.

7. Keeping in mind the fact that 50% of the awarded amount had already been deposited by the appellant, the balance amounts in terms of the computation carried out hereinabove 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 released to the beneficiary(ies) of the award in terms of the scheme of disbursement specified therein.

8. Since the appellant has partially succeeded in the appeal, let the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

9. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

OCTOBER 16, 2019/AB