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

Date of decision: 25.04.2023

+ MAC.APP. 527/2018 & CM APPL. 23314/2018 (stay)
NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Pradeep Gaur & Ms.Sweta Sinha,
Advs.

versus

MASTER AVINASH & ORS Respondents
Through: Mr.Satya Narayan Padhee, 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.21,58,600/- with interest @9% per annum as compensation to the respondent nos.1 to 4 towards their claim on account of the death of Smt Seema Devi 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 arrived to the conclusion that the death of Shri Raj Kumar, Smt.Seema Devi and 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.Seema Devi by treating her monthly income as Rs.8,890/- on the basis of the minimum wages of a

skilled worker considering that she was a house wife. By taking into account the fact that the deceased was aged less than 40 years, the Tribunal directed an addition of 25% in her income and thereby the loss of dependency was computed as Rs.21,33,600/-. This amount was calculated by applying a multiplier of 16 on her annual income with the increase of 25%.

8. By placing reliance on the decision in ***Royal Sundaram Alliance Insurance Co. Ltd V. Manmeet Singh 2012 SCC OnLine Del 583***, the learned Tribunal declined to make any deduction towards her personal expenses and further awarded a notional sum of Rs.25,000/- towards loss of love and affection. Consequently, the Tribunal awarded a total compensation of Rs.21,58,600/-, which amount was directed to be paid with interest at the rate 9% p.a.

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

10. 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 Smt.Seema.

11. 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.

12. Having noted that two of the grounds on which the present appeal has been preferred already stand covered by the decision in MAC APP.526/2018, I may now note the only other submission of the learned counsel for the appellant, who has vehemently urged that the impugned award is liable to be set aside as the learned Tribunal erred in not deducting any amount towards personal expenses of the deceased. He has urged that even if Smt. Seema Devi was a house wife, at least 1/3 amount ought to have been deducted towards her personal expenses. In Support of this submission, he seeks to place reliance on the decision of the Apex Court in ***National Insurance Co. Ltd v Pranay Sethi (2017) 16 SCC 680.***

13. On the other hand, Mr. Satya Narayan Padhee, learned counsel for the respondents supports the impugned award by contending that the learned Tribunal had rightly come to the conclusion that no amount was deductible towards the personal expenses of the deceased Smt. Seema Devi as she was a house wife.

14. After some arguments, he submits that taking into account the decision of this Court in MAC.APP. 526/2018, the respondent would be satisfied in case, the awarded compensation is reduced by taking into account 40% increase in the monthly income of the deceased towards future prospects and thereafter a deduction of 1/3rd being made towards personal expenses of the deceased. He further submits that though the learned Tribunal had granted a sum of Rs.25,000/- towards loss of love and affection under the head of non-pecuniary damages, the said amount needs to be enhanced to Rs.70,000/- by way of Rs. 40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses. Learned Counsel for the appellant does not dispute that the amount under the head of non-pecuniary damages needs to be enhanced to Rs. 70,000/-.

15. In the light of the aforesaid submissions of the parties, the appeal is entitled to partly succeed and the impugned award is modified by directing that while the monthly income of the deceased would, as found by the learned Tribunal, be taken as Rs. 8,890/-, an addition of 40% towards future prospects would be required to be made, thereby her monthly income would be taken as Rs. 12,446/-, from which a deduction of 1/3rd amount would be required to be made towards loss of personal and living expenses and therefore her net monthly income for the purpose of computing loss of dependency would be Rs. 8,298/-. Consequently, the annual loss of dependency works out to Rs. 99,576/- and after applying the multiplier of 16 thereon, the compensation under the pecuniary heads would work out to Rs. 15,93,216/-. The compensation under non pecuniary heads would stand enhanced to Rs. 70,000/- by way of Rs. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss of estate and funeral expenses.

Furthermore the interest granted by the learned Tribunal would stand reduced to 7.5% p.a.

16. The impugned award would accordingly stand modified by directing the respondents will be entitled to receive compensation of Rs.16,63,216/-, along with interest @7.5 p.a under the following heads:-

	Heads	Compensation awarded by the tribunal	Compensation awarded by this Court
1.	Income of the Deceased	Rs.8,890/- per month Rs. 1,06,680/- per year	Rs. 8,890/- per month Rs. 1,06,680/- per year
2.	Income after addition of Future Prospects	Rs. 11,113/- (Rs. 8,890 plus 25% of 8,890/-)	Rs. 12,446/- per month (8,890/- plus 40% of Rs 8,890/-)
3.	Income after deduction of Personal and Living expenses	-None	Rs. 8,298/- per month (12,446/- minus 1/3 rd of 12,446/-)
4.	Loss of dependency:	Rs.21,33,600/- (Rs.8,890/- plus 25% of Rs.8,890/-) X 12 X 16	Rs. 15,93,216/- (Rs.8,890/- plus 40% of Rs. 8,890/- minus 1/3 rd of 8,890/-) X 12 X 16
5.	Loss of Estate	-	Rs. 15,000/-
6.	Funeral Expenses	-	Rs. 15,000/-
7.	Loss of Love and Affection	Rs. 25,000/-	-
8.	Loss of Consortium	-	Rs. 40,000/-
9.	TOTAL	Rs.21,58,600/-	Rs. 16,63,216/-

17. Since the appellant claims to have deposited the awarded amount with the learned Tribunal, while disposing of the appeal the Tribunal is directed to release the amount in terms of this order alongwith up to date interest @7.5% p.a in favour of the respondents and then refund the balance amount of Rs.4,95,384/- to the appellant, alongwith accrued interest thereon, to the appellants. The Registry is also directed to refund the sum of Rs.25,000/- deposited by the appellant by way of statutory amount for filing the present appeal.

APRIL 25, 2023
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REKHA PALLI, J