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

Date of decision: 06.10.2023

+ **MAC.APP. 693/2019**

HDFC ERGO GENERAL INSURANCE CO LTD

..... Appellant

Through: **Mr.A.K. Soni, Adv.**
versus

KALURAM & ORS

..... Respondents

Through: **Mr.S.N.Parashar, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 33059/2019

1. For the reasons stated in the application, the delay of 18 days in filing the appeal is condoned.
2. The application stands disposed of.

MAC.APP. 693/2019 & CM APPL. 33058/2019

3. The appellant challenges the Award dated 02.04.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal) in New Case no. 50117/2016, titled ***Sh.Kaluram & Ors. v. Sh.Sudhir Singh & Ors.***
4. It was the case of the claimants before the learned Tribunal that on 28.06.2012 at about 7.30 p.m., the deceased Smt. Shila Devi was going to a





Mandir from her house by foot. When the deceased reached H. No. 34, Gali No.1, Gautam Vihar Chowki Seema, PS Sahibabad, Ghaziabad, a truck bearing registration no. HR-38J-3245 (hereinafter referred to as 'offending vehicle'), which was being driven by the respondent no.7 herein at a very high speed and in a rash and negligent manner, came from the back side and hit the deceased. Due to said impact, the deceased fell down on the road and sustained grievous injuries. She was removed to the GTB hospital, Shahdara, Delhi, where she died during the course of treatment on 05.08.2012. The cause of death was opined as due to septicemia shock as a result of ante-mortem infection of multiple internal organs subsequent upon ante-mortem injuries produced by blunt force impact, that is the accident in question.

5. The learned counsel for the appellant submits that the FIR was registered on the statement of PW1- Mr.Manoj, son of the deceased, who claimed himself to be an eyewitness of the accident. In the FIR, however, one Mr.Jatan @ Bhola was shown to be the driver of the offending vehicle. However, while filing the claim petition before the learned Tribunal, the respondent no.7, that is, Mr.Sudhir Singh, son of Sh.Mahender Singh, was impleaded as the driver of the offending vehicle. He submits that, therefore, there is a discrepancy in the FIR and in the statement of PW1 before the learned Tribunal, and for the said reason, the testimony of PW1 should have been discarded by the learned Tribunal.

6. I find no merit in the above submission made by the learned counsel for the appellant.

7. It is important to note that PW1 was cross-examined only by the owner of the offending vehicle, that is, respondent no.8 herein. The





respondent no.7 remained *ex-parte* and did not appear before the learned Tribunal. The learned Tribunal in its Impugned Award also record that the appellant did not cross-examine PW1 on the manner in which the accident had taken place, but confined its cross-examination only on the point of income and earnings of the deceased. In fact, the alleged discrepancy in the FIR was not even put to the said witness and the witness was not confronted with it.

8. In fact, the Authorised Representative of the respondent no.8 herein, Mr.Dinesh Rawat, was examined as RW2. In his testimony, he had stated that the respondent no.7 was the driver of the offending vehicle. He was also cross-examined only by the claimants and not by the appellant. Therefore, the identity of the respondent no.7 as the driver of the offending vehicle could not be disputed by the appellant.

9. I, therefore, find no merit in the above challenge of the appellant.

10. The learned counsel for the appellant submits that the learned Tribunal has erred in deducting only 1/3rd of the income of the deceased towards her personal expenses. He submits that in the present case, the claimants are the husband and the children of the deceased, who were all major. He submits that therefore, half of the income should have been deducted towards her personal expenses.

11. I am unable to agree with the said submission of the learned counsel for the appellant.

12. The learned Tribunal in the Impugned Award has considered only two of the children of the deceased, who were aged only about 25 and 24 years at the time of the death of the deceased, as dependents on her. They were unmarried at the time of the death of the deceased. The deceased was a





homemaker and used to make small earnings by making envelopes at home from old newspapers. The contribution made by a homemaker and the services rendered by a woman in a household cannot be undermined or undervalued. She is the support system behind any household. Contribution of the homemaker was highlighted by the Supreme Court in *National Insurance Company Limited v. Birender & Ors.*, (2020) 11 SCC 356; and in *Kirti & Anr. v. Oriental Insurance Company Ltd.*, (2021) 2 SCC 166.

13. In my view, taking into consideration the above judgments of the Supreme Court, the children of the deceased were also equally dependent on her.

14. Therefore, I find no infirmity in the learned Tribunal deducting only 1/3rd income of the deceased towards her personal expenses. The challenge is accordingly rejected.

15. The next challenge of the appellant is to the adoption of a wrong multiplier and the grant of future prospects on the income of the deceased.

16. The learned counsel for the appellant submits that in the present case, the deceased was more than 50 years of age and, therefore, the multiplier of 11 in terms of the judgment of the Supreme Court in *Sarla Devi & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, and future prospects of only 10% in terms of the judgment of the Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680 should have been adopted.

17. I do not find any merit in the above submission.

18. The age of the deceased has been determined by the learned Tribunal to be 50 years based on the Election Voter Identification Card, which shows that the year of birth of the deceased as 1962. The accident had taken place





on 28.06.2012. The exact date of birth of the deceased did not come on the record. In my view, no fault can be found in the learned Tribunal determining the age of the deceased as 50 years. It must be remembered that we are dealing with a claim petition claiming compensation on account of the death that has occurred due to a motor vehicular accident, the Motor Vehicle Act, 1988 being a beneficial legislation, must be interpreted and operated in favour of the claimants.

19. In view of the above, I find no merit in the above challenge of the appellant.

20. Accordingly, I find no merit in the present appeal. The same is, dismissed along with the pending application. There shall be no order as to costs.

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

22. By the order dated 05.08.2019, the appellant was directed to deposit only 75% of the awarded amount along with interest accrued thereon with the learned Tribunal. The appellant shall deposit the balance awarded amount along with interest accrued thereon before the learned Tribunal within a period of six weeks from today. The same shall be released in favour of the claimants in accordance with the schedule of disbursement as prescribed by the learned Tribunal in the Impugned Award.

NAVIN CHAWLA, J

OCTOBER 6, 2023/Arya/AS

