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

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Decided on: 17.09.2019

+ MAC.APP. 974/2015 & CM APPL. 30809/2015

UNITED INDIA INSURANCE CO LTD Appellant

versus

SEEMA KHURANA & ORS Respondents

+ MAC.APP. 370/2017

SEEMA KHURANA & ORS Appellants

versus

UNITED INDIA INSURANCE CO LTD & ANR Respondents

Through: Mr. Pankaj Gupta, Advocate for
insurance company.

Mr. A.P.S. Jadaun, Advocate for R-5
in item 7.

Mr. Anshuman Bal, Advocate for R-
1 to R-4 in item 7 and for appellant
in Item 9.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. Both these appeals i.e. MAC APP No. 974/2015 filed by the insurance company and the cross-objection thereto filed by the claimant, in MAC APP. No. 370/2017, impugn the Award of Compensation dated 05.11.2015 passed by the learned MACT in MACT Case No. 184/2014.

The appellant- insurance company has impugned it on the ground that without discussing rashness and negligence of the driver of the offending vehicle the fixation of liability on the appellant-insurer is erroneous and without basis.

2. It was the case of the claimants that the deceased expired on account of a motor vehicular accident on 11.05.2008. An FIR was registered apropos the accident and the same was taken into consideration by the learned Tribunal, the issue of negligence of the driver has been discussed as under:

“(1). In brief the relevant facts of the case as mentioned in the petition are that one Shri Rajesh Khurana S/o Late Shri K.K. Khurana expired due to injuries suffered in road traffic accident on 11.05.2008 at about 9:30 PM at Rotory Club, Nehru Nagar, Ghaziabad, (U.P.) due to rash and negligent driving of the offending vehicle i.e. Indica car bearing registration no. UP-16F-7472 which was being driven by respondent no: 1 Ram Kumar Sharma on the said date, place and time in said manner. The offending vehicle was insured on the date of accident.

(2). The respondents have filed the written statements. In the WS of R-1 it is mentioned that the offending vehicle was insured on the date of accident and R-1 was having genuine and valid driving licence at that time. In WS of R-2 it is admitted that the offending vehicle was insured in the name of R-1 for the period 20.8.2007 to 19.08.2008. The date of accident is 11.5.2008. The FIR No. 338/2008, U/s 279/338/304A IPC was registered at PS Singhani Gate, Ghaziabad. Father of deceased has already expired earlier before filing the petition. Mother of deceased, widow of deceased and sons of deceased are the petitioners being LRs. In the petition it is mentioned that the deceased was self employed and was doing business and he was 39 years old at the time of accident and earning Rs.,2,50,000/- per annum.

(3). On the basis of pleadings the following issues were framed by my Ld. Predecessor on 21.12.2010:-

1. Whether deceased died in road accident while going on scooter on 11.05.08 at about 9:30 PM at Rotory Club, Nehru Nagar, Ghaziabad caused due to rash & negligent driving of Indica car bearing no. UP-16F-7472 being driven by R1? OPP

2. Whether petitioners are entitled for any compensation and if so, to what amount and from whom?

3. Relief.

(4). I have already heard final arguments and perused the record. Now I shall give my issue-wise findings which are as under:-

(5). Issue No. 1:- The onus to prove this issue was upon the petitioner. Petitioner has examined PW-1 Smt. Seema Khurana who has filed her evidence by way of affidavit which is Ex. PW-1/A. She is not the eye witness of the accident. PW-2 Shri Rajesh Thakur is the eye witness of the accident who has filed his affidavit Ex. PW-2/A. He was also cross examined. Nothing material has come out in his cross examination to demolish the case of the petitioners. He has supported the case of the petitioners. The petitioners have also filed the certified copy of criminal case record including chargesheet. In the cases of motor accident, the aspect of negligence is to be adjudicated on the basis of preponderance of probabilities and the strict proof of negligence is not required. From the overall facts and circumstances and evidence on record it is clear that the accident in question occurred due to rash and negligent driving of the offending vehicle by R-1 on the relevant date, place and time which caused fatal injuries to deceased Rajesh Khurana. The present issue is disposed off accordingly in favour of petitioners and against respondents.

(Emphasis supplied)

3. According to the learned counsel for the appellant-insurance company, the reasoning is not based on the specifics of the case, therefore, it is untenable; that a Court of First Instance i.e. the learned Tribunal ought to have given a proper reasoning apropos the finding of fault with the manner of driving of the offending vehicle. The Court, however, would note that the claim petition was not based on DAR. The facts of the case pleaded were as under:

“1. That on 11.05.2008 at about 9.30 P.M. the deceased was coming to his house from his office on two wheeler scooter. When he reached Nehru Nagar Rotary club when a Indica car bearing no. UP-16F-7472 came at a very high speed driven most rashly and negligently and hit against the scooter as a result the deceased received serious injuries in the accident and was removed to Yashoda Hospital where he died.”

(Emphasis supplied)

4. To substantiate their claim, the claimants had led evidence through the widow of the deceased, Mrs. Seema Khurana, and PW-2 Mr. Rajesh Thakur. The former was not an eyewitness to the fatal accident, while the latter was. His evidence by way of affidavit states as under:

“1. That on 11.05.2008 at about 9.30 P.M. I alongwith Sanjeev Mittal were going to meet our friend in Akarti Apartment. When we reached near Rotary Club mor, we saw a Indica Car bearing no.UP-16F-7472 came from the side of Nehru Stadium came on the wrong side of the road at a very high speed driven most rashly and negligently and hit a scooterist coming from the side of Gandhi Nagar who fell down on the road and was grievously injured. We removed him to Yashoda hospital in Rickshaw. He died in the hospital on the next day.

The accident took place due to the negligence on the part of the driver of Indica Car bearing no.UP-16F7472. My statement was recorded by the police.

(Emphasis supplied)

5. In his cross-examination on 24.05.2011 PW-2 stated as under:

“I tender my evidence by way of affidavit which is Ex. PW 2/A bearing my signatures at points A and B.

XXXX by R1.

Nil. Opportunity given.

XXXX by Sh. VK Gupta, counsel for R2.

I have come today in the court to depose at the behest of the petitioners. My affidavit of evidence has been prepared by counsel for Smt Seema Khurarna as per my instructions. On the date of accident, I along with Sh. Sanjiv Mittal was going on a motorcycle being driven by Sh. Sanjiv Mittal and was passing through the road where the accident took place. I had seen the accident from the distance of 20-30 feet. Deceased was driving a, two wheeler scooter. We were on the main road while the deceased came from our right side through a approach road. Offending car over took our motorcycle and hit the scooter of the deceased. The deceased had just entered the main road from the approach road when the offending vehicle in right side of the road had hit the scooter of the deceased. Vol, offending vehicle was being driven on the wrong side. It was a single road. The accident had taken place on the extreme right side of the main road just at the starting point of the main road from the approach road. I along with some other person including Mr. Sanjiv Mittal had accompanied the deceased to the hospital. I remained at the spot for 5 to 7 minutes. The police had not reached in my presence. I had not previous acquaintance with deceased or his family. I remained in the hospital for about fifteen minutes. I did not met with the police at the

hospital on that day. On the next day, I received a telephonic call from the police and called me to the hospital. The police recorded my statement in the hospital. Police did not take me to the spot of the accident. The front right portion of the offending vehicle hit the front portion of the scooter. It is wrong to suggest that I am not an eye witness of the accident. Offending vehicle had speed away after the accident. I do not remember the colour of the offending vehicle. The vehicle was Indica Car and number plate of the car was in English alphabets. I myself noted down the number of offending vehicle on a paper. I did not keep that paper. It is further wrong to suggest that I am deposing falsely to favour the petitioner.”

(Emphasis supplied)

6. Quite clearly, the claimants were able to establish the fact that there was an eyewitness who had clearly seen the accident from close quarters and sufficient details of the accident had been recorded in his testimony. The eyewitness was nearly 20 to 30 feet from the accident; he saw everything right in front of himself. He accompanied the deceased to the hospital alongwith Mr. Sanjiv Mittal and got a call from the police the next day. His statement was recorded by the police. He denied the suggestion of the insurer that he was not a witness to the accident. He had identified the offending vehicle as Indica Car bearing no. UP 16 F 7472 which came from the wrong side of the road at a high speed and was being driven in a rash and negligent manner and hit the scooter at Rotory Club, Nehru Nagar, Ghaziabad, (U.P.) and grievously injured the deceased, who was moved to Yashoda Hospital in rickshaw and succumbed to his injuries the next day. The testimony of the eyewitness remains unshaken and was rightly believed and taken into consideration in awarding the compensation.

Therefore, the insurer's contention in this regard is untenable and the Court finds no reason to interfere with the impugned order.

7. The learned counsel for the appellant- insurance company submits that the deceased was 39 years of age and was engaged in a private business, therefore, he should get compensation towards 'loss of future prospects' only at 40% and not at 50% as awarded in the impugned order. His contention is correct in view of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680. Accordingly, the compensation towards 'loss of future prospects' is reduced from 50% to 40%.

8. The claimants seek enhancement of the compensation on the ground that the ITR for Assessment Year 2008-09 ought to have been considered and not only the ITRs of AYs 2006-07 and 2007-08. It is not in dispute that the ITR of AY 2008-09 was filed on 27.08.2008, that is, after five months of demise of the deceased. The claimants were not able to support the ITR with any kind of records, ledger books, etc., nor was the claimant PW-1 able to support the enhanced source of income for the AY 2008-09. The Income Tax Officer-PW-3, was unable to corroborate the ITR of 2008-09, because it being more than six years old, had been destroyed as per rules. The ITR of AY 2008-09, not having been proven, was not taken into consideration.

9. The Court would note that the Trial Court had considered the ITR of AY 2006-07 only because in the subsequent ITR there was no bifurcation of gross total income. The ITR of AY 2006-07 was considered as it had bifurcation of income from business and income from other sources, these two were taken into consideration, while the income from house property

was disregarded, as the same would continue ever after the demise of the deceased.

10. In the circumstances, except for reduction of 'loss of future prospects' from 50% to 40%, no other interference is warranted apropos the 'loss of dependency'. However, with regard to non-pecuniary heads, the Court would note that compensation towards 'loss of consortium' has been awarded at Rs. 1,00,000/- and an equal amount for 'loss of care and guidance' has been awarded for the children. A sum of Rs. 25,000/- has been awarded towards 'funeral expenses' but nothing towards 'loss of estate'. These aforesaid amounts need to be revised 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 and *Pranay Sethi (Supra)*.

11. The amounts payable in terms of *Magma (Supra)* towards 'loss of consortium' for both filial and parental for each of the claimants is Rs. 40,000/- and for 'loss of love and affection' is Rs. 50,000/- per claimant. In terms of *Pranay Sethi (Supra)*, Rs. 15,000/- is payable towards 'funeral expenses' and 'loss of estate' under each head. Therefore, the amount payable would be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 15,151/- (income) x 12 (months) x 15 (multiplier) x 140/100 (future prospects) x 75/100 (personal expenses)]	Rs. 28,63,539/-
2.	Loss of love and affection [Rs. 50,000 x 4 (claimants)]	Rs. 2,00,000/-
3.	Loss of consortium	Rs. 1,60,000/-

	[Rs. 40,000 x 4 (claimants)]	
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 32,53,539/-

12. The earlier amount awarded by the learned Tribunal was Rs. 32,93,100/-. The appellant- insurance company is stated to have deposited the awarded amount before this Court. The amount now payable to the claimants would be Rs. 32,53,539/-. The same shall be released to the beneficiaries of the award in terms of the scheme of disbursement specified therein within three weeks of receipt of copy of this order. The excess amounts, as may be, shall be refunded to the appellant- insurance company alongwith the statutory deposit and interest accrued thereon.

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

SEPTEMBER 17, 2019

AB

NAJMI WAZIRI, J

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