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IN THE HIGH COURT OF DELHI AT NEW DELHI

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***Reserved on: 23.09.2022
Pronounced on: 17.10.2022***

+ **MAC. APP. 734/2013**

NATIONAL INSURANCE COMPANY LTD. ...Appellant
Through: Mr. Arihant Jain, Advocate for Ms.
Shanta Devi Raman, Advocate.

versus

RANI & ORS. ...Respondents
Through: Mr. Anshuman Bal, Advocate.

+ **MAC. APP. 1117/2013**

RANI & ORS. ...Appellants
Through: Mr. Anshuman Bal, Advocate.

versus

NATIONAL INSURANCE COMPANY LTD. ..Respondent
Through: Mr. Arihant Jain, Advocate for Ms.
Shanta Devi Raman, Advocate.

**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH**

J U D G M E N T

GAURANG KANTH, J.

1. The learned Presiding Officer, Motor Accident Claims Tribunal, East District, Delhi in MACT case no. 82/2011 vide the Award dated 15.05.2013 (“**impugned Award**”) accepted the claim and awarded a compensation of Rs.32,75,505/- (*Rupees Thirty Two Lacs Seventy*

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Five Thousand Five Hundred and Five only) along with interest @ 7.5% per annum from the date of filing of the present petition till the date of realization in favour of the claimants while deducting the amount of interim compensation, if any and directed the Insurance Company to pay the compensation amount within a period of one month. **MAC. APP. 734/2013** is preferred by the Appellant/ National Insurance Company Ltd. for setting aside the impugned Award dated 15.05.2013 whereas **MAC. APP. 1117/2013** is preferred by the Claimants for enhancement of compensation amount in terms of the impugned Award dated 15.05.2013.

2. Both these appeals arise out of the impugned Award dated 15.05.2013 passed by the learned Claims Tribunal which arise out of the same incident. Hence both these appeals are heard together and disposed of by this common judgment.
3. The learned Claims Tribunal vide the impugned Award dated 15.05.2013 held that the Insurance Company is liable to pay compensation to the Claimants at the first instance with recovery rights against the Respondent No.7 (Driver) and Respondent No.8 (Owner). The relief granted by the learned Claims Tribunal is as under:-

1.	Loss of dependency	Rs.30, 50,505/-
2.	Loss of care and guidance for minor children	Rs. 1,00,000/-
3.	Funeral expenses	Rs. 25,000/-

4.	Loss of consortium	Rs. 1.00,000/-
	Total compensation awarded	Rs. 32, 75,505/-

SUBMISSION ON BEHALF OF THE INSURANCE COMPANY

4. Mr. Arihant Jain learned counsel for the Insurance Company contended that the Impugned Award 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 while granting recovery rights to the Insurance Company failed to appreciate the fact that there was no valid permit with the offending vehicle on the date of the alleged incident and the Appellant/Insurance Company is entitled to complete exoneration. In order to substantiate his argument on this aspect, learned counsel placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd vs Chella Bharathamma & Ors.* reported as *2004 ACJ 2094*. Learned counsel further contended that the learned Claims Tribunal erred in relying on the sole testimony of PW-3 (eye witness) who was a planted witness, as neither his statement was recorded by the police nor was his name shown as an eye witness in the FIR. Learned counsel further contended that the learned Claims Tribunal erred in ascertaining the income of the deceased and ignored the fact that the deceased was employed on probation basis. Learned counsel further contended that the learned Claims Tribunal erred in not deducting the Income Tax for the gross annual income of the deceased for grant of

compensation under the head '*Loss of Dependency*'. Learned counsel further contended that in terms of judgment of Hon'ble Supreme Court in the matter of *National Insurance Co. Ltd Vs Pranay Sethi & Ors.* reported as (2017) 16 SCC 680, compensation under the head '*Care and Guidance for Minor Children*' (*Love and Affection*) has to be deducted. Lastly, learned counsel argued that it has emerged from the testimony of PW-1, Smt. Rani (*wife of the deceased*) that her parents in law were residing with her Dewar and as such the learned Claims Tribunal erred in observing that the parents of the deceased were dependent on him.

SUBMISSION ON BEHALF OF THE CLAIMANTS

5. Mr. Anshuman Bal, learned counsel appearing on behalf of the claimants seeking enhancement of compensation contended that the deceased was 35 years and 2 months of age at the time of alleged incident and as such the learned Claims Tribunal erred in applying the multiplier of 15 instead of 16. He further contended that the Gross Income of the deceased was Rs. 2,04,000/- per annum and as such the learned Claims Tribunal erred while calculating the compensation under the head '*Loss of Dependency*'. While relying on the judgment of Hon'ble Supreme Court in the case of *Eudhaya Priyavs Sate Express Transport Corporation Ltd* reported as 2020 (3) T.A.C. 2 (SC) and *Kirti & Anr. Etc. vs Oriental Insurance Co. Ltd. in Civil Appeal no. 19-20 of 2021* decided on 05.01.2021 sought enhancement of rate of interest from 7.5% per annum to 9% per annum. 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*’ needs to be modified/enhanced.

COURTS REASONING

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

“3. The brief facts arising out of this case are that on 13.02.2011 at about 5:15 a.m deceased Mukesh Chand was on his motorcycle. When he reached at Red Light NH-24 Mayur Vihar Phase-2 in front of East Vinod Nagar, Delhi. In the meantime a truck bearing no. RJ-01-GA-7286 which was being driven by R-1 in a rash and negligent manner reached there and hit with his motorcycle and due to said act Mukesh Chand received serious injuries. He was immediately taken to LBS hospital, was got medically examined vide, MLC bearing no. 1467/11 as unknown person and was declared brought dead...”

7. Mr. Arihant Jain learned counsel for the appellant/Insurance Company strenuously argued for complete exoneration of the Insurance Company from the liability to pay compensation to the claimants on the ground that the offending vehicle was driven without a valid permit. In order to substantiate his arguments, learned counsel placed reliance on the case of *National Insurance Co. Ltd vs Chella Bharathamma & Ors.(Supra)*.

8. In the present case, vide impugned judgment the learned Claims Tribunal has held that *‘the conditions of the permit are violated and in such circumstances the insurance company can claim the right of recovery against R-1 and R-2 and prayed accordingly.’* As per permit dated 08.09.2009 issued by the Secretary/Executive Officer, Transport Authority, Ajmer the offending vehicle was issued a National permit

bearing no. RJ/01/01/10535 which was valid upto 07.09.2014. A National permit means a permit granted by a competent authority to a goods carriage to operate through-out India / the Territory of or in such contiguous States not being less than four in number including the states in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application. Whenever a National Permit is issued in respect of a Goods Carriage, authorization should also be issued to enable the vehicle concerned to be used in other states as mentioned in the permit after collecting authorization fee and composite taxes for other states. The document on which the appellant/Insurance company has placed reliance is an authorization of National permit bearing no. RJ/01/01/10535 which was alleged to be issued for a period from 08.09.2009 to 07.09.2010, however, the authorization letter clearly prescribes at column no. 8 that the permit was valid till 07.09.2014.

9. This court deems it appropriate to recapitulate the penultimate paragraphs of ***Chella Bharathamma*** (supra) case which reads as under:-

“12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no

relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, **it would be proper for the insurer to satisfy the award, though in law it has no liability.** In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executive Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executive Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the lit to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insure.”

10. In the above mentioned case, the Hon’ble Supreme Court has observed that plying of a vehicle without a permit is an infraction and in terms of Section 149(2) of the Motor Vehicles Act, a defence is available to the insurer on this aspect, however, the Apex Court further held that since *MAC.APP. 734/2013 & MAC.APP. 1117/2013*

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Motor Vehicles Act is a beneficial legislation, the insurer would be the proper person to pay the awarded compensation to the claimants. Following the decision of the Hon'ble Supreme Court in ***Chella Bharathamma*** (supra) case, this Court is in agreement with the decision rendered by the learned Tribunal and adjudges that the Insurance Company would be the proper person to pay the awarded compensation to the claimants. Accordingly, the plea of Insurance Company for exoneration of liabilities is rejected.

11. As far as argument of learned counsel for the Insurance Company that the learned Tribunal erred in relying on the sole testimony of PW-3 (eye witness) who was a planted witness, as neither his statement was recorded by the police nor was his name shown as an eye witness in the FIR is concerned, this Court has gone through the testimony of PW-3/Mr. Mukesh Chand Raza. PW-3 during his examination in chief deposed as under:-

“.....That on 13.2.2011 at about 5.15 AM. I was traveling in Truck No. RJ-01-GA-7286 alongwith my goats. When truck reached at Red Light, NH-24, Mayur Vihar Phase-2, in front of East Vinod Nagar, Delhi. When I saw our truck bearing no. RJ-01-GA-7286 driven by its driver at a high speed driven most rashly and negligently and the driver side of the truck hit the Motorcyclist and thereafter dragged the Motorcycle upto 20 feet as result of which the Motorcyclist died due the injuries received in the accident. The said accident was caused due to the negligent driving on the part of driver of truck no. RJ-01-GA-7286....”

12. During cross examination the witness deposed as under:-

“.....I was accompanied with twenty five goats in the truck. Ido not have any documentary proof to show that I was being carrying goats in truck. Police has not recorded my statement. It is incorrect to suggest that Iwas not present at the spot of alleged accident or that I am deposing falsely. I am not a summoned witness. I was informed by Shok at Ali again said Sh. Sahid Khan.....”

13.A perusal of the aforesaid statements clearly depicts that he was travelling in the offending vehicle at the time of the incident. During cross-examination, he deposed corroborating his statement made during the examination-in-chief. There is no reason to disbelieve the testimony of PW-3 especially when his statements are in conformity with the contents of the FIR no. 69/2011 registered under Section 279/304A IPC as well as the testimony of PW-1 Smt. Rani (wife of the deceased). Accordingly, the doubt casted on the testimony of the PW-3 by the Insurance Company is also rejected.

14.Another limb of the argument raised by the learned counsel for the Insurance Company was that the learned Claims Tribunal erred in ascertaining the income of the deceased and ignored the fact that the deceased was employed on probation basis. In this context, the claimants produced PW-2, Mr. Arun Kalra, Assistant Manager, Human Resources, City Max Hospitality (India) Ltd. to prove the employment of the deceased. PW-2 deposed that:-

“.....I have not worked with deceased. The deceased has joined the company on 20/09/2010. I cannot tell how many leaves the deceased has availed during his tenure with the company. At the time of accident the deceased was on probation period and he was not

confirmed. It is correct that it is in the discretion of the company to retain the employee after probation.....”

15.The condition laid down in the Appointment letter dated 20.09.2010, with regard to the probation period, reads as under:-

“20.Sep.10

Mukesh Chandra

Gurgaon

Dear Mukesh

We have pleasure in appointing you in our Company Sr. Executive-Maintenance, Grade A6-2 based at Gurgaon.

Date of Appointment

Your appointment is effect from 20.Sep.10 and you will be on probation for a period of 6 months from the date of joining.

XXX XXX XXX XXX

Compensation & Benefits Program

You shall be paid an annual basic salary of Rs. 77520/- (Rupees Seventy Seven Thousand Five Hundred Twenty Only per annum). Other perquisites and benefits applicable to your grade shall be payable as per company policy in force.

Probation/Confirmation of Services

You will be on probation for a period of 6 months, which may be extended or reduced at the sole discretion of the Management. *During the period of probation, the services may be terminated either by the Company or by yourself by giving one month notice or payment of salary in lieu thereof. On completion of initial probation period you shall continue to be on probation, till such time it is intimated to you in writing regarding your confirmation.*

XXX XXX XXX XXX.

Please confirm that the above terms are acceptable to you by signing a copy of this letter.

Yours truly,

For

Citymax Hospitality (India) Pvt. Ltd.,

-sd-

N PHANI KRISHNA

HEARD-HR & ADMIN”

16. Perusal of the aforementioned testimony of PW-2/Mr. Arun Kalra, Assistant Manager, Human Resources, City Max Hospitality (India) Ltd. and appointment letter issued by the employer of the deceased, it is emphatically clear that the deceased was serving on probation basis at the time of alleged incident. However, it is necessary to adjudicate whether employment on probation basis would prohibit this Court to take into consideration the income of the deceased employee for the purposes of calculation of the compensation. The answer to this question is in negative. The decision whether an employee should be confirmed or his probation be extended should be taken soon after the expiry of the initial probationary period. In the instant case the deceased was in employment on probation basis and died before the completion of probation period. The Motor Vehicles Act is a beneficial legislation. The object and purpose of the Act is to grant adequate compensation to the victims and their dependents. It cannot be deemed that the employment on probation basis cannot be considered for calculating the income of the deceased for the purpose of grant of compensation. The deceased was in employment at the

time of the alleged incident and as such it would be abstract to rule that after completion of period of probation, the services of the deceased would be terminated. Accordingly, this Court is of the considered view that the claimants were successfully able to prove the income of the deceased and there is no infirmity in the decision rendered by the learned Claims Tribunal with regard to the income of the deceased.

17. As far as the aspect whether the parents of the deceased were dependent upon the deceased is concerned, this Court has carefully gone through the testimony of PW-1/Smt. Rani (*wife of the deceased*). PW-1 in her testimony has stated that the parents in-law were dependent on the deceased. She has further stated in her cross-examination that '*I am residing with my in-laws at their house. It is correct that my parent in-law are residing with my dewar*'. The content in the deposition cannot be treated that her parents in-law were permanently residing with her Dewar and were not dependents upon the deceased. No evidence has been produced by the Insurance Company to disprove the assertion made by PW-1 in her affidavit that her parents in-law were dependents on the deceased. As such it can safely be inferred that parents in-law of PW-1 were dependents on the deceased.

18. Since it has been observed above that the deceased was having a regular job, Income Tax ought to have been deducted while calculating the compensation under the head '*Loss of Dependency*'. As per the Salary Statement, the gross pay of the deceased was Rs. 1,80,771/- per annum and in view of the tax slabs for individuals for

the financial year 2010-2011, there was no levy of tax on income of the individuals, upto Rs.1,60,000/- per annum. However, the annual income beyond Rs.1,60,000/- falls under the 10% tax bracket. The income of the deceased falls under 10% tax slab and as such 10% of the amount exceeding Rs. 1,60,000/- is liable to be taken into consideration for the purpose of taxation i.e. 10% of Rs. 20,771/- which comes to Rs. 2,077/-. Accordingly, Income Tax of Rs. 2,077/- was to be deducted from the annual gross salary of the deceased i.e. Rs. 1,80,771/- minus Rs. 2,077/- which comes to Rs. 1,78,694/-.

19.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 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.

20.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 of the age of 35 years at the time of alleged incident, multiplier of 15 is to be taken into consideration. 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.

21. As far as future prospect is concerned, admittedly the deceased was 35 years of age at the time of alleged incident and accordingly 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., 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 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)

22. 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. Vs DTC & Anr. (Supra)***. As per the Judgment passed by the Hon’ble Supreme Court in the case of ***Sarla Verma (Supra)*** deduction 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 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.

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."

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

24.In view of the above discussion, the impugned Award dated 15.05.2013 is modified to the following extent:

i. 'Loss of dependency' is calculated as

1. Rs. 1,78,694/- + 40% (Rs. 71,478/-) =
Rs.2,50,172/-

2. Rs. 2,50,172/- less 1/4 deduction (Rs. 62,543/-)
=Rs. 1,87,629/-

3. Rs. 1,87,629/- X 15 = **Rs. 28,14,435/-**

ii. 'Loss of Consortium' is computed as Rs. 44,000 X 6
= **Rs. 2,64,000/-** 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. 28,14,435/- + Rs. 2,64,000 + Rs. 16,500/- + Rs. 16,500/- = Rs. 31,11,435/-.**

25. Accordingly, the compensation granted by the learned Claims Tribunal is reduced from **Rs. 32,75,505/-** to **Rs. 31,11,435/-**.

26. The Appellant/Insurance Company has already deposited the entire awarded amount with the Registrar General of this Court. Out of which, 80% of the awarded amount has already been released to the Claimants. Balance 20% is lying with the Register General of this Court in the form of FDR. Registry is directed to deduct the differential amounts with proportionate interest from the said FDR and release the same to the Appellant/Insurance Company. The balance, if any may be released to the Claimants. Statutory amount, if deposited, be released to the Appellant/Insurance Company.

27. There would be no change in the rate of interest awarded by the learned Tribunal.

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

GAURANG KANTH
(JUDGE)

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