



2023:DHC:7223



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

Date of decision: 03.10.2023

+ **MAC.APP. 251/2020 & CM APPL. 31435/2020**
UNITED INDIA INSURANCE COMPANY LTD.

..... Appellant

Through: Mr.Amit Kumar Singh, Ms.E.
Enatoli Sema, Ms.Chubalemla
Chang & Mr.Psang Newmai,
Adv.

versus

SMT. SABITA CHAUDHARY & ORS. Respondents

Through: Mr.Anshuman Bal, Adv. for R-
1 to R-4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 05.08.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-2, North-District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No. 5451/2016 titled ***Smt.Sabita Chaudhary & Ors. v. Sh.Diwan Singh & Ors..***

2. It was the case of the claimants before the learned Tribunal that on 21.02.2014, at about 11:30 AM, the deceased - Shri Pintu Chaudhary was standing at Lower GTK Road,

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towards Alipur, SGT Nagar Delhi when a Canter bearing registration No. HR-39A-6883 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner by respondent no.5 herein, came and hit the deceased with great force. Due to the impact of the accident, the deceased fell down on the road and the offending vehicle ran over him. Though the deceased was rushed to BSA hospital, he expired during the course of treatment. FIR No. 162/14 under Section 279/304A Indian Penal Code, 1860 was registered at Police Station S.P. Badli, Delhi against the respondent no.5.

3. To prove their case, the claimants *inter alia* produced Sh.Vijay Kushwaha (PW-1), who was the eyewitness to the accident. He narrated the manner in which the accident had taken place. He stated that he, along with the deceased, were going on a motorcycle to Alipur. They stopped their motorcycle at Lower GTK Road as he had to urinate. While they were standing there, the offending vehicle came from behind at a very high speed and in a rash and negligent manner and hit the deceased and ran over him.

4. The learned counsel for the appellant submits that the above version of PW-1 was in variance with his version before the Police, on the basis of which the above-mentioned FIR was registered. He submits that in the FIR, PW-1 had stated that he along with the deceased were travelling on the motorcycle when suddenly a rickshaw came in front of them. To save themselves, the deceased applied breaks and the motorcycle came to a halt.

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As the deceased was taking the motorcycle to a side, PW-1 saw the offending vehicle coming towards them at a fast speed. Though he raised his hands to warn the offending vehicle to stop, the driver of the offending vehicle did not reduce the speed. PW-1 claimed that he had asked the deceased to save himself, however, while deboarding from the motorcycle, the deceased fell down on the right side of the road and was run over by the offending vehicle. The learned counsel for the appellant submits that clearly the above contradiction in the two versions of the accident shows that the deceased had also contributed towards the accident.

5. On the other hand, the learned counsel for the claimants submits that the testimony of PW-1 cannot be doubted. He submits that PW-1, in his cross-examination before the learned Tribunal, had explained that his statement recorded by the police was not correct and that he had not stated to the Police that a rickshaw had come in front of their motorcycle for which they had to suddenly apply the breaks.

6. I have considered the submissions made by the learned counsels for the parties.

7. Taking either of the versions of PW-1, it cannot be said that the deceased had, in any manner, contributed to the accident. It is evident from the statement of PW-1 in both the versions, that the accident had taken place as the offending vehicle was being driven at a very high speed and in a rash and negligent manner. Even if the driver of the offending vehicle



had seen the motorcycle standing in front of him or a person having fallen down from the same, the accident could certainly have been avoided if the offending vehicle had been driven at a normal speed and in a careful manner. Therefore, I find no merit in the submission of the learned counsel for the appellant and do not consider it to be a fit case for attributing contributory negligence to the deceased.

8. The next challenge of the appellant is on the award of Rs.2,00,000/- in favour of the claimants towards '*Loss of Love and Affection*'.

9. The learned counsel for the appellant submits that in terms of the Judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, the only conventional heads on which the compensation can be awarded in case of death in a motor accident are '*loss of consortium*'; '*loss of estate*'; and '*funeral expenses*'. He submits that compensation towards 'loss of love and affection' cannot be granted.

10. The learned counsel for the claimants is not in a position to dispute the above challenge.

11. Accordingly, the compensation of Rs.2,00,000/- awarded in favour of the claimants towards 'loss of love and affection' is set aside.

12. The next challenge of the appellant to the Impugned Award is to the amount of Rs.1,60,000/- awarded in favour of the claimants toward 'loss of consortium'.



13. The learned counsel for the appellant submits that in terms of the judgment of the Supreme Court in ***Pranay Sethi***, (Supra), as explained by the Supreme Court in the judgment dated 27.03.2023 passed by the Supreme Court in Civil Appeal Nos. 2410-2412 of 2023, titled ***Shri Ram General Insurance Co. Ltd. v. Bhagat Singh Rawat & Ors.***, only a consolidated sum of Rs.40,000/- could be awarded in favour of the claimants.

14. I am unable to agree with the above submission.

15. In ***United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.***, (2021) 11 SCC 780, the Supreme Court, considering the judgement in ***Pranay Sethi and Ors.*** (supra), has observed as under;

“29. Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.



30. In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

32. Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a



child. Most jurisdictions permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. *The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.*

34. *At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, has recognised only three conventional heads under which*



compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

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37.12. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 and Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, the following amounts are awarded under the conventional heads :

(i) Loss of estate : Rs 15,000

(ii) Loss of consortium:

(a) Spousal consortium : Rs 40,000

*(b) Parental consortium :
40,000×3=Rs1,20,000*

(iii) Funeral expenses : Rs 15,000”



16. In ***Bhagat Singh Rawat*** (supra) also, the Supreme Court has observed as under:

“We are, however, of the view that the total amount has to be assigned under a particular heading and that will go depending on the number of legal heirs present.”

(Emphasis supplied)

17. In ***Bhagat Singh Rawat*** (supra), the attention of the Supreme Court was not drawn to the judgment of ***Satinder Kaur*** (supra). In any case, the Supreme Court has held that the compensation will depend on the number of legal heirs present.

18. In ***Anjali v. Lokendra Rathod***, 2022 SCC OnLine SC 1683, and in ***Rahul Ganpatrao Sable v. Laxman Maruti Jadhav***, 2023 SCC OnLine SC 780, also, the Supreme Court has awarded compensation towards loss of consortium to each of the claimants therein.

19. In view of the above, the challenge of the appellant to the compensation awarded to the claimants towards loss of consortium is rejected.

20. The learned counsel for the appellant further submits that the Aadhaar card of respondent no.4, who was the claimant no.4 before the learned Tribunal, shows his father's name as Shri Sukhdev. He submits that therefore, there is a doubt on the parentage of respondent no.4 and compensation should not have been awarded in his favour.



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21. To a query of this Court, he fairly admits that this issue was not raised before the learned Tribunal.

22. The learned counsel for respondent nos.1 to 4, on the other hand, submits that there was a mistake in the Aadhaar Card of respondent no.4, which has since been corrected with the father's name being correctly reflected as that of the deceased.

23. I have considered the submissions made.

24. As the appellant had not taken this plea before the learned Tribunal and the respondents were not granted an opportunity to rebut or explain the same, I see no reason to interfere with the Impugned Award on this account.

25. In view of the above, the appeal partially succeeds only to a limited extent that the compensation awarded to the respondent nos.1 to 4 towards 'loss of love and affection' of Rs. 2,00,000/- is set aside. The compensation awarded on the remaining heads stands confirmed.

26. In terms of the *interim* order dated 16.03.2021, the appellant has deposited the awarded amount with the learned Tribunal. It was further directed that 60% of the same shall be disbursed in favour of the respondent nos.1 to 4 as per the scheme of disbursement, and the remaining shall be kept in an interest bearing fixed deposit.

27. As the compensation amount has now been reduced, the excess amount deposited by the appellant be released in favour of the appellant along with interest accrued thereon.

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28. The compensation amount, as has now been determined, shall be released in favour of the respondent nos.1 to 4 in accordance with the scheme of disbursal, with the amount as would have otherwise become due and payable to the respondent no. 1 to 4 as on today being released in a lump sum, while the remaining being released in accordance with the scheme of disbursal.

29. The statutory amount deposited by the appellant be released in favour of the appellant along with interest accrued thereon.

30. The appeal is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 3, 2023/rv/ss

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