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

% *Decided on: 21.11.2019*

+ MAC.APP. 296/2017, CM APPL. 11511/2017, 11512/2017
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pradeep Gaur, Adv.
versus

+ BEENA AGGARWAL & ORS Respondents
MAC.APP. 1046/2017

BEENA AGGARWAL & ORS Appellants
Through: Ms. Neha Kapoor, Adv. with
Mr. Mohit Bhadu, Adv.
versus
NATIONAL INSURANCE CO & ORS Respondents
Through: Mr. Pradeep Gaur, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

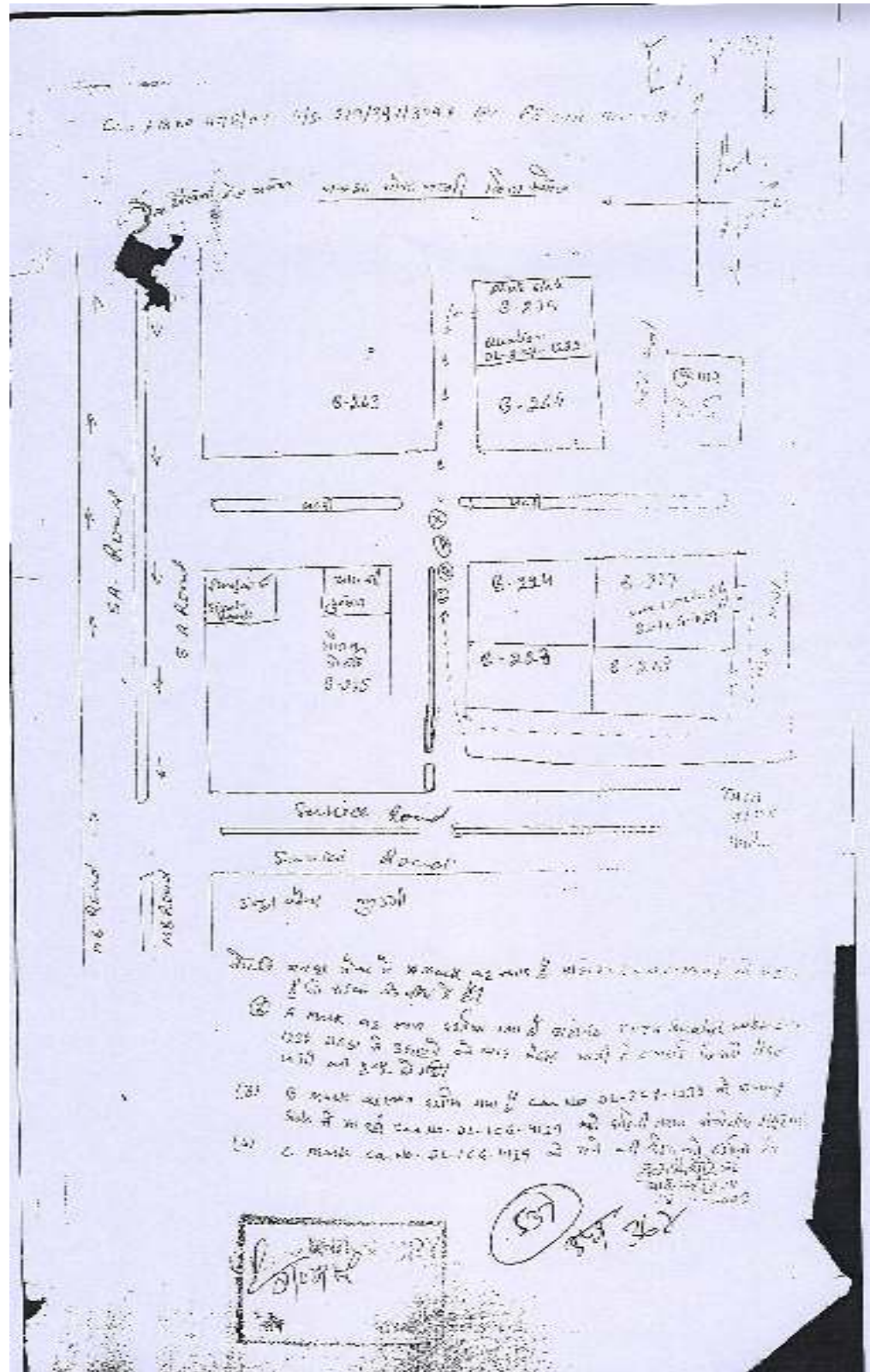
1. MAC.APP 296/2017 was filed by the insurance company against the award of compensation dated 07.12.2016 passed by the learned MACT in MACT No. 3026/16, on the ground that the apportionment of negligence having been fastened exclusively upon the appellant/insurer, is erroneous.

2. According to the insurer, the kin of the claimants, who died in the unfortunate motor accident on 13.09.2003, was the driver of a Toyota Qualis car bearing no. DL-3C-Y-1232 and the alleged offending vehicle was said to be a Honda City car bearing no. DL-1C-G-4129. A FIR was registered at the behest of one eye witness namely Mr. Dharam Chand, who stated that while sitting at his shop he witnessed a Toyota Qualis which was being driven at a

very high speed, first hit a pedestrian, who was identified as Mr. Mulayam Singh. The pedestrian died in the said accident. The Toyota Qualis got imbalanced but continued in its direction when it hit the Honda City car, which was being driven on the wrong side of the road. The resultant impact between the two cars was so immense that the Toyota Qualis turned turtle and crashed against the side railing of the road, which led to the fatality of its driver.

3. The learned counsel for the insurer submits that, what is to be seen in the first place, is the offence committed by the deceased driver of the Toyota Qualis as he was driving the vehicle in a rash and negligent manner which led to the demise of the pedestrian Mr. Mulayam Singh, the vehicle then lost its balance and crashed into the Honda City car, thus there is a clear case of contributory negligence by the deceased the driver. He contends that therefore, some degree of negligence ought to be attributed upon the deceased driver and correspondingly the quantum of compensation be reduced. He further submits that when there is a head-on-collision, 50% contributory negligence is attributed upon each party.

4. The aforesaid contention would ordinarily be valid in the case of a highway or a road, which is not marked for one way traffic. In the present case, the Site Map (at page 297) shows that there was a road divider which clearly required the motor traffic to move in its respective direction. The Site Map is as under:



5. What is discerned from the Site Map is that the motor accident occurred at point 'X'. The Qualis was clearly coming down in the correct lane. The offending Honda City car was obviously in the wrong lane coming from the opposite direction; point 'X' is the spot of a ditch or depression in the middle of the road crossing; the Qualis went into it and bounced-up, crashing fatally into Mr. Mulayam Singh the pedestrian, but it continued its onward direction in its own lane, i.e. on the left side of the road when the offending Honda City car crashed into it at point 'B', because the latter was on wrong side of the road. Even if the death of Mr. Mulayam Singh was on account of the Toyota Qualis hitting him, it stayed in its own lane, i.e. the correct side of the road. The demise of the pedestrian is not being examined in this case but the fatality of the Qualis driver. The crash of the Qualis would not have occurred had the Honda City car not been driven on the wrong side of the road. The latter's sudden appearance in front of the Qualis was almost like an unexpected wall. The demise of the driver of the Qualis was on account of the accident caused due to the ostensible rash and negligent driving of the Honda City car. It has nothing to do with the demise of pedestrian. The negligence of the offending Honda City car is seen and is clearly established from the Site Map. Therefore, there is no case of contributory negligence by the deceased driver. Therefore the case calls for no apportionment of contributory negligence upon the deceased driver.

6. The appellant, next argues that the quantum of compensation should be reduced as some element of contributory negligence should be attributed in the case of a head-on-collision. He relies upon the judgment of the Supreme Court in *Bijoy Kumar Dugar v. Bidya Dhar Dutta* (2006) 3 SCC

242, which held to the effect held that whenever there is a head-on-collision, the contributory negligence of both parties is clearly made out. However, the facts of each case differ. In the present case, the offending Honda City car was coming from the wrong side of the lane while the victim was driving his car on the correct side. The offending car was emerging from the wrong side of the divider at an immense speed and crashed into the victim's vehicle, which had just crossed over at the road junction suddenly crashed into the offending car at the mouth of the other side of the road. The victim's vehicle had hardly any chance of averting the head-on collision with the Honda City car. The sudden unexpected appearance of the offending Honda City car was entirely to be blamed. Furthermore, the learned counsel for the insurer submits that in the criminal case, the driver of the offending Honda City car has been discharged. Be that as it may, such discharge in a criminal case will have little to do with the appreciation of the facts of this case, which are squarely made out from the Site Map. In view of the above, the appellants contention for reduction of the compensation amount is rejected simply because of there being a head-on collision.

7. The insurer next contends that the compensation awarded towards "loss of dependency" calculated on the basis of ITRs, is erroneous because the ITRs belonged to a period before the death of the deceased driver. In this regard, the impugned order has reasoned as under:

20. Income of deceased: In the claim petition, it is mentioned that deceased Sunil Aggarwal is self employed and doing his business and his monthly income is Rs. 1,25,000/- per month. It is further stated that deceased was a Director in a company "Apna Motels (P) Ltd" and was getting a salary of Rs. 1,80,000/- annually from there. Deceased was having an agreement with the company that

there would be at least 20 % increase in the salary every year. Deceased was owner of land and building situated at Dehradun, Uttranchal which was leased out to Apna Motels (P) Ltd. He was managing the affairs of the business of this Motel. The Apna Motels started its operation from 01.01.2003 and till the end of financial year on 31.03.2003 the operating lease charges from the Apna Motels received was Rs. 11,382/- therefore, the projected annual income comes out to be Rs. 1,36,584/- which was likely to be increased in the future. The deceased was 64% share holder in the Apna Motels Pvt Ltd. It is further stated that deceased was having various properties at Delhi which were leased out and deceased was earning Rs. 8,58,000/- per annum from the said properties. Deceased was earning Rs. 31,000/- per annum as interest and dividends on investments made by him. It is further stated that deceased was running an Art Gallery in the name and style of Niharika Art Gallery and was earning Rs. 32,000/-annually. After the accident, petitioners has to close down the said Art Gallery. It is further stated that deceased was also active in business of trading of shares and was earning handsome amount from there. His average annual income from trading of shares was approximately Rs. 70,000/- as shown in the income tax return. Due to his sudden death, this business has to be closed down. Deceased was looking after the joint family business which was being earned out at Okhla in the name of S.S.Engg. Works pvt ltd. The said business has been ruined as no other person is available in the family to take care and run the business which was in the nature of freight and forwarding of India Gypsum Ltd for which the company was having agreement which M/s India Gypson Ltd, the said company earned a profit of Rs. 17.60 lacs for the year ending March 2003.

21. Income Tax return of the M/s S.S. Engineering Works Private Limited for the assessment year 2005-2006 which has been filed after the death of deceased Sunil Aggarwal shows that income of the company is Rs.5,47,200/- per annum. Tax deduction is Rs.1,91,520/-plus surcharge is Rs.4788/-, therefore, his net income is Rs.

3,50,892/- per annum. Income Tax return for the M/s S.S.Engineering Works Private Limited for the assessment years 2004-2005 shows the income of the company is Rs. 9,15,572/-. Tax deducted is Rs.3,20,450/- and surcharge is Rs.8011/-, therefore, his net income is Rs. 5,87,111/- per annum. Income Tax return for the M/s S.S.Engineering Works Private Limited for the assessment years 2003-2004 shows the income of the company is Rs.16,53,465/-. Tax deduction is Rs. 5,78,715/- plus surcharge is Rs. 28,936/-, therefore, net income is Rs. 10,45,814/- per annum (Rs.16,53,465-Rs.607651/-=Rs,10,45,814/-per annum). Income Tax return for the M/s S.S.Engineering Works Private Limited for the assessment years 2002-2003 shows the income of the company is Rs.9,76,636/-. Tax deduction and surcharge is Rs.3,48,660/-, therefore, his net income is Rs. 6,27,976/- per annum.

22. Deceased was also running Apna Motels Pvt Ltd and PWL filed ITR of the Apna Motels Pvt Ltd for the assessment year 2003-2004 is Rs.73,763/-per annum. There was no tax deducted in the assessment year 2003-2004. ITR of the Apna Motels Pvt Ltd for the assessment year 2004-2005 is Rs.2,17,670/- per annum. There was no tax deducted in the assessment year 2004-2005. Regarding the other businesses and other landed properties of the deceased. Though the documents regarding the Niharika Art Gallery and about landed properties has been filed on record but whether these avenues were providing, any income to the deceased has not been proved on record. No documents or any other evidence has been filed on record to show the other income of the deceased except for the ITRs of the M/s S.S.Engineering Works Private Limited and M/s Apna Motels Pvt Ltd. In such circumstances, income from M/s S.S.Engineering Works Private Limited and M/s Apna Motels Pvt Ltd are taken into account. Therefore, income of the deceased is assessed on the basis of ITR of M/s S.S.Engineering Works Private Limited for the assessment years 2003-2004 and ITR of the Apna Motels Pvt Ltd for the assessment year 2003-2004, Rs.10,45,814/- per annum plus Rs. 73,763/-per annum= Rs.11,19,577/-per annum, hence,

monthly income is Rs. 93,298.0833/- (round figure as Rs.93,300/- per month). After presuming that the landed properties of the deceased and his other vocations were providing income to him, monthly income of the deceased Sunil Aggarwal is assessed as Rs.1,00,000/- per month."

8. What is to be seen from above is that no quantum of the earnings from rental income was included in the assessment of compensation towards 'loss of income'. The ITRs of M/s S.S. Engineering Works and of Ratna Motel were taken into consideration. The motor accident occurred in September, 2003. The ITRs of M/s S.S. Engineering Works Pvt. Ltd. for the relevant three years is as under:-

Year (A.Y.)	Total Income (in Rs.)	Tax Deduction	Surcharge	Past tax net income (in Rs.)
2002- 2003	9,76,640	3,81,824	6,836	6,27,976
2003- 2004	16,53,465	5,78,715	28,936	10,45,814
2004- 2005	9,15,572	3,20,450	8,011	5,87,111

Apna Motel: 2003-2004= Rs. 73,763/-

2004-2005 = Rs. 2,17,670

9. The learned Tribunal came to the figure of Rs. 1,00,000/- on the basis of ITRs of the year 2003-2004 both for M/s S.S. Engineering Works and Apna Motel. The appellant submits that the monies which were taken into consideration for computation of compensation included income from leased properties the same would continue even after the demise of the deceased.

However, the appellant is unable to show which of these earnings were taken into consideration at the time of computation. Therefore, the learned Tribunal assessing the monthly income of the deceased as Rs. 1,00,000/-, cannot be faulted with. The appellant's aforesaid contention is untenable and is accordingly rejected. An addition of Rs. 7,000/- per month income from other business such as Niharika Art Gallery and Shivam Foundation was fairly assessed by the learned Tribunal and calls for no interference. The contention of the learned counsel for the appellant that the earnings of a businessman would continue after his death is untenable for the reason that the business was being run by the deceased. He was the key-man for managing the varied business aspects, with his special and unique skills, personal business links and enterprising qualities, which he may have uniquely possessed. The same cannot be replicated by another person. His business was not on auto mode, like a Fixed Deposit, where the interest or profit would necessarily accrues, irrespective of any other business activity. The enterprises run by the deceased were privately owned companies; therefore his sudden demise would affect the continuance of and earnings from such entities.

10. The appellant next contends that the addition of 30% granted towards "loss of future prospects" is erroneous. The same ought to have been 25% in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors*, (2017) 16 SCC 680, wherein apropos a deceased, aged between 40-50 years, such addition shall be 25%. The said argument is valid. The addition towards "loss of future prospects" shall be @ 25%.

11. The appellant further contends that compensation awarded by the learned Tribunal towards "loss of love and affection" and "loss of

consortium" @ Rs. 1 lakh each is on the higher side. The Court would note that in terms of the dicta of Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546, each of the claimants are entitled to compensation towards "loss of love and affection" and "loss of consortium" @ 50,000/- and Rs. 40,000/-, respectively. The same is granted to them. Furthermore, the compensation towards "Loss of Estate" and "Funeral Expenses" shall also be payable to the claimants @ Rs. 15,000/-, under each head, in terms of *Pranay Sethi* (supra).

12. Lastly, the learned counsel for the appellant submits that the deduction of 1/4th towards "personal expenses" is erroneous because there were effectively only three claimants and not four. He relies upon the dicta of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, which inter alia held that "*Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent.*" The claimants have not led any evidence to show that the father was monetarily dependent upon the deceased. In the circumstance, his dependency will not be deemed to be established, thus there being three dependants, 1/3rd deduction towards "personal expenses" would be taken into consideration while calculation compensation towards "loss of dependency". Nevertheless, the Court would note that, the evidence of the spouse of the deceased, to the effect, that the father was crest-fallen and emotionally devastated on account of demise of his young son who was barely 44 years of age and a was a businessman with much promise. Therefore, he ought to be compensated at least under two heads i.e. "loss of

love and affection" and "loss of parental consortium". In the circumstance, the father is awarded Rs. 50,000/- and Rs. 40,000/- towards "loss of love and affection" and "loss of consortium", respectively, in the terms of **Magma** (supra).

13. The Court is informed by the learned counsel for the respondents/claimants that the father of the deceased has since passed away. Accordingly, quantum awarded to him i.e. Rs. 90,000/- would be inherited by his successors. The deceased was his only son but he has a daughter as well. Let the amount of Rs. 90,000/- be paid to his daughter.

14. Accordingly, the amount payable to the claimants shall be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 1,00,000/- (monthly income of the deceased) x 12 (months) x 14 (multiplier) x 125/100 (loss of future prospects) x 66.66/100 (1/3 rd deduction towards personal expenses)]	Rs. 1,39,98,600/-
2.	Loss of love and affection [Rs. 50,000/- x 4 (claimants)]	Rs. 2,00,000/-
3.	Loss of consortium [Rs. 40,000/- x 4 (claimants)]	Rs. 1,60,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	TOTAL	Rs. 1,43,88,600/-

15. The aforesaid amount, along with interest @ 9% interest per annum from the date of filing of the claim petition till its realization, if not already

deposited, be deposited before the learned Tribunal, within three week from the date of receipt of copy of this order to be released to the beneficiaries of the scheme, in terms of the scheme of disbursement specified therein.

16. The learned counsel for the appellant states that 50% of the awarded amount has already been deposited. Let the remaining amount in terms of this order be deposited along with interest accrued thereon.

17. Since the appellant-insurance company has partially succeeded in its appeal, the statutory amount, along with interest accrued thereon, be returned to it.

18. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J.

NOVEMBER 21, 2019

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