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

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Reserved on: 07.10.2022
Pronounced on: 31.10.2022

+ **MAC.APP. 609/2013**

THE NEW INDIA ASSURANCE CO. LTD Appellant

Through: Mr. J. P. N. Shahi and Ms. J.
Kiran, Advocates

versus

SUNITA DEVI & ORS. Respondents

Through: Mr. Rajnish Kumar, Advocate

+ **MAC.APP. 490/2014**

SMT. SUNITA DEVI & ORS. Appellants

Through: Mr. Rajnish Kumar, Advocate

versus

THE NEW INDIA ASSURANCE CO. LTD Respondent

Through: Mr. J. P. N. Shahi and Ms. J.
Kiran, Advocates

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. Both these appeals are heard together and disposed of by this common judgment. These appeals arise out of the Award passed by the learned Claims Tribunal which arise out of the same incident.

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2. **MAC. APP. 609/2013** is preferred by the Appellant/ The New India Assurance Co. Ltd. for setting aside the Award dated **03.06.2013** passed by learned Presiding Officer, Motor Accident Claims Tribunal-2 (Central)/ Tis Hazari Court, Delhi in MACT Suit No. 135/2013 whereby the learned Presiding Officer accepted the claim and awarded a compensation of *Rs.16,21,700/- (Rupees Sixteen Lacs Twenty One Thousand Seven Hundred only)* alongwith interest @ 9 % per annum, excluding interim maintenance, from the date of filing of the present petition till the date of realization (excepting for the period not specifically allowed) in favour of the claimants and directed the Insurance Company to pay the compensation amount within a period of one month and **MAC. APP. 490/2014** is preferred by the Claimants for enhancement of compensation amount in terms of Award dated **03.06.2013** passed by learned Presiding Officer, Motor Accident Claims Tribunal-2 (Central)/ Tis Hazari Court, Delhi in MACT Suit No. 135/2013.

SUBMISSION ON BEHALF OF APPELLANT/INSURANCE COMPANY

3. Mr. J.P.N. Shahi, learned counsel for the Appellant/Insurance Company contended that the Impugned order is perverse and has been passed without appreciating the principles of law, documents on record and the evidence on record. Learned counsel further contended that the learned Claims Tribunal erred in granting 10% contributory negligence as it has been proved on record that the deceased was crossing the road carelessly and as such 50% contributory negligence should have been awarded

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by the learned Claims Tribunal. Learned counsel while placing reliance on *National Insurance Co. Ltd v. Pranay Sethi & Ors* reported as (2017) 16 SCC 680, contended that compensation under the head 'Loss of Consortium' 'Loss of Estate' and 'Loss of Funeral Expenses' needs to be modified. Learned counsel further contended that in terms of dicta of *Pranay Sethi (supra)* since the deceased was of the age of 35 years at the time of the alleged incident, 'Future Prospects' is to be paid by adding 40% of the assessed income of the deceased. Learned counsel further contended that the learned Claims Tribunal erred in declaring the father of the deceased as dependent and sought calculation of deduction excluding the father of the deceased as dependent. Lastly, learned counsel sought reduction of rate of interest @ 7.5% per annum instead of 9%.

SUBMISSION ON BEHALF OF CLAIMANTS

4. Mr. Rajnish Kumar learned counsel appearing on behalf of claimants contended that the learned Claims Tribunal erred in deducting 10% towards contributory negligence. Learned counsel further contended that it has been proved from the testimony of PW-2 that the accident had occurred as the offending vehicle was driven in a rash and negligent manner and accordingly, the 10 % contributory negligence awarded by the learned Claims Tribunal is liable to be set aside. Learned counsel while placing reliance on the case of *Pranay Sethi (supra)* contended that compensation under the head 'Loss of Consortium' 'Loss of Estate' and 'Loss of Funeral Expenses'

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needs to be modified/enhanced. Lastly, learned counsel contended that the deceased was survived of 2 minor children and an amount of Rs. 1,00,000/- should have been awarded towards the care and guidance of each minor children.

COURTS REASONING

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

“2.that on the day of accident deceased while crossing the road on foot, near Metro Pillar no. 182, Shastri Nagar, Delhi was hit by Motorcycle no. DL 10 SC 7986 (offending vehicle) driven by respondent no. 1 in rash and negligent manner causing fatal injuries. Deceased was taken to hospital where during the course of treatment died on 04/02/2013. FIR was lodged, MLC and postmortem conducted.”

6. Learned counsel for the Appellant/Insurance Company raised an argument that the learned Claims Tribunal erred in granting 10% contributory negligence as it has been proved on record that the deceased was crossing the road carelessly and as such 50% contributory negligence should have been awarded by the learned Claims Tribunal. In this context, it is relevant to peruse the testimony of PW-2, Sh. Narender Kumar, relevant portion of his testimony is recapitulated as under:-

“On 03/02/2013 I was standing near the road with my vehicle in Shastri Nagar. At about 6 pm I saw one motorcycyle which was being driven rashly, negligently and at high speed came from Inderlok side and hit pedestrian near metro pillar no. 182, Shastri Nagar. After the accident people gathered at the spot and I informed the PCR. The ambulance arrived at the spot

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after 15 minutes. Police recorded my statement at police station. I cannot say who was the in mistake in this accident.

XXXX by Sh. Surender Singh, ld. Counsel for R3.

There was no zebra crossing nor cut for crossing the road nor any red light was there. Vol., people used to cross from there. It is correct that traffic runs but people do not stop on the road while crossing the road. At the time of accident the traffic was going on and the deceased was crossing the road without taking any care. I cannot say who was on guilt. It is wrong to suggest that the accident occurred due to the negligence of deceased."

7. As per the F.I.R., it has been stated that '**Ek Vyakti Pedal Sadak Par Kar Raha Tha Thabhi Inderlok ki taraf se ek motorcycle no. DL 10SC 7986 par do savar do ladke tej rafter se aaye va pedal par karne wale vyakti to takar mari**'. Perusal of the site plan also shows that the place of accident was a busy main road and on both the sides of the road there are established colonies. There is no doubt that the rider of the offending vehicle has to be more vigilant and attentive while riding the vehicle. However, it cannot be lost sight of the fact that a duty is also cast upon a pedestrian, and he should use due care and caution while crossing the road and it is his duty to look out for oncoming traffic. Whenever a pedestrian is crossing over a roadway at any place other than which is meant for pedestrian crossing, they cannot claim any specific precedence and the responsibility for causing the accident will have to be shared by the pedestrian along with the vehicle driver. PW-2/Sh. Narender Kumar, who was an eyewitness to the incident, categorically stated in his evidence

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that '*At the time of accident the traffic was going on and the deceased was crossing the road without taking any care.*' In view of this, it cannot be said that it was only the driver of the vehicle in question who was solely responsible for the accident. Accordingly, this Court is in agreement with the finding of the learned Claims Tribunal with regard to attributing 10% contributory negligence to the deceased.

8. On the aspect whether the father of the deceased were dependent upon the deceased is concerned, this Court has carefully gone through the testimony of PW-1, Smt Sunita Devi (*wife of the deceased*). In her testimony, she has stated that the parents in law of the deceased were dependent on the deceased. She has further stated in her cross-examination that '*my father in law is old aged and is not working. My husband used to send Rs.7,000/- to Rs. 8,000/- on average per month. My husband was residing at rented house. It is wrong to suggest that my husband was not earning Rs. 10,000/- per month. It is wrong to suggest that my father in law is not earning*'. No evidence to the contrary has been produced by the Insurance Company to disprove the assertion made by the PW-1 in her affidavit that her father in law was dependent on the deceased. Accordingly, it can be safely inferred that father of the deceased was dependent on the deceased.

9. 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 *National Insurance Co. Ltd Vs MAC.APP. 609/2013*
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Pranay Sethi & Ors reported as (2017) 16 SCC 680 and in the case of ***Sarla Verma & Ors. Vs DTC & Anr.*** reported in (2009) 6 SCC 121.

10. As far as future prospect is concerned admittedly the deceased was 35 years of age at the time of the alleged incident and accordingly in terms of ***Pranay Sethi (Supra)*** case 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)*** case 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., an addition of 40% of the established income of the deceased towards 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

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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)

11. Further in the case of ***Pranay Sethi (Supra)***, 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 at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. 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 & Ors. v. DTC & Ors.*** reported as **(2009) 6 SCC 121**. As per the Judgment passed by the Hon’ble Supreme Court in the case of ***Sarla Verma (Supra)*** deductions are 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.

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.

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 dependent 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 dependent on the father.

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

12. It is borne out from the records that the deceased was married and as discussed above, the deceased was having five dependents accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased, should be one fourth (1/4).

13. Further, the argument raised by the learned counsel for the claimants that the deceased was survived of 2 minor children and an amount of Rs. 1,00,000/- should have been awarded towards

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the care and guidance of each minor children, is misconceived and cannot be entertained in terms of law laid down by Hon'ble Supreme Court in the case of *Pranay Sethi (Supra)*.

14. In view of the above discussion, the impugned Award dated 03.06.2013 is modified to the following extent:

i. 'Loss of dependency' is calculated as

1. Rs. 7,254/- + 40% (Rs. 2,902/-) = Rs. 10,156/-

2. Rs. 10,156/- less 1/4 deduction (Rs. 2,539/-) = Rs. 7,617/-

3. Rs. 7,617/- X 12 X 16 = **Rs. 14,62,464/-**.

ii. 'Loss of Consortium' is computed as Rs. 44,000 X 5 = **Rs. 2,20,000/-** to be paid to the claimants.

iii. 'Loss of Estate' is quantified as **Rs. 16,500/-** to be paid to the claimants.

iv. 'Funeral Expenses' is quantified as **Rs. 16,500/-** to be paid to the claimants.

v. Compensation under the head 'Care and Guidance' i.e. 'Love and Affection.' = Nil.

vi. Total compensation to be paid to claimants is;
Rs. 14,62,464/- + Rs. 2,20,000 + Rs. 16,500/- + Rs. 16,500/- = Rs. 17,15,464/-.

15. Since 10% contributory negligence is attributed to the deceased in causing the accident, the compensation amount is to be deducted by 10%. Accordingly, the Claimants are entitled for a compensation of Rs. 17,15,464/- (-) Rs. 1,71,546/- =

Rs.15,43,918/-. Compensation granted by the learned Claims Tribunal is reduced from **Rs. 16,21,700/-** to **Rs. 15,43,918/-**.

16.This Court, vide order dated 12.07.2013 while staying the operation of the impugned Award in the present Appeal, directed the Appellant/Insurance Company to deposit the entire decretal amount with the Registrar General of this Court. This Court further directed for the release of the 80% of the decretal amount to the Claimants. Balance 20% was to be kept in an interest-bearing FDR with UCO Bank, Delhi High Court Branch. The registry is directed to deduct the differential amount from the said FDR and release the said amount with uptodate interest to the Appellant/Insurance Company. Balance, if any, may be released to the Claimants in terms of the Award dated 03.06.2013. Statutory amount deposited by the parties shall be released to the respective parties.

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

18.Appeals stands disposed of. No order as to costs.

**GAURANG KANTH
(JUDGE)**

OCTOBER 31, 2022

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