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

% *Reserved on : 09.09.2022*
Pronounced on: 27.09.2022

\+ MAC. APP. 81/2014

THE ORIENTAL INSURANCE CO LTD. ..... Petitioner

Through: Mr. Pankaj Seth, Advocate

versus

SMT. LEELAWATI & ORS ..... Respondents

Through: Mr. S. N. Parashar, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 12.12.2013 ("**impugned Award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Dwarka Courts, Delhi in MACP No. 126/2012.
2. By way of the impugned Award dated 12.12.2013 the learned Claims Tribunal Awarded a compensation of Rs. 9,79,272/- with interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to deposit the entire awarded amount

before the learned Claims Tribunal within a period of one month.

SUBMISSION OF THE APPELLANT

3. Mr. Pankaj Seth, learned counsel for the Appellant contended that learned Claims Tribunal erred in observing that the alleged incident took place due to negligent driving of the offending vehicle. He further contended that it is a settled law that when two vehicles are involved in an accident then the act has to be treated as contributory negligence. He further contended that in terms of dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as ***(2017) 16 SCC 680,*** compensation under the head '*Future Prospects*' is to be paid by adding 40% of the assessed income of the deceased. Learned counsel fairly concedes that multiplier should be adopted in terms of dicta laid down in case of ***Sarla Verma & Ors. Vs DTC & Anr***. reported as ***(2009) 6 SCC 121*** which is upheld in the judgment of ***Pranay Sethi (Supra)*** case.

SUBMISSION OF THE RESPONDENT

4. Mr. S. N. Parashar, Advocate learned counsel appearing on behalf of the respondent/claimant while placing reliance on ***Pranay Sethi (supra)*** contended that compensation under the '*Loss of Consortium*', '*Loss of Estate*' and '*Loss of Funeral Expenses*' needs to be modified/enhanced. Learned counsel fairly concedes that in terms of judgment of ***Pranay Sethi (Supra)***, compensation under the head '*Love and Affection.*' has to be deducted.

REBUTTAL ARGUMENTS

5. Mr. Pankaj Seth, learned counsel for the appellant in rebuttal contended that the respondent/claimant is not entitled for any enhancement in compensation as the respondent/claimant has neither challenged the impugned order by way of an appeal nor preferred any cross objection to the present appeal.

LEGAL ANALYSIS

6. Brief facts of the case as noted by learned Claims Tribunal are as under:-

> "*…on 21/4/2012 at about 1.00 PM, Sachin Kumar (hereinafter the deceased) was pillion on motorcycle bearing no. UP-14BD-1158 being driven by his friend Imran Ali at a normal speed on correct side of the road when the motorcycle was hit by the offending vehicle from behind near GT road in front of PVR Oplent Mall, Chowki Nehru Nagar, PS Sihani Gate, Distt. Gaziabad being driven by R1 with fast speed in rash & negligent manner without blowing any horn in the contravention of the traffic rules & regulations. As a result thereof both the riders fell down along with motorcycle and sustained grievous injuries. Both the victims were taken to Yashoda hospital, Nehru Nagar, Gaziabad where the victim Sachin was declared as 'brought dead' by the Doctors on duty…*"

7. Mr. Pankaj Seth, learned counsel for the appellant contended that in an accident where two vehicles are involved, it has to be declared an act of contributory negligence. In this context it is necessary to ascertain the preliminary issue of negligence.

8. The learned Claims Tribunal while deciding the issue of negligence has held as under:-

> "*7. The onus to prove the aforesaid issues was on the petitioner. PW2 Sh. Imran had narrated the sequence of the accident in paragraph two of his affidavit Ex. PW2/A. On being cross examined on behalf of the respondents, he confirmed his driving on the correct side of the road at the speed of 40-30 Kmph whereas* ***the offending vehicle was running at the speed of 65-70 Kmph and hit the motorcycle from behind. He had noted down the number of the offending vehicle. Furthermore, he had been cited being the witness of the accident in the criminal case, therefore, I find no reason to give discredit to his version given by him with regard to the negligent driving of the vehicle in question.***
>
> *8. Besides this, the petitioner have proved the attested copies of criminal record viz. Charge sheet Ex. PA, FIR Ex. PB, site plan Ex. PC, Mechanical inspection report Ex. PD, MLC Ex. PE and postmortem report Ex. PF to establish the factum of the accident.*
>
> *XXXX XXXX XXXX*
>
> *11. Having regards to the aforesaid evidence, I am of the opinion that petitioner have been able to establish on record that accident did take place due to negligent driving of the offending vehicle at the given date, time and place.*"

9. In order to prove negligence of the offending vehicle, the claimant has produced PW-2, Mr. Imran Ali in support of her claim. PW-2 by way of his affidavit ***Ex PW-2/A*** has stated that '*on 21.04.2012 at about 01:00 p.m. I along with Sachin Kumar*

was going to Lal Kauan from Raj Nagar, via Chaudhary More, Ghaziabad by motor cycle No.UP-14BD-1158, which was being driven by me at a normal speed and on correct side of the road. When we reached at G.T. Road, in front of PVR Oplent Mall, Chowki Nehru Nagar, PS: Sihani Gate, Distt. Ghaziabad, in a meanwhile, ***a truck No.UP-14CT-6901, which was being driven by its driver, at very high speed, rashly, negligently, without taking necessary precautions, without proper lookouts, violating the traffic rules and without blowing any horn came from back side and hit the motor cycle with a great force****. As result of this we fell down on the road and sustained grievous injuries.* ***We were immediately taken to Yashoda Hospital, Nehru Nagar, Ghaziabad, where doctor declared Sachin Kumar as "brought dead****". His postmortem was conducted at District Mortuary District Hospital, Ghaziabad, U.P.*'The witness further made a statement that '*this accident was caused due to rash and negligent driving on the part of the driver of the offending truck no.UP-14CT-6901. Had the Truck driver been careful and cautious enough this accident could have been averted and the deceased would not have died an unnatural and untimely death in the accident*'. PW-2, Mr. Imran Ali was cross examined by the learned counsel appearing on behalf of the driver and owner of the offending vehicle and during cross examination the witness corroborated the statement made in examination in chief and deposed that '*I was driving the vehicle on left side of the road at the speed of 30-40*

Km. ph which was owned by Shakil Ahmed. The deceased was not driving the vehicle. ***The truck was running at the speed of 65-70 Kmph which hit the motorcycle from behind on the date of accident****. I did not look in the mirror before the accident. I did not stop my vehicle prior to the accident. It is wrong to suggest that I was driving the vehicle in negligent manner. 1am not aware as to who was the driver of the offending vehicle.****1 had noted down the number of the offending vehicle*****.'* Learned counsel for the respondent/insurance company chooses not to cross examine PW-2, Mr. Imran Ali before the learned Claims Tribunal.

10. A perusal of the aforesaid testimonies reveals that the alleged incident occurred due to rash and negligent act of the driver of the offending vehicle. The testimony of the PW-2 was unrebutted and no evidence has been led either by the owner of the offending vehicle or by the insurance company to claim contributory negligence. As such we do not find any merit in the argument raised by learned counsel for the appellant with regard to contributory negligence.

11. As far as the argument of learned counsel for the appellant with regard to non-entitlement of respondent/claimant for enhancement of compensation on the ground that respondent/claimant has neither challenged the impugned order by way of an appeal nor preferred any cross objection to the present appeal is concerned, the Hon'ble Supreme Court in the case of ***Surekha and others Vs Santosh and others*** reported

as ***2020 ACJ 2156*** while granting enhancement of compensation to the claimants has observed that:-

> "2. *This appeal takes exception to the judgment and order dated 4.1.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016 [Shriram General Ins. Co. Ltd. v. Surekha, 2020 ACJ 434 (Bombay)], whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs. 49,85,376, however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.*
>
> *3.* ***By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants****.*
>
> *4. As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the appellants is determined at Rs. 49,85,376, with interest thereon as awarded by the High Court*"

12. Applying the aforesaid observation of the Hon'ble Supreme Court, this Court is of the opinion that the respondent/claimant can be granted enhanced compensation without preferring an appeal or a cross objection in an appeal filed by the Insurance Company.

13. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the

Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** and in case of ***Sarla Verma (Supra).***

14. In the Judgment of ***Pranay Sethi (Supra)*** case, the Hon'ble Supreme Court has held that for the conventional heads, namely, '*Loss of Estate*', '*Loss of Consortium*' and '*Funeral Expenses*' amount of compensation is fixed as Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. As admitted by the learned counsel for the parties, the multiplier should be adopted in terms of dicta laid down in case of ***Sarla Verma (Supra)*** which is upheld in the judgment of ***Pranay Sethi (Supra)*** whereby it was held that for the purposes of selection of multiplier the age of the deceased has to be taken into account. Since the deceased was aged 19 years at the time of alleged incident multiplier of 18 is to be taken into consideration.

15. As far as future prospect is concerned in terms of ***Pranay Sethi (Supra),*** an addition of 40% of the established income of the deceased should be granted under the head '*Future Prospects'*. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** with regard to grant of compensation under the head '*Future Prospects'* has held as under:-

> "*....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc.,* ***<u>an addition of 40% of the established income of the deceased towards</u>***

future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."

(emphasis supplied)

16. With regard to deduction to be made towards '*Personal and Living Expenses*', the Hon'ble Supreme Court in ***Pranay Sethi (Supra)*** upholds the deduction ascertained in the case of ***Sarla Verma (Supra)***. As per the Judgment passed by the Hon'ble Supreme Court in the case of ***Sarla Verma (Supra)*** deduction is to be calculated as under:-

"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok

Chandra, the general practice is to apply standardized deductions.

<u>Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six</u>.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle.

In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. 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. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

<u>Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be</u>

restricted to one-third and contribution to the family will be taken as two-third."

17. It is borne out from the records that the deceased was survived by his mother only. Accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased, should be one half (1/2).

18. In view of the above discussion the impugned Award dated 12.12.2013 is modified to the following extent:

    (a) '*Loss of dependency*' is calculated as

    1. Rs. 8,528/- + 40% (Rs. 3,411/-) = Rs. 11,939/-
    2. Rs. 11,939/- less 1/2 deduction (Rs 5,970/-) = Rs.5,970/-
    3. Rs. 5,970 X 12 X 18 = **Rs. 12,89,520/-**

    (b) '*Loss of Consortium*' is computed as Rs. 44,000 X 1 = **Rs. 44,000/-** to be paid to the respondent/claimant.

    (c) '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the respondent/claimant.

    (d) '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the respondent/claimant.

    (e) Compensation under the head '*Love and Affection*' = Nil.

    (f) Total compensation to be paid to respondent/claimant is; **Rs. 12,89,520/-+ Rs. 44,000+ Rs. 16,500/- + Rs.16,500/- = Rs. 13,66,520/-.**

19. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 9,79,272/-** to **Rs. 13,66,520/-**.

20. The Appellant is directed to deposit the entire differential amount with the learned Claims Tribunal within a period of 4 weeks. On deposit of the entire amount, the modified Award alongwith interest and the balance amount lying deposited with the Registry of this Court and before the learned Claims Tribunal be released to the respondent/claimant within a period of two weeks. Statutory amount, if deposited, be released to the appellant.

21. There would no change in the rate of interest awarded by the learned Claims Tribunal.

22. Appeal stands disposed of. No order as to costs.

GAURANG KANTH, J.

SEPTEMBER 27, 2022