

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 19.01.2023

+ MAC.APP. 333/2021

SMT ASHA VERMA & ANR.

..... Appellant

Through: Mr.Umesh Kumar, Adv.

versus

HUDFC ERGO GENERAL INSURANCE COMPANY LTD & ORS.

..... Respondent

Through: Mr.Sameer Nandwani, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the claimants, seeks to assail the award dated 07.12.2020 passed by the learned Motor Accidents Claims Tribunal insofar as it relates to quantum of compensation.
2. In support of the appeal, learned counsel for the appellants has raised three primary submissions. The first submission being that once it was evident from the statement of PW-3, a colleague of the deceased who had just before the accident, travelled with him for about 12 kms in the car that he was driving the car properly, the deduction of 50% towards contributory negligence on the part of the deceased, as held by the learned Tribunal was wholly unwarranted. Furthermore, PW-4, the surveyor who had examined the car after the accident had also clearly stated as per his estimate, the car

was being driven at a speed of 30 to 40 km per hour. While not denying that the alcohol level in the blood sample of the deceased just after accident was found to be 91.8 mg/100 ml of blood, he submits that once there was nothing to show that the deceased was driving the car roughly or negligently, the deduction of 50% amount on account of contributory negligence was highly excessive. He, therefore, prays that the same be reduced to 20%.

3. His next submission is that the learned Tribunal has also erred in computing future prospects of the deceased by taking into account only 25% of his income. The learned Tribunal has failed to appreciate the fact that the deceased, who was working in a well-known company M/s Panasonic Appliances India Ltd., had a permanent job. He, therefore, contends that in accordance with the decision in *National Insurance Company Limited v. Pranay Sethi and others (2017)16 SCC 680*, an addition of 30% be made to the income of the deceased towards his future prospects.

4. Learned Counsel for the appellants finally submits that the learned Tribunal, while taking the annual income of the deceased as only Rs.7,08,048/-, has failed to consider that the allowances being paid to him as also the amount being deposited by his employer towards his provident fund were in fact, part of his pay package and ought to have been taken into consideration while determining the loss of income and loss of future prospects. He, therefore, contends that the annual income of the deceased ought to have been taken as Rs.10,24,596/- instead of Rs.7,08,048/- from which a reduction of Rs.1,04,919/- was required to be made towards income tax. Consequently, his net annual income was required to be taken

as Rs.9,19,676/-. He, therefore, prays that the compensation be accordingly enhanced.

5. On the other hand, learned counsel for the respondents, while supporting the impugned award submits that once it was found that the alcohol in the blood sample of the deceased was more than three times the permissible limit, the learned Tribunal was justified in deducting 50% amount towards contributory negligence. He is, however, not in a position to deny that, in the facts of the present case and taking into account that the deceased was working in a well-known company, the future prospects were required to be computed by making an addition of 30% to his income. He also fairly does not deny that except for income tax, no other deductions ought to have been made from the salary of the deceased for computing the amount payable towards loss of dependency.

6. Having considered the submissions of the learned counsel for the parties and perused the record, I am inclined to accept the respondent's plea that in the facts of the present case, the deduction of 50% towards contributory negligence by the learned Tribunal was justified. In my view, once it was found that as against the permissible limit of 30 mg/100 ml of the blood, the blood sample of the deceased contained 91.8mg alcohol/ 100 ml blood, this Court is unable to appreciate the appellants' plea that the deduction of 50% towards contributory negligence was in any manner, unjustified. Even though, there is no eye-witness to prove the exact cause of the accident, the fact that the blood sample of the deceased contained such a high quantity of alcohol, cannot be overlooked. Merely because a colleague of the deceased has stated that he was travelling with the deceased just before the accident and did not notice anything amiss with

the manner in which the car was being driven, would not, in my view, be a sufficient ground to overlook that even as per Section 185 of the Motor Vehicles Act, 1988 a person having more than 30mg alcohol in 100 ml of his blood is not permitted to drive a motor vehicle. The provisions of the Motor Vehicles Act which prohibit persons having more than 30mg alcohol in 100ml of their blood are based on scientific studies which show that a person who consumes excessive alcohol may not be in a position to safely drive a motor vehicle. When persons choose to risk their own lives and those of others, by driving after consumption of such high quantities of alcohol, it cannot be said that there is no contributory negligence. In the present case, there is no direct evidence to show the exact cause of the accident. In these circumstances, once the deceased was admittedly under the influence of such a high quantity of alcohol, it cannot be said that the finding of the learned Tribunal that 50% amount ought to have been deducted towards contributory negligence is, in any manner, perverse. I, therefore, do not find any reason to interfere with this finding of the learned Tribunal.

7. Now coming to the appellants' plea that while computing the amount towards loss of dependency, no deductions, except towards income tax, could have been made by the learned Tribunal. Having perused the nature of allowances which were being received by the deceased, it is clear that all the allowances which were being received by him as also the amount that was being deposited by his employer, were fixed amounts payable to him towards his monthly pay. As noted hereinabove, even learned counsel for the respondents has not been able to seriously dispute this position. This Court is, therefore, inclined to accept the appellants' plea that the annual

income of the deceased ought to have been taken as Rs.10,24,596/- from which a deduction of Rs 1,04,919/- was required to be made towards income tax and therefore, his net annual income ought to be taken as Rs.9,19,677/-.

8. Taking into account that the deceased was working in a reputed private concern for the last many years, the appellants are also justified in urging that the future prospects of the deceased ought to have been computed by making an addition of 30% of his income and not 25%, in view of the decision in *Pranay Sethi (Supra)*, as has been done by the learned Tribunal. Accordingly, by making this addition of 30% i.e. Rs. 2,75,903/- towards the future prospects, the salary of the deceased would work out to be Rs. 11,95,580/-. After deducting Rs. 3,98,526/- i.e. 1/3rd of this amount towards the personal expenses of the deceased, the net annual contribution would work out to be Rs.7,97,054/-. Consequently, the compensation towards the “loss of dependency” works out to Rs. 1,03,61,702/- (7,97,054 x 13), to which compensation under the non pecuniary heads of i.e “Loss of estate”, “Funeral expenses”, “loss of consortium” (Rs15,000+Rs.15,000+Rs.80,000), respectively, are required to be added. The amount of compensation, thus stands at Rs. 1,04,71,702/-, to which 50% of the amount is deductible towards contributory negligence. The net compensation payable to the appellants would therefore be Rs.52,35,851/-, which amount would be payable with interest @9% p.a. as directed under the impugned award.

9. The appeal therefore, deserves to be partly allowed by modifying the impugned award and enhancing the compensation to Rs 52,35,851/- as detailed hereunder:-

Heads of compensation	Compensation awarded by the Tribunal	Compensation awarded by this Court
Total Annual Salary	Rs.7,08,048/-	Rs.10,24,596/-
Total Annual Taxable Salary	Rs.2,08,048/-	Rs.5,24,596/-
Annual Salary After 20% Deduction Towards Income Tax	Rs.6,66,500/-	Rs.9,19,677/-
Loss of Dependency	Rs.5,55,420/-	$[(Rs.9,19,677 \times 30\%) - 1/3^{rd} \text{ income}] \times 13 = Rs.1,03,61,702/-$
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Consortium	Rs.80,000/-	Rs.80,000/-
Total Compensation	Rs.73,30,460/-	Rs.1,04,71,702/-
-50% Contributory Negligence	Rs.36,65,230/-	Rs.52,35,851/-
Total Compensation	Rs.36,65,230/-	Rs.52,35,851/-

10. Now, coming to the apportionment of this amount in favour of the two appellants. Learned counsel for the appellants submits that a sum of Rs.40,00,000/- alongwith interest be paid to the appellant no. 1 and the remaining sum of Rs.12,35,851/- alongwith interest be paid to the appellant no. 2. Learned counsel for the respondent has no objection to this prayer. The impugned award is accordingly modified by directing that a sum of Rs.40,00,000/- alongwith interest @ 9% p.a. will be payable to the

appellant no. 1 while the remaining amount of Rs.12,35,851/- alongwith interest @ 9% p.a. will be payable to the appellant no. 2.

11. Taking into account that the accident took place almost six years ago, it is directed that a sum of Rs. 20,00,000/- alongwith interest @ 9% p.a., as directed, be paid to the appellant no. 1 within six weeks and the remaining amount of Rs. 20,00,000/- alongwith interest be kept in 40 FDRs of Rs.50,000/- each, to be released on a monthly basis in favour of appellant no. 1. Insofar as the sum of Rs. 12,35,851/- alongwith interest, which is payable to the appellant no. 2 is concerned, the same will be kept in the form of an FDR and would be payable to him when he attains the age of 21 years.

12. The appeal is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

JANUARY 19, 2023
sr