

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on:16.03.2023
Date of decision:28.03.2023

+ MAC.APP. 526/2018 & CM APPL.23306/2018(stay), 23308/2018-
Condonation of delay

NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Pradeep Gaur with Ms.Sweta
Sinha, Advs.

Versus

YAD RAM & ORS Respondent
Through: Mr.Satya Naryan Padhee with
Mr.Bhave S Sharma, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present appeal under Section 173 of the Motor Vehicles Act (hereinafter, 'MV ACT'), preferred by the insurance company, seeks to assail the award dated 29.01.2018 passed by the learned Motor Accident Claims Tribunal (hereinafter, 'the learned Tribunal'). Vide the impugned award, the learned Tribunal has awarded a sum of Rs. 97,23,040/- with interest @ 9% p.a., as compensation to the claimants/respondent nos. 1 to 4, who are the two minor sons and parents of the deceased Shri Raj Kumar, who died in the accident on

13.12.2016.

2. Before dealing with the submissions of learned counsel for the parties, the brief factual matrix, as is necessary for adjudication of the present appeal, may be noted.
3. 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. Relying on the same, the two minor sons and aged parents of Sh. Raj Kumar preferred a claim seeking compensation on account of his death due to the accident. Similar claims were raised by them seeking compensation on account of the death of Smt. Seema and Ritu in the same accident. 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 and are being decided separately. The present appeal deals only with the challenge to the compensation granted on account of the death of Sh. Raj Kumar.

4. 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.
5. 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. ”

6. Having come to the conclusion that the death of Sh. Raj Kumar in the accident was on account of rash and negligent driving by the driver of

the truck, the learned Tribunal proceeded to award compensation by treating the annual income of Sh. Raj Kumar as Rs. 6,32,268/-. In arriving at this figure, the tribunal placed reliance on his pay slip as per which his monthly income was Rs. 52,689/-. A deduction of Rs. 26,453/- towards income tax was made from this annual income of Rs. 6,32,268/- whereafter 1/3rd amount was deducted towards the personal and living expenses of the deceased. Consequently, the annual income of the deceased, for the purpose of determining compensation was taken as Rs. 4,03,877/- and accordingly, a sum of Rs.97,23,040/- was awarded as compensation, which amount was directed to be paid with interest @9% p.a. This compensation comprised of the following heads:

	Heads	Compensation
1.	Income of the Deceased	Rs.6,32,268/- per annum.
	Income after tax deductions	Rs. 6,05,815/- (Rs.6,32,268 - Rs.26453/-)
2.	Income after deduction of Personal and Living expenses	Rs.4,03,877/- per annum (1/3rd of Rs.6,05,815/-).
3.	Future Prospects	Rs 2,01,938/- per annum. (50% of Rs.4,03,877/-)
4.	Loss of dependency:	Rs.96,93,040/- (Rs.4,03,877 + Rs 2,01,938) x16
5.	Loss of Estate	Rs. 15,000/-
6.	Funeral Expenses	Rs. 15,000/-
7.	Loss of Consortium	-
8.	TOTAL	Rs.97,23,040/-

7. Being aggrieved, the appellant has preferred the present appeal.
8. In support of the appeal, learned counsel for the appellant has raised three grounds. The first and foremost being that the learned Tribunal failed to appreciate that the accident took place not because of the negligence of the driver of the truck but only on account of the negligence of the deceased Sh. Raj Kumar, who at the time of the accident, was driving the motor cycle with four pillion riders, i.e., his wife and three children. Once the deceased was blatantly violating the traffic rules, it is he alone who was responsible for the accident and therefore, it could not be said that there was any negligence on the part of the driver of the truck. Without prejudice to his submission that the accident took place only on account of the negligence of the deceased, he submits that in any event, it was a clear case of contributory negligence on his part. He, therefore, contends that a suitable deduction on account of contributory negligence on the part of the deceased ought to have been made by the learned Tribunal while computing the quantum of compensation.
9. He next submits that while computing the annual income of the deceased, the learned Tribunal has deducted lesser amount towards income tax. Taking into account that the annual income of the deceased, at the time of the accident, was Rs. 6,32,268/-, a sum of Rs. 52,996/- was deductible towards income tax as per the applicable slab but the learned tribunal has deducted only a sum of Rs 26,453/- towards income tax. He, therefore, contends that if the amount of Rs.

52,996/- is deducted towards income tax, the annual income of the deceased would stand reduced to Rs. 5,69,041/- and consequently the compensation will also stand suitably reduced.

10. The third and final submission of Mr. Gaur is that the learned Tribunal has gravely erred in granting interest on compensation at the exorbitant rate of 9% p.a. He submits that while awarding interest, it was incumbent on the learned Tribunal to consider that the bank rate of interest on Fixed Deposit Receipts (FDRs), at the time of the accident in December, 2016 was about 7% p.a. He submits the award was passed within barely fourteen months of the accident and therefore, interest ought to have been granted only @6% p.a. as is being granted by the Apex Court in the recent past. In support of his plea, he seeks to rely on the decisions of the Apex Court in ***Benson George vs. Reliance General Insurance Co. Ltd. (2022) SCC Online SC 238***, ***Devi vs. National Insurance Co. Ltd. (2019) 2 SCC 186***, ***R.K. Malik & Anr. vs. Kiran Pal & Ors. (2009) 14 SCC 1***.

11. He submits that the learned Tribunal has failed to appreciate that award of interest under the Motor Vehicles Act is governed by Section 171 which gives a discretion to the learned Tribunal to award simple interest at a rate as is deemed appropriate. The same is, however, neither akin to any liability arising out of any contractual obligation nor is the claim in the nature of a commercial transaction. On the other hand, under the MV Act, interest is awarded only to compensate the claimants for the delayed payment of compensation. It has to be however kept in mind that the compensation comprises not only of damages for the loss already suffered by the claimants

due to the accident but also by way of an advance payment for the losses which the claimants may suffer in the future. In a case like the present one, the award was passed without any undue delay and since the lumpsum compensation which the claimants will receive also includes amount towards their future loss, the same can be easily invested by them. He, therefore, contends that the learned Tribunal erred in awarding the interest @9% p.a. by overlooking the fact that the bank rate of interest on FDRs, at the time of the passing of the award was only 6.75% p.a. as against 9% p.a. He, therefore, prays that interest be reduced to 6% p.a. and this Court may lay guidelines for the Tribunals for grant of interest as was done by the Karnataka High Court in *Managing Director, Karnataka Power Corporation Ltd. v. Geetha, (1986) SCC Online Kar 338*, so that interest is not awarded by the tribunals at rates higher than the bank rate of interest.

12. *Per contra*, Mr. Satya Narayan Padhee, learned counsel for the respondent supports the impugned award by contending that the learned Tribunal has rightly come to the conclusion that the accident took place due to the rash and negligent driving of the driver of the insured truck. He submits that as per the Mechanical Inspection Reports of the truck and the motorcycle submitted before the learned Tribunal, it was evident that the insured truck had hit the motorcycle from behind. The fact that despite the brakes of the truck functioning properly, it was the truck that hit the motorcycle from behind and therefore the same was indicative of the fact that it was the driver of the insured truck, who was driving rashly and negligently.

13. The appellants having neither led any evidence to show that the

deceased Sh. Raj Kumar, at the time of the accident, was accompanied by four pillion riders nor having cross examined the respondent's witnesses in this regard, cannot now be permitted to urge that there were four pillion riders. The mere fact that there were two pillion riders on the motorcycle at the time of the accident and therefore the deceased was guilty of violating the traffic rules, would not in itself imply that he was guilty of negligence. He, therefore, prays that the appellant's plea that there was negligence or contributory negligence on the part of the deceased, be rejected.

14. Insofar as the appellant's plea regarding the deduction of lesser amounts towards income tax for determining the annual income of the deceased is concerned, Mr. Padhee fairly submits that a sum of Rs. 52,996/- was deductible towards income tax as against the sum of Rs. 26,453/- deducted by the learned Tribunal. He, therefore, agrees that a further sum of Rs. 26,543/- be deducted from Rs. 6,05,815/- for calculating the annual income of the deceased and the collection be accordingly reduced.

15. He next submits that the appellant's plea that the grant of interest @ 9% p.a. was exorbitant or unjustified, is also without any basis. By placing reliance on the decisions of the Apex Court in *Kirti vs. Oriental Insurance Co. Ltd. (2021) 2 SCC 166*, *Rahul Sharma & Anr. vs National Insurance Co. Ltd. (2021) 6 SCC 188*, *Karthik Subramanian vs. B. Sarath Babu & Anr., Civil Appeal Nos. 799-800 of 2021*, *Arti Bezbaruah vs. Dy. Director General, Geological Survey of India & Anr. (2003) 3 SCC 148*, he submits that the Apex Court has been consistently awarding interest @ 9% p.a. and it is only

in exceptional circumstances that the same has been reduced to 7.5% p.a. or 6% p.a. or increased to 12% p.a. as in the case of *United India Insurance Co. Ltd. vs. Satinder Kaur (2021) 11 SCC 780*. At the time of the accident, the deceased was a young man of 31 years of age and has left behind his aging and dependant parents besides two minor sons, who have no other source of income. The minor sons are in the nascent stage of their lives who have their whole lives ahead and are looking towards this compensation to help them sustain themselves without their parents. He submits that even though interest paid by the banks on FDRs may vary from 6 to 10% p.a. from time to time, the harsh reality is persons like the claimants, who lose their sole bread earners in a motor vehicle accident, in order to sustain themselves during the pendency of the proceedings before the learned Tribunal, often have to borrow from financial and non-financial institutions, who extend loans at very high rates of interest, which sometimes go upto 24% p.a. He, therefore, contends that in the facts and circumstances of the present case, where the deceased left behind not only his aged parents but also two toddlers, the learned Tribunal was justified in awarding interest @ 9% p.a.

16. Having considered the submissions of the learned counsel for the parties and perused the record, I find that in the light of the parties being *ad idem* that besides the deduction of Rs. 26,453/- made from the annual income of the deceased as directed under the impugned award, a further sum of Rs. 26,543/- was deductible towards income tax, the compensation towards the loss of dependency would be required to be calculated by taking his income as Rs. 5,79,272/- as

against his annual income of Rs. 6,05,815/- taken by the learned Tribunal. Therefore, now only two issues remain for my consideration; the first being as to whether, as urged by the appellant, there was any negligence/contributory negligence on the part of the deceased Sh. Raj Kumar and if yes, whether any deduction is required to be made from the compensation on this count. The second question which needs to be determined is as to whether the rate of interest of 9% p.a. on compensation as awarded by the learned Tribunal is exorbitant and is required to be reduced.

17. Having noted the issues, I may begin by dealing with the first issue, i.e., as to whether there was any negligence or contributory negligence on the part of the deceased. Learned counsel for the appellant has urged that since at the time of the accident, the appellant was found riding the motorcycle with four pillion riders, it was evident that he was himself violating the traffic rules. It has therefore been contended that this in itself shows that the deceased was negligent and the accident took place because of his negligence. The driver of the truck, insured with the appellant could not therefore be blamed for the accident. On the other hand, it is the respondent's plea that the appellant, having failed to lead any evidence or cross examined the appellant's witnesses, who categorically stated that the accident took place because of the rash and negligent driving of the truck, the appellant cannot be permitted to urge before this Court for the first time that the deceased was guilty of negligence or contributory negligence.

18. In order to appreciate the rival submissions of the parties on this aspect, it would be apposite to note the findings of the learned Tribunal on this issue as contained in Paras 44 and 45 of the impugned award. The same read as under:

“44. Liability; Insurance Company has not led any evidence in support of their defence taken in written statement with regard to the contributory negligence committed on the part of the deceased Raj Kumar while driving his motorcycle. It is alleged by the Insurance Company that at the time of accident total five persons were sitting on the motorcycle while deceased Raj Kumar was driving the same. PW-I Yad Ram in his affidavit of evidence Ex. PW-I/A has deposed that on the unfortunate day of 13.12.2016, when deceased Raj Kumar alongwith his wife Seema Devi and daughter Ritu Singh (aged 9 years) were traveling on motorcycle bearing registration No. UP-81AA-0367, they were struck by offending truck bearing registration No. HR-38V-6909 at Kalindi Kunj Road, Near Metro Station Yard, New Delhi. Said truck was driven by respondent No. 1 in a rash and negligent manner. It is further deposed by him that all the three occupants of motorcycle were grievously injured and died on the spot. In his cross-examination, PW-1 Yad Ram has reiterated that his son Raj Kumar alongwith his wife Seema and minor daughter Ritu were going to Delhi on the motorcycle and other two children of deceased Raj Kumar were in their village in Aligarh on that day.

45. In the cross-examination by the learned counsel for Insurance Company, PW-1 Yad Ram has deposed that I cannot say whether other two children were also on the same motorcycle because I was not present at the time of accident. On the date of accident all the five i.e. three children and husband and wife had left the village for Delhi'. It is this deposition of PW-1 Yad Ram on which learned counsel for Insurance Company is heavily relying

in support of their argument that deceased Raj Kumar was guilty of contributory negligence as he was carrying his entire family including three children on the same motorcycle. Learned counsel for petitioners, on the other hand, has argued that PW-1 Yad Ram being illiterate person living in village has been confused by the learned counsel by asking irrelevant question which has been disallowed by the court because on the point of negligence, learned counsel for respondent No. 1 and 2 has sufficiently cross-examined the witness. It is further argued by the learned counsel for petitioners that onus to prove that there were five persons traveling on the motorcycle including deceased Raj Kumar was upon the Insurance Company and Insurance Company has miserably failed to prove said fact. Further, examination-in-chief and cross-examination of PW-1 Yad Ram has remained consistent about the fact of deceased Raj Kumar alongwith his wife Seema and minor daughter Ritu were traveling on motorcycle and other two sons of deceased Raj Kumar (petitioners herein) were at their village at Aligarh. In case the other two sons of deceased were also on the motorcycle and accident was so fatal that deceased Raj Kumar and his wife Seema and their minor daughter Ritu died on the spot, there is every likelihood that they would have certainly suffered some injuries. There is nothing alleged on behalf of Insurance Company that petitioners were able to manipulate the entire record of police/ 10 also. 10 who visited the spot of accident immediately after the accident has reported in rukka on which FIR was registered that when he reached at the spot he found three bodies lying on road in the pool of blood who were one male, one female and one female child. He has further reported that offending truck was driven in a rash and negligent manner and hit against the motorcycle and crushed the motorcyclist and other occupants of motorcycle who died on the spot. Moreover, driver and conductor of the offending truck were beaten by the public persons and were rushed to the hospital. Learned counsel for Insurance

Company could have examined the driver of the offending truck to prove that five persons were traveling on the motorcycle at the time of accident, but that evidence has not been led by the Insurance Company. Mechanical Inspection Reports of offending truck and motorcycle have already been discussed and they clearly explain that motorcycle was hit from behind by the offending truck which was driven by respondent No. 1 in a rash and negligent manner. Nothing was suggested by driver and conductor in the cross-examination of PW-1 Yad Ram that motorcycle was having five persons and it was suggested that deceased Raj Kumar was sitting on the motorcycle alongwith heavy bags as a result he lost balance and sustained injuries without any fault of any vehicle. Because of the above discussions, I find force in the arguments of learned counsel for petitioners that Insurance Company has failed to prove any contributory negligence on part of deceased Raj Kumar and all the three occupants of motorcycle died on the spot due to rash and negligent driving of offending truck by respondent No. 1. Learned counsel for petitioners has argued that deceased was having valid driving licence and instead of five persons, only deceased Raj Kumar, his wife Smt. Seema Devi and their minor daughter aged only 9 years were sitting on the said motorcycle at the time of accident and hence there is no question arises regarding contributory negligence in that regard. Moreover, all the three occupants of said motorcycle died in the said accident due to the rash and negligent act of respondent No. 1. Respondent No. 3/ Insurance Company, being insurer of the offending vehicle, is liable to indemnify the insured and to pay compensation to petitioners by depositing the same with State Bank of India, Saket Court Branch, Saket, New Delhi within a period of 30 days from today alongwith the interest @ 9% per annum, failing which interest @ 12% per annum shall be charged for the period of delay.”

19. Upon a perusal of the aforesaid, I find that even though the appellant had averred in its written statement before the learned Tribunal that there was contributory negligence on the part of the deceased Sh. Raj Kumar by alleging that there were four pillion riders with him on the motorcycle, it had failed to lead any evidence in this regard. The learned Tribunal specifically records that no evidence whatsoever was led by the appellant in support of its plea that there were four pillion riders on the motorcycle with the deceased. This Court, therefore, sees no reason to accept the appellant's bald plea that there were four pillion riders on the motorcycle.

20. It has also been urged by the appellant that the admitted position that there were two pillion riders with the deceased on the motorcycle at the time of the accident, was in itself sufficient to show that the deceased had violated the traffic rules and therefore it was a clear case of at least contributory negligence. Even though, on the first blush, this plea appears to be attractive, but once as per the Mechanical Inspection Reports of both the truck and the motorcycle, it emerged that the motorcycle was hit by the truck from behind and there was no causal connection between the accident and the factum of there being two pillion riders along with the deceased, on the motorcycle, it could not be said that there was any contributory negligence on the part of the deceased. The deceased at best, could have been held guilty of violating the traffic rules but this violation in itself is not enough to establish contributory negligence. In this regard, reference may be made to the decision in *Mohammed Siddique and Anr. Vs. National Insurance Company Ltd. (2020) 3*

SCC 57, wherein, the Apex Court, while dealing with a similar plea where there were two pillion riders on the motorcycle, the Court held that unless evidence is lead to show that the violation of the traffic rules by the injured, contributed to the accident or to the nature of injuries, no contributory negligence can be presumed. The said observations, as contained in Para nos. 12 and 13 of the decision read as under:

“12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most, it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C, inserted by Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases,

where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.

13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

21. In the present case, the appellant has failed to lead any evidence before the learned Tribunal that this purported violation of the traffic rules by the deceased led to the accident or in any manner, aggravated the nature of injuries. I am, therefore, of the considered view that in the light of the categorical findings given in the mechanical inspection reports of both the motorcycle and the truck, the learned Tribunal was justified in holding that the manner in which

the motorcycle was crushed clearly indicated that the insured truck was being driven rashly and negligently. I, therefore, find no reason to interfere with this finding of the learned Tribunal that the appellant had failed to prove any negligence or contributory negligence on the part of the deceased.

22. Now coming to the appellant's plea that the interest granted @ 9% p.a. is liable to be reduced to 6% p.a. In support of his plea, Mr. Gaur, learned counsel for the appellant has vehemently urged that interest awarded on compensation is governed by Section 171 of the Motor Vehicles Act, which gives a discretion to the learned Tribunal to award interest if the circumstances so warrant. This, he has contended is clearly indicative of the fact that interest on compensation is not a matter of right and is awarded only to compensate the claimants for the delay in receiving the compensation towards the injuries/death due to the accident. Furthermore, the provision specifically provides that only simple interest will be granted. This, he has urged, is again indicative of the fact that interest on compensation is granted only to mitigate the sufferings of the claimants on account of the delay in adjudication of the claim petitions; in the present case, when the award has been passed within barely fourteen months of the accident, there was no reason for the Tribunal to award interest @ 9% p.a. and that too even when the bank rates of interest on FDRs even as on date are only about 6% p.a.

23. Since it is the common case of the parties that interest on compensation is granted under Section 171 of the Motor Vehicles

Act, it may be useful to refer to the said provision, the same reads as under:

“171. Award of interest where any claim is allowed.— Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

24. From a perusal of the aforesaid, it is evident that even though Section 171 gives a discretion to the learned Tribunal to grant interest on compensation, unlike Section 34 of the Code of Civil Procedure which prescribes that interest, except in commercial matters, would not exceed 6% p.a., neither any fixed rate of interest has been prescribed nor has any ceiling on the rate at which interest can be granted by the learned Tribunal under the MV Act has been provided. It is, therefore, always incumbent for the learned Tribunal to award interest at a rate which is deemed appropriate in the facts of each case; the rate must however be just and fair. The learned Tribunal has to keep in mind that interest is awarded not because of any contractual obligation but because of the delay in the claimants receiving the compensation which they should receive at the time of the accident itself. Since the time gap between the accident and the passing of an award may vary from case to case, Section 171 does not prescribe any fixed rate of interest and clothes the Tribunal with a discretion to award interest by taking into account factors like inflation, the rate of interest as prescribed by the Reserve Bank of

India at the time of the accident as also the at the time of the passing of the award, the duration of the pendency of the claim petition, the nature of injuries, the nature of the urgency of the requirement of the claimants to receive compensation. The learned Tribunal may also take into account as to whether the claimants in order to meet the expenses for medical treatment of the injuries resulting from the accident were required to borrow from financial institutions. Another important factor would be as to what proportion of the awarded compensation pertains to damages already suffered such as medical charges, loss of earnings and out of pocket expenses *vis-à-vis* payments made towards loss of future earnings and loss of dependency, which in fact is being paid in advance. It cannot, therefore, be urged that because interest was granted at @12% p.a. by the Apex Court in respect of an award of a particular year, interest must necessarily be granted at the same rate in respect of all awards in the same year. Similarly, it cannot be said that because interest @ 6% p.a. was granted in an award pertaining to another year, the said rate must be followed in all awards of the same year. In every case, all surrounding circumstances have to be considered by the Court before awarding interest and infact even a slight change in the circumstances of two claim petitions in respect of two contemporaneous accidents in itself may be a ground to award interest at different rates in the two cases.

25. This position that no fixed rate of interest on compensation under the Motor Vehicles Act has been repeatedly emphasised by the Apex Court. In this regard, reference may be made to the observations of

the Apex Court in *Abati Bezbaruah v. Geological Survey (supra)* which reads as under:

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

* * * *

18. Three decisions were cited before us by Mr A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section

34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

26. Reference may also be made to the decision of the Apex Court in ***Dharampal v. UP State Road Transport Corporation (2008) 12 SCC 208***, wherein it was emphasised that a duty has been laid on the tribunal to determine the question of interest by taking into account all the facts and circumstances of the case. In the said decision, the Apex Court, observed that the change in economy and policy of the RBI qua the rate of interest would be a relevant criteria for granting interest on compensation. The elucidative observations of the Supreme Court as contained in para 9 to 13 of the decision read as under:

"9. In National Insurance Co. Ltd. v. Keshav Bahadur [(2004) 2 SCC 370 : 2004 SCC (Cri) 558] this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.

10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant.

No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest. In order to determine such rate we may refer to the observations made by this Court over the years. In the year 2001 in Kaushnuma Begum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] , on the question of the rate of interest to be awarded it was held that earlier, 12% was found to be the reasonable rate of simple interest but with a change in economy and the policy of Reserve Bank of India the interest rate has been lowered and the nationalised banks are now granting interest @ 9% on fixed deposits for one year. Accordingly, interest @ 9% was awarded in the said case. We may at this stage also refer to the following observations of Their Lordships in the aforesaid decision which are relevant to the present case : (SCC p. 16, para 24)

“24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that ‘in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf’. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.”

11. In the year 2002, in United India Insurance Co. Ltd. v. Patricia Jean Mahajan [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] this Court held that the interest is payable on the equitable grounds to the aggrieved person who is deprived of using the money which is due and

payable to him. Following the observations made in *Kaushnuma Begum* [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] interest @ 9% was awarded in this case also. It was held as follows : (*Mahajan case* [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] , SCC p. 304, para 39)

“39. ... In our view the reason indicated in *Kaushnuma Begum* [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] is a valid reason and it may be noticed that the rate of interest is already on the decline. We therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court.”

12. In the year 2003, in *AbatiBezbaruah v. Geological Survey of India* [(2003) 3 SCC 148 : 2003 SCC (Cri) 746] it was held that the question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. After referring to the aforementioned decisions interest @ 9% was awarded in the said case.

13. However, in the year 2005 in *T.N. State Transport Corpn. Ltd. v. S. Rajapriya* [(2005) 6 SCC 236 : 2005 SCC (Cri) 1436] this Court again taking note of the then prevailing rate of interest on bank deposits directed for lowering the rate of interest fixed by the Tribunal at 9% per annum and altered the same to 7.5% per annum.

14. In the backdrop of the aforesaid legal position, we may now examine the facts of the present case. The accident in the present case had taken place on 1-9-2004 and the Tribunal had passed the award on 18-5-2005. Rate at which the interest is to be awarded would normally depend upon the bank rate prevailing at the relevant time. Since in *T.N. State Transport Corpn. Ltd.* [(2005) 6 SCC 236 : 2005 SCC (Cri) 1436] decided in the month of April 2005, the prevailing rate of interest on bank deposits was found and held to be 7.5% per annum, we consider it appropriate

to award the same rate of interest, as the same was the prevailing rate of interest on the date of the passing of the award i.e. 18-5-2005 in the present case. Consequently, we hold that the appellants would be entitled to be paid interest at the rate of 7.5% from the date of application till the date of payment.”

27. Learned counsel for the appellant has vehemently relied on the decision of the Karnataka High Court in ***Managing Director Karnataka Power Corporation (supra)*** to urge that interest on compensation under the Motor Vehicles Act is not by way of damages and therefore only nominal interest should be awarded by keeping in mind that this compensation comprises of two components, one being for the damage already done and the other by way of future earning or loss of dependency which is being paid in advance. In my considered view, while there can be no dispute with the fact that the compensation comprises not only of damages for losses already suffered by the claimants but also for loss which he/she may suffer in the future on account of the accident. However, this only implies that interest should be awarded by the Tribunal by taking into consideration all relevant factors. The decision in ***Managing Director Karnataka Power Corporation (supra)***, also emphasises this aspect. In this regard, reference may be made to observations of the Karnataka High Court in para 13 of its aforesaid decision. The same read as under:

“13. What emerges from a conspectus of the authorities is that: The determination of the rate of interest is guided, not by a single criterion, but a combination of factors. The purpose in Section 110CC fixing the date of the petition as

the earliest part from which interest could be reckoned is to see that a claimant does not stand to gain by his own delay in bringing the action. Unlike the position under the Administration of Justice Act, 1969 in England, the Tribunals under Section 110CC are not compelled to exercise the power to award interest.

The interest should not be awarded for the damage done. It should be awarded to the claimants for being kept out of money which ought to have paid to them. When a composite rate is applied, it is important to make a mental note of what items of the award go to the 'interest-pool' and what items do not go to 'interest-pool'. While special damages-sums actually spent or lost, up to the date of trial such as Medical charges, loss of earnings, and out of pocket expenses, etc. qualify for interest, however, the Award for loss of future earnings or the loss of dependancy cannot be said to be money kept out of the claimants because they pertain to a loss of the future income and are in fact paid in advance. This would mean that any composite rate of interest must take into account the size of the awards in the 'interest-pool' and of those in the 'non-interest' pool. The provisions for erosion of value of the money could only be so far as special damages are concerned, for the period between the incurring of the special damages and their realisation; and in the case of loss of future pecuniary benefits from the date of the award till date of realisation. But, as stated earlier, a composite rate can be evolved and applied keeping these distinctions in mind.

It is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12%. Both the award and the rate of interest are in the discretion of the Tribunal to be exercised judicially and judiciously, not arbitrarily or capriciously; but in accordance with sound principles.

Generally speaking, a composite rate of 6% should be considered satisfactory without any specific itemisation because the component of compensation in the 'interest-pool' is comparatively smaller and the sizable component is the amount awarded for the loss of future dependency. We, however, hasten to add that the Tribunals have an undoubted discretion to award higher rates of interest, if in their opinion, the circumstances of the particular case justify such higher rates.

28. Both sides have, by relying on decisions in support of their respective pleas regarding the rate of interest, prayed that this Court should lay down the rate at which interest should be granted so that the same can act as guidelines for the tribunals to uniformly follow. While Mr. Gaur has endeavoured to show that the rate of interest has been reduced to 6% p.a. by the Apex Court in some cases, Mr. Satya Narayan Padhee has relied on decisions wherein interest has been granted at 9% and even @12 % p.a. However, since I am of the view that no fixed rate of interest on compensation under the MV Act can be applied, I do not deem it necessary to deal with the decisions relied upon by the parties which all, I find turn on their peculiar facts. The duty to determine the appropriate rate of interest, having been bestowed on the Courts by the statute, it would not be desirable that any fixed rate of interest is laid down by this Court. The rate of interest has to be necessarily determined on a case to case basis; what may be a reasonable rate in one case may not be reasonable in another. I am, therefore, of the considered view that no uniform rate

of interest can or should be prescribed on compensation under the MV Act.

29. Now coming to the facts of the present case. The fateful accident took place on 13.12.2016 in which three persons, namely Sh. Raj Kumar, a constable (GD) in the CRPF, his wife Smt. Seema and their minor daughter Ritu, lost their lives, leaving behind two minor children of Sh. Raj Kumar and Smt. Seema as also the aged parents of Sh. Raj Kumar. The award was passed on 29.01.2018, which is about thirteen and a half months after the accident. It cannot be denied that on account of sudden death of Sh. Raj Kumar, the family must have faced enormous set back as also financial difficulties but what needs to be noted is that the award was passed in just about one year. In December, 2016, when the accident took place, the rate of interest by banks on FDRs as per RBI guidelines was about 7.5% p.a., which stood reduced to 6.75% p.a. in March 2017 and remained at 6.75% p.a., in January 2018, at the time the award came to be passed. It is only in March, 2019 that the interest rose to 7% p.a., before reaching 7.40% p.a., whereafter, on account of the pandemic of Covid-19, it again slid down to 6.75% p.a. Since all the three family members died on the spot itself, it is not even the claimant's case that any amount was spent on their medical treatment. The claimants also did not set up any case before the learned Tribunal that in order to meet their daily expenses, they had to take loans either from any financial institution or from their friends/relatives, which was required to be repaid with interest.

30. In the backdrop of the aforesaid facts and taking into account that compensation awarded to the claimants comprises of not only the damages already suffered by them but also by way of advance payment towards the loss they would suffer in the future on account of the accident, I am of the considered view that the grant of interest @ 9% p.a. by the learned Tribunal was on the higher side. No doubt the Apex Court, has in some of its recent decisions, awarded interest @9% p.a. as in *Kirti (supra)* and in *Rahul Sharma(supra)*, and has also awarded interest @ 12% p.a. in *Satinder Kaur (supra)*, those cases pertained to accidents which took place many years ago when even the bank rate of interest on FDRs was much higher. Furthermore, in those cases the matters had remained pending adjudication for many years. However, I also find that in some of its recent decisions i.e., *Sidram vs The Divisional Manager, United India Insurance Co. Ltd. (2023) 3 SCC 439*, *Benson George (supra)*, *Kausalya Bhoi vs Divisional Manager, Oriental Insurance Co. Ltd. & Anr. (2022) SCC Online SC 646*, awarded interest @ 6% p.a. There is yet another line of cases of the Apex Court in the recent past i.e., *Sarup Singh @ Ram Saru vs. HDFC Ergo General Insurance Co Ltd. (2023) 1 SCC 159*, *Divya vs. The National Insurance Co. Ltd. & Anr. (2022) SCC Online SC 1488*, *Velayudhan vs. National Insurance Co. Ltd & Anr (2022) SCC Online SC 1168*, wherein interest has been granted @7.5% p.a., thus re-affirming the principle that no uniform rate of interest can be laid down under the MV Act. In the light of the aforesaid and taking into account the facts of the present case as noted hereinabove, I am of the

considered view that the claimants are entitled to receive interest @7.5% p.a. from the date of filing of the claim petition to the date of realization.

31.The appeal is accordingly, partly allowed by directing that the compensation under the impugned award would stand reduced to Rs.92,98,368/-in the following terms and would be paid to the claimants with interest @7.5% p.a.:

	Heads	Compensation	Revised Compensation
1.	Income of the Deceased	Rs.6,32,268/- per annum.	Rs.6,32,268/- per annum
	Income after tax deductions	Rs. 6,05,815/- (Rs. 6,32,268 - Rs.26453)	Rs.5,79,272/-
2.	Income after deduction of Personal and Living expenses	Rs.4,03,877/- per annum (Rs 6,05,815 - 1/3 rd of Rs.6,05,815/-).	Rs.3,86,182/- (3,85,182 - 1/3 rd of 3,85,182)
3.	Future Prospects	Rs 2,01,938/- per annum. (50% of Rs.4,03,877/-)	Rs. 1,93,091/- (50% of 3,85,182/-)
4.	Loss of dependency:	Rs.96,93,040/- (Rs.4,03,877+ Rs 2,01,938) x 16	Rs. 92,68,368/- (Rs.3,85,182/- + Rs. 1,93,091/-) x16
5.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
6.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
7.	Loss of Consortium	-	-
8.	TOTAL	Rs.97,23,040/-	Rs. 92,98,368/-

32.The appeal along with all pending applications is partly allowed in the aforesaid terms. As the appellant has deposited the entire awarded amount with the learned Tribunal in terms of this Court's order dated 29.05.2018, the learned Tribunal is directed to forthwith release the amount in terms of this order in favour of the claimants with up-to date interest. The remaining amount with accrued interest thereon, be refunded to the appellant.

(REKHA PALLI)
JUDGE

MARCH 28, 2023

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