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

Date of decision: 20.12.2023

\+ **MAC.APP. 471/2018**

SUNITA & ORS ..... Appellants

Through: Mr.Kamaldeep, Adv.

versus

SHAMSHEER ALAM & ORS (THE ORIENTAL INSURANCE CO LTD) ..... Respondents

Through: Mr.R.K.Tripathi, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 66349/2023

1. By the consent of the learned counsel for the respondent no.3, who is the only contesting respondent in the present case, the appeal is taken up for hearing today itself.

2. The application is allowed.

3. The next date of hearing, that is, 23.02.2024 shall stand cancelled.

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4. This appeal has been filed challenging the Award dated 10.01.2018 (hereinafter referred to as 'Impugned Award') passed by

the learned Motor Accidents Claims Tribunal, (Shahdara-District) Karkardooma Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC No. 1793/2016, titled as ***Sunita & Ors. v. Shamsheer Alam & Ors.***.

Brief Background

5. Before the learned Tribunal, it was the case of the appellants, who were the Claimants before the learned Tribunal, that on 18.02.2016, at about 2 PM, the deceased Sh.Jai Kishan along with his colleague Sh.Raj Kumar was travelling by a car. As they reached at GT Road, Chintamani, Industrial Area, Red Light, Delhi, the Offending Vehicle bearing registration no. UP-13T-0507, being driven by its driver in a rash and negligent manner, hit the car which resulted in the death of the deceased.

6. The learned Tribunal, on appreciation of evidence led before it, has held that from the statement of PW1-Sh.Raj Kumar, and the site plan prepared by the Investigating Officer during investigation, it was evident that the car was being driven at a high speed and was trying to overtake the Offending Vehicle from the wrong side, which caused the accident. At the same time, the driver of the Offending Vehicle was also driving the Offending Vehicle in a rash and negligent manner.

7. The learned Tribunal has attributed contributory negligence of 15% on the deceased for causing the accident.

Challenge to the Contributory Negligence of the Deceased

8. The learned counsel for the appellants submits that as the deceased was travelling in the car only as a passenger, contributory negligence, even if assuming there to be one of the driver of the car,

cannot be attributed to the deceased. He submits that, therefore, the learned Tribunal has erred in attributing contributory negligence of 15% on the deceased.

9. The learned counsel for the respondent no.3 is not in a position to dispute the finding of the learned Tribunal that the deceased was indeed travelling in the car as a passenger.

10. In that view of the matter, the learned Tribunal has clearly erred in attributing contributory negligence of 15% on the deceased. The passenger in the car cannot be attributed with contributory negligence for causing the accident without any specific allegation against such passenger. In the present case, there is no allegation against the passenger that he had contributed to the cause of the accident due to his negligence. In that view, contributory negligence cannot be attributed to the deceased for causing the accident.

11. The Impugned Award, insofar as it attributes contributory negligence of 15% to the deceased is, therefore, set aside.

Challenge to the Personal and Living Expenses of the Deceased

12. The next challenge of the appellants to the Impugned Award is on deduction of half of the income of the deceased towards his personal and living expenses.

13. The learned counsel for the appellants submits that the deceased had left behind his wife, father and three children as his legal heirs. He submits that taking into account the evidence led before the learned Tribunal, and even assuming that the father of the deceased was not dependent on him, only one-third from the income of the deceased

should have been deducted towards his personal and living expenses.

14. The learned counsel for the respondent no.3 does not dispute the above position in law.

15. In view of the above, the Impugned Award is modified to the extent that for purposes of determination of the compensation towards loss of dependency, one-third of the income of the deceased shall be deducted towards his personal and living expenses instead of one-half as has been directed by the learned Tribunal. It is ordered accordingly.

Conclusion and Directions

16. In view of the above, the compensation payable to the appellants towards loss of dependency is re-determined as under:

S.No.	**Particulars**	**Amount**
1.	Income	Rs.40,017/-
2.	Future Prospects	15%
3.	Deduction towards Personal and Living Expenses	1/3
4.	Multiplier	11
5.	Months	12
	Total	Rs.40,017x115/100 x2/3x11x12 =Rs.40,49,720.40/-
	Less: Compensation awarded by Ld. Tribunal	(Rs.21,26,263/-)
	Enhanced Compensation	**Rs.19,23,457.40/-**

17. The enhanced compensation shall also carry interest at the rate

of and for the period as was awarded by the learned Tribunal in the Impugned Award.

18. The respondent no.3 shall deposit the enhanced compensation along with interest, with the learned Tribunal within a period of four weeks from today.

19. The compensation, including the enhanced compensation, shall be released in favour of the appellants in accordance with the schedule of disbursal as prescribed in the Impugned Award.

20. The appeal is allowed in the above terms.

21. There shall be no orders as to costs.

22. Let the Trial Court Record be returned to the learned Tribunal.

NAVIN CHAWLA, J

DECEMBER 20, 2023/ns/ss

Click here to check corrigendum, if any