2023:DHC:6097

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

Date of Decision: 23.08.2023

\+ **MAC.APP. 132/2020 & CM APPL. 8758/2020**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr.Pradeep Gaur, Ms.Sweta Sinha, Advs.

versus

BIRJPAL SINGH & ORS ..... Respondents
Through: Mr.Manu Luv Shahalia, Adv for R-1 to 4

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The appellant challenges the Award dated 03.10.2019 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal) in the Petition no.153/2018, titled ***Birjpal Singh & Ors. v. Aman & Ors.***

2. The appellant challenges the Impugned Award on the ground that though the respondent no.1 herein, the husband of the deceased-Late Smt.Saroj, was himself an earning member of the family, the learned Tribunal, while assessing the loss of dependency has taken him as a dependent on the deceased, and based thereon, has deducted only 1/4th of the income of the deceased towards personal and living expenses.

3. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in ***Sarla Verma (Smt.) & Ors v. Delhi Transport Corporation & Anr.,*** (2009) 6 SCC 121, submits that as the respondent no.1 himself was an earning member of the family, he cannot be considered to be financially dependent on the deceased and, therefore, there being only three claimants dependent on the deceased, 1/3rd of her income should have been deducted towards personal and living expenses.

4. The learned counsel for the respondent nos.1 to 4 is not in a position to seriously deny the fact that the respondent no.1 was indeed an earning member of the family. In fact, the own claim petition of the respondent no.1, that is the Claim Petition bearing no. 382/2017, titled ***Birjpal Singh v. Aman and Ors.*** before the learned Tribunal, claiming compensation for the injury suffered by him due to the accident in question has been allowed on the basis of his income stated therein.

5. Accordingly, in view of the judgment of ***Sarla Verma*** (supra), which has been upheld by the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi,*** (2017) 6 SCC 680, it is held that the learned Tribunal has erred in deducting only 1/4th of the income of the deceased towards personal and living expenses, instead of 1/3rd income of the deceased that should have been deducted for determining the loss of dependency of the claimants, that is, respondent nos.1 to 4 herein.

6. In view of the above, the compensation awarded on the head of loss of dependency is recalculated as:-

Rs.41,163 – (1/3rd of Rs. 41,163/- = Rs.13,721) = Rs.27,442 x 12 x 14

= *Rs.46,10,256/-*

7. The next challenge of the appellant to the Impugned Award is on account of the interest on the compensation amount awarded at the rate of 9% per annum in favour of the respondent nos.1 to 4. The learned counsel for the appellant, placing reliance on the judgment of this Court in ***National Insurance Co. Ltd. v. Yad Ram and Others***, 2023 SCC OnLine Del. 1849, submits that in the said judgment this Court had reduced the rate of interest to 7.5% per annum, keeping in view the rate of interest as was applicable during and around the period of the accident in question therein.

8. The learned counsel for the respondent nos.1 to 4 does not seriously dispute the above submission of the learned counsel for the appellant.

9. In view of the above, the Impugned Award is modified and the respondent nos.1 to 4 are held entitled to the following compensation:

Heads	Compensation Given by Tribunal	Compensation after Modifications by This Court
Loss of Dependency	Rs.51,86,496/-	Rs.46,10,256/-
Loss of Consortium	Rs.40,000/-	Rs.40,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Total	Rs. 52,56,496/-	Rs.46,80,256/-

10. The respondent no.1 to 4 are further held entitled to interest on the above amount at the rate of 7.5% per annum from the date of the

filing of the Detailed Accident Report till its realization.

11. In terms of the order dated 04.03.2020, the appellant has deposited a sum of Rs.55 lacs with the learned Registrar General of this Court. As the Award has been modified by the present judgment, it is directed that the balance amount, if any, to be deposited by the appellant pursuant to the present judgment, along with interest due thereon, shall be deposited by the appellant with the learned Registrar General of this Court within a period of six weeks from today. On the other hand, in case any excess amount has been deposited by the appellant with the learned Registrar General of this Court pursuant to the order dated 04.03.2020, the same shall be released to the appellant along with proportionate interest accrued thereon.

12. Vide order dated 16.12.2021, 75% of the awarded amount along with interest at the rate of 7.5% per annum was directed to be released to the respondent nos.1 to 4 as per the scheme of disbursal in the Impugned Award. If in terms of this judgment, the respondent no. 1 to 4 are held entitled to release of further/enhanced amount, the same shall be released in their favour by the learned Registrar General of this Court, in accordance with the Scheme of disbursal.

13. The appeal and the pending application are disposed of in the above terms.

14. The statutory amount deposited by the appellant shall be released to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 23, 2023/Arya/AS