

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

Reserved on : 29.08.2022
% **Pronounced on : 27.03.2023**

+ **MAC.APP. 18/2021 AND , CM APPL. 1158/2021 & CM APPL. 44800/2021**

**UP STATE ROAD TRANSPORT CORPORATION THROUGH ITS
REGIONAL MANAGER** Appellants

Through: Mr. Shadab Khan, Advocate.

versus

SMT. CHHOTI DEVI @ POONAM DEVI & ORS.

..... Respondents

Through: Ms. Rakhi Dubey, Advocate for R-1
and 2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 against the award dated 28.01.2020 with the following prayers:-

“(A) Set aside the judgment and award dated 28.01.2020 passed by the Motor Accident Claims Tribunal Karkardooma Court, Delhi, In Motor Accident Claim Petition No. 246/2019 (Smt.Chhoti Devi & Anr. Vs. Jai Kumar Kaushik & Anr.); and

(B) Any other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

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2. In brief, the facts of the case are that Vivek Kumar Chaudhary, died due to a motor accident which happened on 12.10.2016 at about 11:25 p.m., near Ghazipur flyover, Delhi.
3. Pursuant to this accident, an FIR No.441/2016, u/s 279/304A IPC, was registered at PS Ghazipur. As per FIR, at the relevant time, a U.P. roadways bus bearing registration no.UP-15-BT-4639 (offending vehicle) being driven at fast speed and in a negligent manner towards Anand Vihar and hit the scooty bearing registration No. DL-5SBY-7495 being driven by Vivek Kumar Chaudhary, due to which the scooty rider got injured and scooty got damaged. The bus driver was apprehended at the spot.
4. I have heard the learned counsel for the appellant as well as learned counsel appearing on behalf of respondent no. 1 to 2 and have perused the record.
5. It is submitted by learned counsel for the appellant that learned Tribunal has failed to take into account the negligence on the part of the deceased who was also responsible for the said accident. It is further submitted that learned Tribunal ignored the fact that the doctor who did the postmortem had opined that there was smell of alcohol in the stomach contents of the deceased. It is further submitted that due to influence of alcohol, the deceased lost control over his scooty and first hit the divider then fell down on the road and came into contact with rear wheel of the bus. It is further submitted that the manner in which the accident took place itself proves that bus driver was not negligent in causing the accident. It is further submitted by learned counsel for the appellant that learned Tribunal has

erred in granting compensation towards the future prospects. It is further submitted that Ex-PW3/B i.e salary certificate shows that the amount of Rs. 1000/- is towards travelling allowance which should be reduced in calculating the compensation amount as it is not a part of salary. It is further submitted that interest awarded by the learned Tribunal is on the higher side i.e 9% instead of 6%. In support of his contentions, learned counsel for the appellant has placed reliance on following judgments:-

- *National Assurance Co. Ltd. vs. Devki and Ors., MACA NO. 165/2013.*
- *Oriental Insurance Co. Ltd. vs. Meena Variyal, 2007 (5) SCC 428.*
- *National Insurance Co. Ltd. vs. Pranay Sethi & ors., 2017 (16) SCC 680.*
- *S. Naryanamma & Ors. vs. Secretary to Govt. of India, II (2002) ACC 582.*
- *Sri Benson George vs. Reliance General Insurance Co. Ltd.& Anr. 2022 SCC Online SC 238.*
- *Anthony vs. Karnataka State Road Transport Corporation, (2020) 7 SCC 161.*

6. On the other hand, it is submitted by learned counsel for the respondent no. 1 & 2 that the bus driver was driving the bus in rash and negligent manner which is evident from the mechanical inspection report of the bus as there were dents/scratches on front portion of the bus. It is further submitted that the learned Tribunal has considered the doctor's opinion in

respect of the smell of alcohol in stomach content, she further submitted that as per the various judgment laid down by the Hon'ble Supreme Court, the smell in itself is not sufficient to draw an inference that the deceased was under the influence of alcohol. It is further submitted that deceased was working as a Reporter in Sudershan News and PW-3 also deposed that deceased was working as an Associate Producer since 08.03.2014 and was drawing salary of Rs. 16,500/- p.m. It is further submitted that learned Tribunal has rightly taken the future prospects as 50%, however, respondent no. 1 and 2 both are entitled for the enhanced compensation under the head of loss of consortium of Rs. 40,000/- each but the learned Tribunal had granted only Rs. 40,000/- in total and it is prayed that the loss of consortium be enhanced from Rs.40,000/- to Rs.40,000/- each. It is further submitted that learned Tribunal has not granted the compensations under the head of Loss of Estate and the head of Loss of Funeral Expenses as per the precedent set by the Hon'ble Supreme Court. In support of her contentions, learned counsel for the respondent no. 1 and 2 has placed reliance on following judgments:-

- ***National Insurance Co. Ltd. vs. Pranay Sethi & ors., 2017 (16) SCC 680.***
- ***United India Insurance Company Limited V Satinder Kaur Alias Satwinder Kaur and Ors. {Civil appeal no.2705-2706 of 2020, arising out of SLP (Civil) No. 28548 of 2014 and SLP (Civil) No. 12520 of 2015}***

7. In the instant case, a bare perusal of the impugned Award dated 28.01.2020 shows that the learned Tribunal has dealt with each and every issue in great detail. As far as the contention of the learned counsel for the appellant with regard to doctor's opinion of having alcohol in stomach contents is concerned, the learned Tribunal in the impugned award has observed as follows:-

“13. Though, Ld. Counsel for respondent No. 1 and 2 has rightly pointed out that in the postmortem report of deceased, the doctor opined that there was smell of alcohol in the stomach contents, however, in view of this court, the smell in itself is not sufficient to draw an inference that scooty rider was under the influence of liquor. The measurement of alcohol in the blood of deceased was required to be checked in order to reach to the conclusion as to whether the deceased was under the influence of alcohol. In view of this, plea of defence regarding contributory negligence on the part of the deceased is required to be rejected.”

I have perused the above observations made by the learned Tribunal and this Court is of the opinion that the learned Tribunal has rightly concluded that the smell in itself is not sufficient to draw an inference that scooty rider was under the influence of liquor.

8. Admittedly, at the time of the alleged incident deceased was driving scooty bearing no. DL-5SBY-7495. Both the parties, during the trial, have produced the witnesses in support of their respective case and learned Tribunal has thoroughly analysed the statements of the witnesses. It is pertinent to note that FIR is illustrative of the fact that the impact of accident was so hard that the rider of the scooty was declared “brought dead” by the hospital.

9. In the case of ***K. Suresh v. New India Assurance Co. Ltd. reported in (2012) 12 SCC 274***, the Hon'ble Supreme Court of India while observing that Tribunal and Courts have to be broad based in computing compensation has held as under:-

“10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion is of “just compensation” should be in heard.

10. Looking into the entire circumstances, this Court is of the opinion that quantum of compensation granted by learned Tribunal is just and proper and has been granted in terms of assertions made by Hon'ble Supreme Court in various judicial precedents.

11. However, the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & ors., 2017 (16) SCC 680*** has observed as follows:

“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an

acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb Rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb Rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantumcentric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

12. The contention of the learned counsel for respondent with regard to compensation entitled under the head of loss of consortium i.e., Rs. 40,000/- each is concerned, the Hon’ble Supreme Court in ***Chandra @ Chanda @ Chandraram Vs Mukesh Kumar Yadav & Ors (Civil Appeal No. 6152/2021)*** while granting parental Consortium of Rs. 40,000/- to the parents of the deceased held that the parents are also dependents of the deceased and entitled for compensation. In view of the law laid down in the ***Chandra @ Chanda @ Chandraram*** (supra), it is clear that the parents of the deceased are entitled to compensation under the head ‘loss of consortium’. The Hon’ble Supreme Court in ***United India Insurance Company Limited V Satinder Kaur Alias Satwinder Kaur and Ors. {Civil***

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appeal no.2705-2706 of 2020, arising out of SLP (Civil) No. 28548 of 2014 and SLP (Civil) No. 12520 of 2015} and *The New India Assurance Company vs Somwati* (Civil appeal no.3093 of 2020), observed that amount under the head of loss of consortium shall be awarded to each of the claimants. Taking into account the observation of the Hon'ble Supreme Court, this Court deems it appropriate to award loss of consortium to the respondent no. 1 and 2 @ Rs. 40,000/- each. Hence, in view of the above, the compensation Awarded under the head loss of consortium to respondent no. 1 and 2 is modified from Rs.40,000/- in total to Rs.44,000/- each. Further, the compensation under the head of Loss of Estate as well as under the head of Funeral Expenses is modified to Rs. 16,500/- each.

13. Moreover, the contention of learned counsel for the appellant that travelling allowance amounting to Rs.1,000/- must be deducted from the compensation amount as the same does not form the part of salary has force in it. Considering this contention, this Court is of the opinion that travelling allowance be deducted while calculating the compensation. Reliance can be placed on the judgment of Division Bench of Madras High Court in *D.Shanmugam and ors. Versus D.Jayakumar and ors., C.M.A. No. 1658/2015* in which relevant para reads as follows:

“34. As per the decision of Hon'ble Andhra Pradesh High Court, in S.Narayanamma & Ors V. Secretary to Government of India, Ministry of Telecommunications and Ors, reported in 2002 ACC 582, allowances, like travelling allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance, etc., do not form part of income and that the same can be deducted.”.

14. Additionally, premised on the established principles of law held by the Hon'ble Supreme Court in *S. Chandrasekharan & Ors. vs. M. Dinakar & Anr., Civil Appeal Nos. 4688-4689 Of 2022 (Arising out of SLP (C) Nos. 8119-8120 of 2019) and National Insurance Company Ltd. vs. Mannat Johal & Ors., Civil Appeal Nos.4079-4081 Of 2019 (Arising out of SLP (C) Nos. 742-744 Of 2019)*, the rate of interest is reduced from 9% per annum to 7.5% per annum from the date of filing of the claim petition till the date of realization.

15. Accordingly, the appeal stands disposed of accompanying pending applications (if any) with above said modification.

16. The Tribunal shall re-compute the compensation amount after considering the above modifications, thereafter the same shall be disbursed to the claimants as per the scheme of disbursement mentioned therein. Trial Court Record be sent back along with a copy of this Judgment for compliance.

17. The matter shall be listed before the concerned Tribunal on 12th April, 2023 for the purpose of re-computation of award amount and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

MARCH 27, 2023

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