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

% *Reserved on: 19.10.2022*
Pronounced on: 01.11.2022

\+ **MAC.APP. 655/2015**

ORIENTAL INSURANCE COMPANY LTD..... Appellant
Through: Mr. Tarkeshwar Nath and Mr. Lalit Mohan, Advocates.

versus

DHARAMPAL PANCHAL & ORS ..... Respondents
Through: Mr. Santosh Chaurihaa, Advocate for Respondent/Claimant No. 1 & 2.
Mr. Vinod Sharma, Advocate for respondent Nos. 4 & 5.

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 03.06.2015 ("**impugned Award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, North East District, Karkardooma Courts, Delhi.

2. By way of the impugned Award dated 03.06.2015, the learned Claims Tribunal Awarded a compensation of Rs. 12,01,512/- with interest @ 9 % 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 Tribunal within a period of one month.

<u>SUBMISSION OF THE APPELLANT</u>

3. Mr. Tarkeshwar Nath, learned counsel for the Appellant/Insurance Company contended that the Impugned order is perverse and has been passed without appreciating the principles of law as well as the documents and the evidence available on record. Learned counsel further contended that the learned Claims Tribunal had failed to appreciate the fact that there was no valid permit with the offending vehicle on the date of the alleged incident and as such the appellant is entitled for complete exoneration. 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.

<u>SUBMISSION OF THE RESPONDENT</u>

4. Mr. Santosh Chaurihaa, learned counsel appearing on behalf of the Respondents/Claimant Nos. 1 & 2 contended that no interference in the impugned order is called for by this Court. He further contended that the learned Claims Tribunal has dealt with the issue of validity of permit in detail and had come to a conclusion that at the time of the alleged incident, the offending vehicle was plying on the road with a valid permit and had correctly held that the Insurance Company was liable for payment of compensation to the claimants. Learned counsel 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.

<u>COURT'S REASONING</u>

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

> "*...that on 11/06/2009 deceased gave a signal to stop the offending vehicle i.e bus bearing no. DL 17D 3075 which was going towards UP from Delhi More plying under UP Roadways and the driver of the said bus stopped the bus on the signal of the deceased and the deceased started to board and all of a sudden the driver of the said bus started the bus without caring for the deceased due to which he fell down and was dragged with the bus upto 10 to 15 feets. Deceased has received grievous injuries and was taken to GTB Hospital. The FIR No. 111/09 u/sec 279/337/304-A IPG was also registered at P.S Harsh Vihar in this respect....*"

6. Mr. Tarkeshwar Nath, learned counsel for the appellant contended that the learned Claims Tribunal had failed to appreciate the fact that there was no valid permit with the offending vehicle on the date of the alleged incident and as such the appellant is entitled for complete exoneration.

7. In order to ascertain whether there was valid permit with the offending vehicle on the date of the alleged incident, it is necessary for this Court to go through the evidence produced before the learned Claims Tribunal. R2W1/Sh. Chinni Prasad, Assistant Regional Manager, Uttar Pradesh State Road Transport Corporation ("**UPSRTC**") produced the relevant documents before the learned Claims Tribunal in order to substantiate the validity of the permit and deposed as under:-

> *"I have brought the summon record of route permit no. 65STA/STAGE/G3 (41) for route covered by this permit Sharanpur – Nanuta – Thana – Bhawan – Shamli – Kadla – Barautaghpat - Loni, Delhi which is Ex. R2W1/1 (objected to on the mode of proof) alongwith official copy of office order dated 10/04/2009 which is Ex. R2W1/2 which was issued in favour of Satish Kumar S/o Sh. Charan Singh R/o Baraut in respect of bus bearing no. UP 17D/3075. I have also brought the copy of the agreement dated 10/04/09 executed between UPSRTC and respondent no.2 in respect of bus no. UP 17D3075 which is Ex. R2W1/3. I have brought the photocopy of Govt. Gazzette, U. P. which is marked as mark A.*
> *Court question:- As per R2W1/1 the permit was issued on 22/06/1993 and there is no date till when the said permit was valid. Kindly explain till when this permit was valid and when it expired.*
> *Ans:- The permit is valid until it is surrendered and there is no validity on the permit.*
> *Court question:- Can you tell the year of manufacture of the bus UP 17D 3075?*
> *Ans:- I cannot tell and only the owner can tell.*
> *Court question:- On the Ex. R2W1/1 there is no mention of any bus number, engine number or chasis no. then how this permit can be connected with the bus no. UP 17D 3075.*
> *Ans:- The permit is issued for a specific route and then the UP Roadway is at liberty to run any bus on the said route on the basis of the said permit.*
> *Court Q:- At present on the basis of the permit Ex. R2W1/1, how many others are being run by UP roadways.*
> *Ans:- Only one bus is run on the basis of one permit. As per. Ex. R2W1/2 Sh. Satish kumar was permitted to run his bus bearing no. UP 17D 3075 from 10th April 2009 to 7th April 2014 on the route from Loni Morh-Baurat to Shahranpur."*

8. This Court has gone through Gazette Notification bearing no. 1635/XXX-93-365-85 dated Lucknow, May 29,1993 **(Mark-A)** whereby

the SCHEME has been notified by the Government of Uttar Pradesh by which UPSRTC shall commence to operate Road Transport Services (state carriage, contract carriage otherwise than taxi cabs and hears cars) from 25.02.1986 or thereafter. The above-mentioned Notification also stipulates the routes on which the SCHEME shall be applicable. The route on which the offending vehicle was run finds mention in the Gazette Notification bearing no. 1635/XXX-93-365-85 dated Lucknow, May 29,1993 **(Mark-A)** at serial no.1. **Ex. R2W1/1** is the permit for route Sharanpur – Nanuta – Thana – Bhawan – Shamli – Kadla - Baraut-Baghpat - Loni, Delhi and **Ex. R2W1/2** is the office order by which the vehicle no. UP 17D 3075 (offending vehicle) owned by Mr. Satish Kumar S/o Sh. Charan Singh was permitted to ply at route Baraut – Loni – Shamli – Sharanpur for the period from 10.04.2009 to 07.04.2014. All these three documents alongwith the Agreement dated 10.04.2009 executed between UPSRTC and Mr. Satish Kumar (owner of the offending vehicle) would depict that in pursuance to the SCHEME floated through Gazette Notification dated May 29,1993 **(Mark A)**, permit for route Sharanpur – Nanuta – Thana – Bhawan – Shamli – Kadla - Baraut-Baghpat – Loni – Delhi (**Ex. R2W1/1**) was issued by UPSRTC and by way of **Ex. R2W1/2,** an office order was issued authorizing Mr. Satish Kumar (owner of the offending vehicle) to ply the offending vehicle at the given route. The testimony of R2W1/Sh. Chinni Prasad, Assistant Regional Manager, UPSRTC substantially validate the documents brought on record on behalf of UPSRTC and prove the fact beyond doubt that the offending vehicle was having a valid permit at the time of the alleged incident. Accordingly, the argument raised by learned counsel for the appellant with regard to the fact that there was no valid permit with the offending vehicle on the date of the alleged incident holds no ground.

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 ***Pranay Sethi (supra)*** and in case of ***Sarla Verma & Ors. Vs DTC & Anr.*** reported in ***(2009) 6 SCC 121.***

10. 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 at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years

11. 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'* as the deceased was of the age of 21 years at the time of the alleged incident. 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.***
> *60. 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)

12. 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)*** 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 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.”

13. It is borne out from the records that the deceased was survived by his mother and wife. Father of the deceased was treated as not to be dependant. Accordingly, in terms of the aforesaid judgments, deduction towards personal and living expenses of the deceased, should be one third (1/3).

14. In view of the above discussion, the impugned Award dated 03.06.2015 is modified to the following extent:

(a) ‘*Loss of dependency*’ is calculated as

1. Rs. 4,382/- + 40% (Rs. 1,753/-) = Rs. 6,135/-

2. Rs. 6,135/- less 1/3 deduction (Rs 2,045/-) =Rs. 4,090/-
3. Rs. 4,090 X 12 X 18 = **Rs. 8,83,440/-**

(b) '*Loss of Consortium*' is computed as Rs. 44,000 X 3 = **Rs.1,32,000/-** to be paid to the respondents/claimants.

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

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

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

(f) Total compensation to be paid to respondent/claimant is; **Rs. 8,83,440/- + Rs. 1,32,000 + Rs. 16,500/- + Rs. 16,500/- = Rs. 10,48,440/-.**

15. Accordingly, the compensation granted by the learned Tribunal is reduced from **Rs. 12,01,512/-** to **Rs. 10,48,440/-**.

16. This Court, vide order dated 18.08.2015 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 50% of the decretal amount to the Claimants and balance 50% 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 up-to-date interest to the Appellant/Insurance Company. Balance, if any, may be released to the Claimants in terms of the Award dated 03.06.2015. Statutory amount deposited by the Appellant shall be released to them.

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

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

GAURANG KANTH, J.

NOVEMBER 1, 2022