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

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Reserved on: 27.01.2023

Pronounced on: 13.02.2023

+ **MAC.APP. 365/2013**

THE NEW INDIA ASSURANCE
COMPANY LTD.

..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

ALI SHER KHAN AND ORS.

..... Respondents

Through: Mr. Javed Ahmad, Ms. Aakriti
Aditya, Advocates for
respondent Nos. 1 & 2.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant being the Insurance Company of the offending Truck bearing No.HR-45-2917 under Section 173 of the Motor Vehicles Act, 1988 ("*the Act*") against the award dated 31.01.2013 ("*the impugned award*") passed by the Presiding officer, MACT, Karkardooma Courts, Delhi in M.A.C Petition No.881/2010.
2. By way of the impugned award, the learned Claims Tribunal held that this is a case of contributory negligence and negligence on the part of the truck bearing no. HR-45-2917 and three wheeler bearing no. HR-45-9155 was assessed as 75% and 30% respectively. Learned Claims Tribunal awarded a compensation

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of Rs. 18,46,000/- (Eighteen Lakhs Forty Six Thousand Rupees) @ 7.5% per annum from the date of filing of the claims petition till the realization of the amount. Learned Claims Tribunal directed the appellant, being the Insurance Company of the Truck bearing no. HR-45-2917, to satisfy 70% of the awarded compensation i.e. Rs. 12,92,200/- within a period of one month. Learned Claims Tribunal awarded compensation under the following heads:

<u>Head</u>	<u>Amount</u>
Total loss of dependency (Rs. 1,29,000 X 14)	Rs. 18,06,000/-
Loss of love and affection	Rs. 25,000/-
Loss of estate	Rs. 10,000/-
Funeral expenses	Rs. 5,000/-
TOTAL	Rs. 18,46,000/-

FACTS RELEVANT FOR ADJUDICATION OF THE MATTER

3. Facts of the matter as recorded by the learned Claims Tribunal are as under:

“2. The brief facts, as stated by petitioners, are that on 19.08.2009. at about 3.15 p.m. one Sh. Naveen Nagar along with Sikandar Khan, Sh. Amit Kumar, Himanshu Gupta, Parvesh Verma, Arvind and one more person belonging to Bihar along with a lady were travelling in Three wheeler no. HR-45-9155 and when the three wheeler reached near Bus stand, Village Patti Kalyana, a Tanker bearing no. HR-45-2917 driven rashly, negligently and at high speed came from Panipat side and hit the

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three wheeler due to which Sh. Himanshu, Amit Kumar, Parvesh, Sikandar and Lady from Bihar suffered fatal injuries and died. Sh. Arvind, Naveen Nagar and a person from Bihar sustained grievous injuries.”

4. A claim petition (**M.A.C. Petition no. 881/2010**) was filed under Sections 166/140 of the Act by the bereaved parents of the deceased i.e. Respondent nos.1&2/ claimants for claiming compensation of Rs. 40,00,000/- (Forty Lakh Rupees) towards the death of their deceased son. A similar claim was brought before the learned Claims Tribunal by the parents of another deceased/Sh. Himanshu Gupta vide **M.A.C Petition No.882/2010**.
5. *Vide* an order dated 14.02.2012, the learned Claims Tribunal passed an interim award for the sum of Rs. 50,000/- in favour of Respondent nos. 1 and 2. Learned Claims Tribunal directed the appellant to deposit 50% of the awarded amount in favour of Respondent nos. 1&2/claimants and rest 50% of the awarded amount will be deposited by Respondent no. 6 i.e. Reliance General Insurance Company Ltd.
6. *Vide* a common impugned Award dated 31.01.2013, the learned Claims Tribunal disposed of both the aforesaid Claim petitions holding that this is a case of contributory negligence as both the vehicles involved in the accident are negligent. Learned Claims Tribunal assessed the negligence on the part of the truck bearing no. HR-45-2917 and three-wheeler bearing no. HR-45-9155 as 70% and 30% respectively. In the **M.A.C Petition No.881/2010**, the learned Claims Tribunal was pleased to award a **MAC.APP. 365/2013**

compensation of Rs. 18,46,000/- and directed the appellant and Respondent no.6 to deposit 70% and 30% of the awarded compensation within period of a month.

7. Aggrieved by the impugned award dated 31.01.2013, the appellant, being the Insurance Company of the Truck bearing No. HR-45-2917, has preferred present appeal praying for quashing of the same.
8. An application being **C.M. No. 6757 of 2020** has been filed by Respondent Nos. 1&2 for seeking enhancement of the compensation awarded by the learned Claims Tribunal.
9. This Court vide its order dated 26.04.2013 stayed the execution of the impugned award subject to the appellant depositing 70% of the awarded compensation along with interest with the Registrar General of this Court. This Court further directed for release of 50% of the aforesaid deposited amount in favour of Respondent nos.1 &2.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT

10. Mr. Pankaj Seth, learned counsel appearing for the appellant has submitted that the impugned award is bad in law since the learned Claims Tribunal completely neglected the evidence produced before it. It is averred by the learned counsel that the learned Claims Tribunal unjustifiably adjudged that the driver and owner of the tanker (i.e. Respondent nos. 3&4) was guilty for contributory negligence to the extent of 70%.

- 11.It is further submitted that the learned Claims Tribunal erroneously and unjustly fixed the liability upon the appellant for paying 70% of the awarded compensation, even when it is an admitted fact that there was a head on collision between the two vehicles and both the drivers were equally responsible for causing the accident that proved fatal to the deceased. The learned counsel while placing reliance on the evidence of PW-4 asserted that the accident took place as the driver of the three-wheeler was driving negligently and was overloaded with passengers in contravention of the Rules. Therefore, ascertainment of the liability in proportion of 70:30 is unjust and discriminatory, and the learned Claims Tribunal should have fixed entire liability of paying compensation on the driver/owner and insurer of the three-wheeler.
- 12.It is further submitted that the learned Claims Tribunal without any cogent evidence produced and proved on record regarding employment and income of the deceased, arbitrarily assumed Rs.15,000/- as the notional income of the deceased. Learned Claims Tribunal also irrationally added 50% of Rs.15,000/- towards the future prospects and considered Rs.22,500/- as the income of the deceased for purpose of assessing loss of dependency.
- 13.Learned counsel fairly concedes that the multiplier should be applied as per the law laid down in ***Sarla Verma & Ors. Vs DTC & Anr (2009) 6 SCC 121*** whereby it was held that for the purposes of selection of multiplier, the age of the deceased has to ***MAC.APP. 365/2013***

be considered. Learned Claims Tribunal erred in adopting the multiplier of 14 as per the age of deceased's mother, instead of multiplier of 18.

14. With these submissions, learned counsel for the Appellant prays for the modification of the impugned Award.

SUBMISSIONS MADE ON BEHALF OF RESPONDENT NOS.

1 & 2

15. Mr. Javed Ahmad, learned counsel appearing for Respondent nos. 1 and 2 has vehemently opposed the present appeal filed by the appellant. It is submitted that Respondent nos. 1 and 2 being parents of the deceased are entitled to enhanced compensation. It is further submitted that Respondent nos. 1 and 2 have undergone great pain and trauma by losing their son who had a bright future considering his academic records. It is submitted that Respondent nos. 1 and 2 have spent considerable amount of their savings on their son's education and the said accident has deprived them of their son's love and financial security in the old age.

16. Learned counsel for Respondent nos. 1 and 2 has placed reliance on *New India Assurance Co. Ltd. v. Dilip Kumar, 2018 SCC OnLine Del 9263* for seeking enhancement of the claim compensation in the interest of justice.

17. With these submissions, learned counsel for Respondent Nos. 1 & 2 prays for enhancement of the compensation in their favour.

REBUTTAL ARGUMENT

18.Mr. Pankaj Seth in rebuttal contended that Respondent nos. 1 and 2 are not entitled for any enhancement in compensation. Placing reliance on the judgment delivered by the Hon'ble Supreme Court in *Ranjana Prakash v. Divl. Manager, (2011) 14 SCC 639*, learned counsel submitted that Respondent nos.1 and 2 has neither challenged the impugned award by way of an appeal nor preferred any cross objection to the present appeal, therefore, are not entitled for enhancement of the compensation.

LEGAL ANALYSIS

19.This Court has heard the rival contentions of the parties and have perused the relevant documents produced before the learned Claims tribunal and Judgments relied upon by the parties.

20.At the outset, it is vehemently argued by learned counsel for the appellant/Insurance Company that the learned Claims Tribunal has unjustifiably ascertained the liability of paying 70% of the amount of compensation upon the appellant. It is the case of the appellant that accident took place due to rash and negligent driving of Respondent no.5 (driver/owner of the three-wheeler) and therefore it is the Respondent nos.5 & 6 upon whom the liability should be laid for payment of the compensation.

I. Apportionment of the liability in the present case

21.The prime issue that requires this Court's judicial consideration relates to the apportionment of liability to pay the amount of awarded compensation. For determining the liability of the parties in causing the said accident and subsequent liability to

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pay the awarded compensation, it becomes pertinent to enquire into the circumstances under which the said accident took place. The deposition of PW-4/Sh. Naveen Nagar, who is one of the survivors of the accident in which deceased lost his life, comes to the assistance in assessing the contribution of the parties in causing the accident. Extract of the deposition is reproduced hereinbelow:

“...The three wheeler was plying at the left side of the road and the tanker was coming from opposite side. The road was under construction and there was a divider on the road and as the one side of the road was under construction only single road was being used for traffic. The road was the single road without there being any divider. The speed of the three-wheeler might have been 50-60 Kmph. I cannot tell the speed of tanker but the speed of the tanker was more than the speed of the three wheeler. The road was full of traffic. I cannot tell the number of vehicle/ rush on the road at the time of accident. It was the head-on collision. It is wrong to suggest that I was not traveling in the three wheeler and I did not witness the accident. It is wrong to suggest that driver of the tanker was negligent and the driver of three wheeler was not negligent. Vol. The drivers of both the vehicles were negligent and were responsible for accident, it is wrong to suggest that I am deposing falsely”

22. On perusal of the testimony given by PW-4, the following circumstances are cogently conveyed:

- (a) The tanker bearing no. HR-45-9155 came from the opposite side and collided with the three-wheeler carrying deceased and the other passengers.
- (b) The road was under construction and single road was being used for the flow of traffic.

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- (c) It was a head on collision.
- (d) Both the vehicles were driven recklessly and contributed towards the accident and subsequent death of the passengers.
- (e) The sitting capacity of the three-wheeler was 3+1 where as it was overloaded and was carrying 8+1 people.
- (f) The speed of the tanker was more than that of the three-wheeler.

The testimony of PW-4 reveals the circumstances under which the accident took place which makes it a clear case of contributory negligence. However, as far as the three-wheeler is considered, the sitting capacity was 3+1, and it was carrying 8+1 people. In addition, it was plying at a speed of 50-60 Kmph. Due to the construction work, traffic was moving in a single lane. In such a situation, the driver of a heavily overloaded three-wheeler running at a speed of 50-60 Kmph is highly negligent. This Court is of the considered view that the learned Claims Tribunal assessed the negligence of the three-wheeler on a lower side. Hence based on the facts and circumstances, this Court deems it appropriate for the negligence to be apportioned at 50% on tanker's driver and 50% on three-wheeler's driver. Since the driver of the tanker was driving the vehicle at a high speed, the insurer of the said vehicle i.e. the Appellant will be liable to pay 50% of the awarded compensation to the deceased's dependents. While the liability to pay rest 50% of the awarded compensation is levelled upon Respondent no.6. Therefore, the finding of the learned Claims Tribunal is modified to the extent that the driver

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of the tanker and the driver/owner of the three-wheeler are liable for the contributory negligence in proportion of 50:50 (1:1) respectively, instead of 70:30 (7:3).

(II) Modification/enhancement of the quantum of awarded compensation

23. Respondent nos. 1 & 2 have preferred an application under the Section 151 of the Civil Procedure Code, 1908 for enhancement of the compensation awarded by the learned Claims Tribunal. As far as the argument of learned counsel for the appellant with regard to non-entitlement of Respondent Nos. 1 & 2 for enhancement of compensation on the ground that the Respondents have neither challenged the impugned order by way of an appeal nor preferred any cross-objection to the present appeal is concerned, the Hon'ble Supreme Court in the case of ***Surekha and others Vs Santosh and others*** reported as **2020 ACJ 2156** while granting enhancement of compensation to the claimants has observed that:-

“2. This appeal takes exception to the judgment and order dated 4.1.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016 [Shriram General Ins. Co. Ltd. v. Surekha, 2020 ACJ 434 (Bombay)], whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs. 49,85,376, however, declined to grant enhancement merely on the ground that the appellants had failed to file cross appeal.

3. By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and

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ensure that just compensation is awarded to the affected person or the claimants.

4. As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the appellants is determined at Rs. 49,85,376, with interest thereon as awarded by the High Court”

24. In the light of the aforesaid judgment, Respondent nos. 1 and 2 are well within their rights to claim enhanced compensation. This Court can therefore modify the compensation awarded by the learned Claims Tribunal, if so required, for purpose of granting ‘just compensation’ and meeting ends of justice in accordance with the objective of the Act.

25. Learned counsel for the Appellant argued that the learned Claims Tribunal, without any cogent evidence produced and proved on record regarding employment and income of the deceased, arbitrarily assumed Rs.15,000/- as the notional income of the deceased.

26. On examination of the impugned Award it shows that the learned Claims Tribunal fixed Rs.15,000/- as the notional income of the deceased without any basis. For fixation of the notional income, there is no straight jacket formula. While concurring with the view expressed by Hon’ble Mr. Justice Surya Kant (J) in the case of ***Kirti & Anr Vs Oriental Insurance co Ltd***, reported as **2021 (2) SCC 166**. Hon’ble N.V Ramana (J), explained the two distinct categories of situations wherein the Court usually determines the notional income of a victim. The relevant excerpts of the said Judgment reads as follows:

“17. There are two distinct categories of situations wherein the Court usually determines notional income of a victim. The first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the Court “guesses” the income of the victim on the basis of the evidence on record, like the quality of life being led by the victim and her family, the general earning of an individual employed in that field, the qualifications of the victim, and other considerations.

18. The second category of cases relates to those situations wherein the Court is called upon to determine the income of a nonearning victim, such as a child, a student or a homemaker. Needless to say, compensation in such cases is extremely difficult to quantify.

19. The Court often follows different principles for determining the compensation towards a nonearning victim in order to arrive at an amount which would be just in the facts and circumstances of the case. Some of these involve the determination of notional income. Whenever notional income is determined in such cases, different considerations and factors are taken into account. For instance, for students, the Court often considers the course that they are studying, their academic proficiency, the family background, etc., to determine and fix what they could earn in the future.”.

27. From the cited case law, it is evident that the notional income of a student pursuing professional course is to be decided based on the facts of each case. The Hon'ble Supreme Court in ***V.Mekala Vs Malathi & Anr*** reported as ***2014 SCC OnLine SC 392*** held that while determining the notional income of a student, the academic as well as non-academic activities of the student needs to be examined. This Court is cognizant of the fact that deceased was a young student aged 19 and was pursuing Bachelor of Technology (B.Tech) in Electronics & Communication stream at the time of accident, i.e, 19.08.2009. The mark sheet of the

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deceased was placed on record which shows that he was a moderate student. The learned Claims Tribunal relied upon **MAC Appeal No. 238/2012** titled as **Meenu Tognatta & Anr. Vs. National Insurance Co. Ltd. & Ors.** and **MAC Appeal No.478/2011** titled as **Krishna Kanta Marwah & Anr. Vs. Reliance General Insurance Co. Ltd. & Ors.** to fix the potential income of the deceased. In **Meenu Tognatta (supra)**, this Court increased the potential income of a 2nd year BE student from Rs. 12,500/- to Rs.18,000/- whereas in **Krishna Kanta Marwah (supra)**, the potential income of a B.Sc.(Computer) student was fixed at Rs. 15,000/- per month. Hence, considering the facts and circumstances of the present case, this Court is of the considered view that the learned Claims Tribunal is justified in fixing the monthly income of the deceased at Rs.15,000/- p.m. There is no interference called in this regard.

28. With regard to the 'future prospects' to be added in the income, it is pertinent to refer to the judgment delivered in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680** wherein the issue of 'Future prospects' has been dealt in depth. Hence, in terms of the judgment delivered in **Pranay Sethi (supra)**, it is, therefore, appropriate to add 40% of the income of the deceased towards the future prospects. The total monthly income of the deceased, therefore, is taken at Rs. 21,000/- [Rs.15,000/- + 40% of Rs.15,000]. The total annual income is computed to be Rs. 2,52,000/- (Rs. 21,000 X 12).

29. Deduction of Income tax from the gross annual income is required for arriving at the net annual income of the deceased for computing compensation under the head of 'Loss of dependency'. Going by the fact that engineering course spans for a period of 4 years, the deceased would have graduated from the college in the year 2011 and have started earning in the same year itself. The assessment year, therefore, will be taken as 2011-2012. During the assessment year 2011-2012, the income tax rates applicable for the income slab of Rs.1,60,000/- to 5,00,000/- is 10% of the amount exceeding Rs. 1,60,000/-. Considering the same, 10% of Rs. 92,000/- (Rs.2,52,000/- - Rs.1,60,000/-) amounting to Rs. 9,200/- will be treated as income tax payable by the deceased. Therefore, the net annual income of the deceased after income tax deduction comes up to **Rs.2,42,800/-**.

30. The second limb of submission on behalf of the appellant relates to the selection of the multiplier that will be applicable in the present case. It is prudent to refer to the case of *Sarla Verma (supra)* which was followed in *Pranay Sethi (supra)* for the selection of multiplier. As per the law laid down in *Sarla Verma (supra)* with respect to the operative multiplier while calculating quantum of compensation, the multiplier will be applied as per the age of the deceased. The relevant portion of the said judgment is reproduced hereinbelow:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above

(prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

31. The multiplier applicable in the present case is '18' since the deceased was aged 21 at the time of accident. Learned Claims tribunal erred in applying the operative multiplier as per the age of deceased's mother, therefore, the multiplier is enhanced from 14 to 18.
32. Taking income of the deceased as Rs. 2,42,800/- per annum, deducting 50% of the income as personal expenses (Rs.83,600/-), and applying the multiplier of 18, the loss of dependency is calculated at **Rs. 1,21,400/ X 18 = Rs. 21,85,200/-**.
33. Learned Claims Tribunal has awarded Rs. 25,000/- towards loss of love and affection which is not a permissible head in view of the judgment of the Supreme Court in ***Pranay Sethi (supra)*** and is, therefore, set aside.
34. As far as the compensation under the conventional head of Loss of Estate, Funeral Expenses and Loss of Consortium is concerned, the same has been quantified/fixed by the Hon'ble Apex Court in ***Pranay Sethi (supra)***.

35. Accordingly in terms of *Pranay Sethi (supra)*, 'Loss of Estate' is enhanced from Rs. 10,000/- to Rs. 16,500/- and 'Funeral Expenses' are enhanced from Rs. 5,000/- to Rs. 16,500/-. Compensation under the head of 'Loss of Consortium' is computed at Rs. 44,000/- for each of the dependant i.e. Rs. 88,000/- in the present matter.

36. In view of the above discussion, the impugned Award dated 31.10.2013 is modified to the following extent:

Heads	Awarded compensation
(A) Loss of dependency	(i) Rs. 15,000/- + 40% (6,000) = Rs. 21,000/- (ii) Rs. 21,000 X 12 = 2,52,000/- (iii) Rs. 2,52,000/- - Rs. 9200/- = Rs. 2,42,800/- (iv) Rs. 2,42,800 – 50%(1,21,400) = Rs. 1,21,400 (v) Rs. 1,21,400 X 18 = Rs. 21,85,200/-
(B) Loss of consortium	Rs. 44,000 X 2 = Rs. 88,000/-
(C) Funeral expenses	Rs. 16,500/-
(D) Loss of estate	Rs. 16,500/-
(E) Loss of love and affection	NIL
TOTAL AWARDED COMPENSATION (A+B+C+D)	Rs. 23,06,200/-

37. The compensation awarded by the learned Claims Tribunal is therefore enhanced from Rs. 19,75,000/- to 23,06,200/-.

38. There would be no change in the rate of interest awarded by the learned Claims Tribunal.
39. It is also pertinent to note that as per order dated 26.04.2013, the appellant was directed to deposit 70% of the awarded compensation which amounts to Rs. 13,82,500/-. However, as per the office record, an amount of Rs. 11,31,096/- was deposited by the appellant to the Registry of this Court vide cheque dated 24.05.2013. Further, out of the aforesaid deposited amount, a sum of Rs. 5,65,548/- has already been released in favour of Respondent nos.1&2. The rest 50% of the aforesaid deposited amount is lying with the Registrar General of this Court.
40. The Appellant and Respondent No.6 are directed to deposit their respective shares of the enhanced compensation with the Registrar General of this Court with interest @ 7.5% from the date of filing the present Appeal within 4 weeks. Upon the deposit of the said amount, the balance 50% of the earlier deposited amount with the interest accrued thereon along with the enhanced compensation shall be released to the Claimants in terms of the impugned Award.
41. Statutory amount, if deposited, be released to the Appellant.
42. In view of the detailed discussion herein above, the Appeal filed by the Insurance Company is partly allowed.
43. Appeal is disposed of in the above terms. No order as to costs.

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