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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 01.08.2023***

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MAC.APP.528/2018, CM APPL. 23317/2018 & 23319/2018

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr Pradeep Gaur and Ms Sweta
Sinha, Advs.

versus

MASTER SHAURYA & ORS. Respondents

Through: Mr. Satya Narayan, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present appeal, preferred by the insurer, under section 173 of the Motor Vehicles Act seeks to assail the award dated 29.01.2018 passed by the learned Motor Accidents Claim Tribunal. Vide the impugned award, the learned Tribunal has awarded a sum of Rs.6,79,760/- with interest @9% per annum as compensation to the respondent nos.1 to 4 towards their claim on account of the death of Ms. Ritu in the fateful motor accident which took place on 13.12.2016.

2. At the outset, it may be noted that vide the impugned award, the learned Tribunal has allowed compensation in respect of three claim petitions relating to the death of Smt Seema Devi, her husband Shri Raj Kumar and their minor daughter Ritu. Aggrieved by the quantum



of compensation awarded in respect of all the three claim petitions, the insurer has preferred three separate appeals. In all the appeals there is a challenge to the quantum of compensation as also to the rate of interest with which compensation is payable.

3. Before dealing with the rival submissions of the parties, I may note in brief the factual matrix of the present case, insofar as is necessary for adjudication of the present appeal.

4. On 13.12.2016, Sh. Raj Kumar, a constable/GD in the Central Reserve Police Force (CRPF) along with his wife namely Smt. Seema Devi and 9 years old daughter Ritu was travelling on a motor cycle bearing registration number UP-81AA-0367. On reaching Kalandi Kunj Road No. 13, near Metro Yard, New Delhi, the motor cycle was hit from behind by a truck bearing registration number HR-38V-6909. The truck which was insured with the appellant was being driven by respondent no.5/driver of the insured truck. In the accident, Sh. Raj Kumar, his wife Smt. Seema and minor daughter Ritu, all succumbed to the injuries sustained by them. Consequently, a Detailed Accident Report (DAR) being MACT No. 710/2017 was filed by the police. By relying on the same the two minor son and aged parents of Shri. Raj Kumar preferred three separate claims seeking compensation on account of the death of Shri. Raj Kumar, Smt. Seema and Ritu in the accident.

5. Before the learned Tribunal, the claimants, in support of their claim that the death of Sh. Raj Kumar, Smt. Seema Devi and their daughter Ritu was a result of rash and negligent driving of the truck insured with the appellant, the claimants examined two witnesses.



Though the appellant cross examined these witnesses, they did not lead any evidence to substantiate their plea that the accident took place because of the negligence of the deceased Sh. Raj Kumar, who was driving the motor cycle with two pillion riders. Upon appreciation of evidence, the learned Tribunal came to a conclusion that the motor cycle had been crushed after being hit by the offending truck from behind and therefore, opined that the accident occurred on account of the rash and negligent driving by respondent no.5.

6. At this stage, it would be apposite to note the findings of the learned Tribunal in this regard as contained in Para 16-19 of the award. The same read as under:

*“16. From the discussions above, it is evident that the negligence has to be established in petition filed under Section 166 of Act and the same may be proved through the direct evidence or through the circumstances surrounding the accident or on the principle of 'res ipsa loquitur'. In my view, present case is squarely covered by the principle of **res ipsa loquitur**. In the FIR placed on record it is recorded that it became known from the spot that the offending truck was being driven in a rash and negligent manner and high speed and hit against the motorcycle and crushed the motorcyclist as a result he died; the truck tried to escape but public stopped the truck and thereafter gave beatings to the driver and its helper and the PCR came at the spot and took the driver and PCR to the hospital for treatment. These are the observations of the 10 who reached at the spot after receiving intimation of the accident. The fresh damage in the mechanical inspection report of the motorcycle bearing No. UP 81AA 0367 is as under:-*



.'Rear Number plate of UP 81AA 0367 left side dented and pressed'

17. These fresh damages on the rear side of the motorcycle of deceased established that it was hit from behind. The fresh damages on offending truck No. HR 38B 6909 are as under:-

'Front Bumper and lower steel channel dented/pressed/scratched. The brakes of the offending truck were OK and vehicle was roadworthy.'

18. The above fresh damages on the offending truck shows that it had struck the motorcycle from behind despite it being mechanically fit with its brakes OK. In other words it establishes that the offending truck was not driven with due care and caution and was driven in rash and negligent manner.

19. In these circumstances, the onus to prove as to how the accident happened would shift on the defendant i.e. respondent No. 1. In the present case, respondent No. 1 has not disputed the fact that he was driving the offending vehicle at the time of accident. However, he has not stepped into the witness box to explain circumstances surrounding the accident. The charge-sheet for the offence U/s. 279/304A IPG has been filed against respondent No.1 and he has not led any evidence to show that he has been falsely implicated for the rash and negligent driving of the offending vehicle. In such circumstances, petitioner has been able to prove that deceased suffered fatal injuries due to rash and negligent driving of the R-1. Accordingly, issue No. 1 is decided in favour of the petitioner and against the respondents. ”

7. Having come to the conclusion that the death of Shri Raj Kumar, Smt.Seema Devi and Ms.Ritu in the accident was on account



of rash and negligent driving by the driver of the Truck, the learned Tribunal awarded compensation on account of the death of Ms.Ritu, who was aged about 9 years at the time of the accident by treating her notional income as Rs.15,000/- per annum. For this purpose, the learned Tribunal relied on the decision in ***R.K.Malik v. Kiran Pal 2009 Law Suit(SC) 813*** and ***Chetan Malhotra v. Lala Ram MAC APPL.554/2010***. The learned Tribunal thereafter took into account cost inflation index(CII) as notified by the Govt. of India under Section 48 of the Income Tax Act, computed her inflation corrected annual income as being Rs.50,982/-(Rs,15,000/- X 1125/331). The learned Tribunal thereafter made a deduction of 1/3rd towards her personal and living expenses and, therefore, held her net annual income to be Rs.33,988/-to which a multiplier of 10 was applied for awarding a sum of Rs.3,39,880/- as compensation towards pecuniary loss of estate. A similar amount of Rs.3,39,880/- was awarded towards non-pecuniary damage for which purpose the learned Tribunal again relied on the decision in ***Chetan Malhotra(supra)***.

8. Being aggrieved, the appellant has preferred the present appeal.

9. As noted above, even though all the three claims have been allowed vide the common impugned award, since the grounds for grant of compensation in respect of the three claims are different, three separate appeals have been filed by the insurance company, which are being decided separately. The present appeal deals only with the challenge to the compensation granted on account of the death of Ms. Ritu.



10. Before dealing with the facts of the present appeal, it may also be noted that insofar as the appellant's challenge to grant of interest at the rate of 9% per annum as also it's plea that there was no negligence on the part of the driver of the insured vehicle are concerned, the same have already been decided by this Court on 28.03.2023 in **MAC APP. 526/2018 [National Insurance Co Ltd v Yad Ram and Ors]** wherein the Court was dealing with the challenge to the grant of compensation on account of the death of Shri Raj Kumar. Vide the said decision, this Court rejected the appellant's plea that there was no negligence on the part of the driver of the insured vehicle. The Court, however, reduced the interest on compensation to 7.5% p.a. Since the date of the accident as also of the impugned award in the present appeal is same as that in MAC APP.526/2018, the appellant's plea that there was no negligence on the part of the driver of the insured vehicle will for the reasons stated in the decision dated 28.03.2023 stands rejected in the present appeal as well. For similar reasons the interest in the present case will also stand reduced to 7.5% p.a. and the decision in MAC APP. 526/2018 will be read as a part of this decision.

11. In support of the appeal, learned counsel for the appellant has, at the outset, submits that the decision in **Chetan Malhotra vs. Lala Ram** [MAC.APP. 554/2010 decided on 13.05.2016], on which the learned Tribunal has based its award, is no longer good law as the IIInd Schedule to the Act stands deleted. By drawing my attention on the decision of the Apex Court in **Rajendra Singh and Others vs. National Insurance Company Limited and Others** [SLP (Civil) No. 13964 of 2018], he submits that the learned Tribunal has grossly erred



in awarding the same amount as compensation under the non-pecuniary head as was found payable to the respondents under the pecuniary head. He contends that in no case has the Apex Court granted such a huge amount of Rs.3,39,880/- under the non-pecuniary head. In fact, even in the decisions relied upon by the respondents, no such amount towards non pecuniary head has been granted in the case of a death of a minor child.

12. He next submits that the learned Tribunal has also erred in fixing the notional annual income of the deceased Ms. Ritu as Rs. 50,982/- as against the notional annual income of Rs.36,000/- considered by the Apex Court in **Rajendra Singh** (supra). Furthermore, the learned Tribunal has also erred in making a deduction of only 1/3rd towards her personal expenses by ignoring the aforesaid decision of the Apex Court wherein a deduction of 50% was made towards the personal expenses of the deceased. He, therefore, prays that the impugned award be modified accordingly.

13. On the other hand, learned counsel for the respondents, while supporting the impugned award, submits that the decision in **Chetan Malhotra** (supra) was rightly applied by the learned Tribunal to the facts of the present case. The impugned award, he contends, was passed on 29.01.2018, i.e., much before the date on which the IIInd Schedule of the Act was deleted from the statute. He, therefore, contends that the decision of the learned Tribunal in granting compensation of Rs. 3,39,880/- towards non-pecuniary head does not warrant any interference. He further submits that even the finding of



the learned Tribunal to hold the notional income of the deceased as Rs.50,982/- was just and proper. Finally, he submits that the appellant's plea that a deduction of 50% was required to be made towards the personal expenses of Ms. Ritu is also liable to be rejected as there is no such uniform rule that a deduction of 50% should be made towards personal expenses where the deceased was a minor child. By placing reliance on the decision in ***Meena Devi vs. Nunu Chand Mahto @ Namchand Mahto & Ors.*** JT 2022 (10) SC 140, he submits that in a similar case when the Apex Court was dealing with the case of the death of a minor child aged 12 years in a motor accident, no deduction was made towards the personal expenses of the child. He therefore, prays that compensation be computed by taking into account the annual income of the deceased as Rs.50,982/-.

14. Having considered the submissions of learned counsel for the parties and perused the record, I find that in the present case, the learned Tribunal has after taking into account the Cost Inflation Index, considered the notional annual income of the 9 years old deceased as Rs.50,982/-. As against this, the Apex Court had in the case of ***Rajendra Singh*** (supra) taken the notional annual income of a 12 years old child as Rs.36,000/-. Learned counsel for the appellant has vehemently urged that once the Apex Court has taken the notional income of the child as Rs.36,000/-, this Court should also reduce the notional income of the deceased in the present case to Rs.36,000/-. I am unable to agree with this plea of the appellant. A perusal of the decision in ***Rajendra Singh*** (supra) in itself shows that the Apex Court did not lay down any such principle that the notional income of a



minor who dies in a motor accident, should always be taken as Rs.36,000/- per annum. In my view, this notional income cannot be an abstract figure but has to be fixed by the learned Tribunal taking into consideration the facts and circumstances of each case. In the present case, the Tribunal has, after taking into account the facts of the case, determined the notional income of the deceased as Rs.50,982/-, which amount cannot, in my view, in any manner be said to be exorbitant so as to warrant interference by this Court in exercise of its appellate jurisdiction. I, therefore, do not find any merit and reject the appellant's plea that the notional income of the deceased should be taken as Rs.36,000/-.

15. Now, coming to the appellant's next plea that the Tribunal wrongly made a deduction of 1/3rd as against a deduction of half of the notional income towards the personal expenses of the deceased. Even though I find that the learned counsel for the appellant is correct in urging that in *Rajendra Singh* (supra), the Apex Court had directed a deduction of half to be made towards the personal expenses of a minor child who had expired in a motor accident, this rule was not followed by the Apex Court itself in various subsequent decisions including the decision in *Meena Devi* (supra), relied upon by the respondents, wherein no deduction at all was made towards personal expenses. In the present case, the Tribunal has after considering the surrounding facts and circumstances directed 1/3rd deduction to be made on this account. In these circumstances, I do not find any reason to interfere with the direction of the learned Tribunal insofar as it deducts of 1/3rd of the notional income towards the personal and living expenses of the



deceased.

16. Now, coming to the plea of the appellant that the amount of Rs. 3,39,880/- awarded towards non-pecuniary damage is highly exorbitant, though learned counsel for the respondents has vehemently urged that taking into account that the impugned award was passed in 2018 i.e. much before the deletion of IIInd Schedule of the Act, I am of the view that taking into account the decision of the Apex Court in *National Insurance Co. Ltd. Vs. Pranay Sethi*; 2017 (13) SCALE, the grant of compensation of Rs.3,39,880/- towards non pecuniary heads by awarding an amount equivalent to the amount of compensation awarded towards pecuniary loss of the estate, is unjustified. There is absolutely no basis for granting such an amount towards non-pecuniary damages. Taking into account all the heads under the non-pecuniary heads, this amount is reduced to Rs.1,00,000/-. The impugned award is accordingly modified to the aforesaid extend. The respondents would consequently be entitled to receive a sum of Rs.3,39,880/- as compensation towards pecuniary losses alongwith Rs.1,00,000/- towards non-pecuniary damages with interest @7.5% p.a. as directed hereinabove.

17. The learned Tribunal will forthwith release the amount in terms of this order to the respondents with up to date interest as per the scheme of disbursal contained in the impugned award, which is not being interfered with by this Court. The excess deposited amount, if any, will be refunded back to the appellant alongwith accrued interest thereon.

18. While disposing of the appeal in the aforesaid terms, the registry



is directed to refund the statutory deposit of Rs.25,000/- to the appellant.

(REKHA PALLI)
JUDGE

AUGUST 1, 2023
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