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

Date of decision: 20.12.2023

+ MAC.APP. 553/2018
NATIONAL INSURANCE CO.LTD Appellant
Through: Mr.Pankaj Seth, Adv.

versus

JAGAN SINGH & ORS Respondents
Through: Mr.S.N.Parashar, Adv. for R-1
to 8.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 61765/2023

1. This is an application seeking condonation of a delay of 1884 days in filing of the cross objections. The applicants /respondent nos.1 and 2 in the appeal state that they only subsequently realised that in order to be entitled to the grant of the benefit of enhancement of compensation in terms of the various judgments of the Supreme Court, they would have to file their own cross objection/cross appeal.
2. The learned counsel for the applicants submits that the applicants should not be made to suffer a prejudice only because they relied upon a legal advice received, which was believed to be correct.
3. On the other hand, the learned counsel for the appellant submits that the applicants have been unable to give a valid and sufficient



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cause for seeking the condonation of delay. He submits that the cause shown by the applicants cannot be treated as a sufficient cause for the delay.

4. I have considered the submissions made by the learned counsels for the parties.

5. In the course of hearing of the present appeal, while the respondent nos.1 and 2 tried to make submissions seeking enhancement of the compensation granted in their favour by the learned Tribunal, an objection was raised by the learned counsel for the appellant stating that the applicants cannot be allowed to seek enhancement of the compensation in absence of the cross objections or cross appeal. It appears that it is only then that the applicants realized that they would have to file separate cross objection/cross appeal to seek enhancement of compensation. They appear to have clearly relied upon the advice received by them that there would be no need to file a separate appeal, cross appeal, or cross objections to seek enhancement of the compensation, as various judgments have held that such power would exist in a Court under Order XLI Rule 33 of the Code of Civil Procedure, 1908 (in short, 'CPC'). The applicants cannot be made to suffer for relying on the legal advice received, which also is supported by various judgments.

6. It is to be remembered that the object of the Motor Vehicles Act, 1988 is to provide 'just' compensation to the victims of the road accident. It is a beneficial piece of legislation and therefore, a more liberal approach in favour of the victims of the road accident needs to be adopted.



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7. Accordingly, the delay in filing of the cross objections is condoned.

MAC.APP. 553/2018 & CM APPL. 24350/2018, 61764/2023

8. This appeal has been filed challenging the Award dated 21.08.2017 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claim Tribunal, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT no.53 of 2015, titled *Sh.Jagan Singh & Ors. v. Ranvir Singh & Anr.*.

9. I must herein note that the claimants have also filed their cross-objections under Order XLI, Rule 22 of the CPC. With the consent of the learned counsels of the parties, the same is also being disposed of by this judgment.

10. It was the case of the claimants, that is, the respondent nos.1 to 8 herein, before the learned Tribunal that on 12.11.2014, at about 5.00 p.m., the deceased Smt. Pana Kaur was going on foot from her house to attend nature's call. As she reached in front of Bijendra, Village Khudadiya, PS Ahmandgarh, District Bulandshahar, Uttar Pradesh, a motor cycle bearing registration no.UP-81BA 0547 (hereinafter referred to as the offending vehicle'), which was being driven by its driver/respondent no.9 herein at a very high speed and in a rash and negligent manner, came from back side and hit the deceased with great force. As a result of the accident, the deceased sustained grievous injuries. She was taken to the GTB Hospital, Dilshad Garden, and while being shifted to the Aligarh Hospital, she, unfortunately, died on the way.



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11. The learned Tribunal, on the basis of the evidence led before it, concluded that the respondent nos.1 to 8, as claimants, had been able to prove that the accident had taken place with the offending vehicle being driven in a rash and negligent manner. The learned Tribunal awarded compensation of Rs.12,32,640/- alongwith interest at the rate of 9% per annum from the date of filing of the claim petition, that is 15.04.2015, till the date of its deposit, in favour of the respondent nos.1 to 8.

Rash and negligent driving

12. The learned counsel for the appellant submits that the learned Tribunal has erred in holding that the respondent nos.1 to 8 had been able to prove that the accident in question had taken place due to the offending vehicle being driven in a rash and negligent manner. He submits that the learned Tribunal has not given any reasons for the above finding.

13. I do not find any merit in the above contention of the learned counsel for the appellant.

14. The learned Tribunal, in its Impugned Award, has held that from the deposition of PW-1, Sh.Jagan Singh, who was also the claimant no.1, and from the statement of PW-2, Mr.Bobi, who was an eye-witness to the accident, and also from the other material on record in form of the record of the criminal case registered for the accident and the mechanical inspection report, the respondent no.1 to 8 had been able to prove that the accident in question had taken place with the offending vehicle being driven in a rash and negligent manner.

15. PW-2 in his statement had fully corroborated the case set up by



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the respondent nos.1 to 8 on the manner of the accident. He was not cross-examined by the appellant herein or by the driver of the offending vehicle. In fact, the respondent no.9, that is, the driver of the offending vehicle, was proceeded *ex parte* vide the order dated 18.05.2016 passed by the learned Tribunal.

16. In view of the above, the finding of the learned Tribunal that the accident in question had taken place due to the offending vehicle being driven in a rash and negligent manner cannot be faulted.

17. The challenge of the appellant in this regard is accordingly rejected.

Non-pecuniary damages

18. The learned counsel for the appellant submits that the learned Tribunal has also erred in awarding excessive amounts as compensation on non-pecuniary heads. He places reliance on the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi & Ors.*, (2017) 16 SCC 680.

19. The learned counsel for the respondent nos.1 to 8 does not dispute this position. In fact, he seeks enhancement of the compensation awarded towards loss of consortium, by placing reliance on the judgment of the Supreme Court in *Pranay Sethi & Ors.* (supra), as explained by the Supreme Court in *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur & Ors.* (2021) 11 SCC 780.

20. I find merit in the above challenge of the appellant and the claimants.

21. In the present case, the learned Tribunal has awarded



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compensation towards non-pecuniary heads, as under:

“FURTHER claimants are entitled to following:

- | | | |
|---|--|----------------|
| (i) | Loss of consortium | Rs. 1,00,000/- |
| (claimant no. 1 is husband of deceased) | | |
| (ii) | Funeral expenses | Rs. 25,000/- |
| (iii) | Loss of Love, care, and affection and guidance of the children | Rs. 1,00,000/- |
| (iv) | Loss of Estate (Royal Sundaram Vs. Master Manneet Singh) | Rs. 0 |
| | | Rs.2,25,000/- |

*Total compensation to which claimants are entitled comes out to be Rs.10,07,635.20 + 2,25,000/- = Rs.12,32,635.20/-
Rounded to Rs.12,32,640/-.”*

22. The above is clearly not in terms of the judgment of the Supreme Court in **Pranay Sethi** (supra), and as explained by the Supreme Court in **Satwinder Kaur** (supra). Therefore, the compensation on non-pecuniary heads is re-determined as under:

S.No	Non-pecuniary head	Amount
1.	Loss of Consortium	Rs.40,000/- x 8 = Rs.3,20,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Total	Rs. 3,50,000/-

23. The total compensation payable to the respondent nos.1 to 8 taking into account the compensation awarded by the learned Tribunal towards loss of dependency, to which there is no challenge by either party, is re-determined as:

*Rs.10,07,635.20 + Rs.3,50,000 = Rs.13,57,635.20
Rounded to Rs. 13,58,000/-*



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24. The above compensation amount shall carry interest at such rate and for such period as has been awarded by the learned Tribunal in its impugned Award.

Non-grant of recovery rights

25. The learned counsel for the appellant submits that the learned Tribunal has erred in not granting a right to the appellant to recover the compensation paid to the respondent nos.1 to 8 from the respondent no.9, that is, the driver of the offending vehicle. He submits that the respondent no.9 has failed to produce before the learned Tribunal his driving licence to drive the motorcycle.

26. To a pointed query of this Court, on whether the appellant led any evidence on this issue, the learned counsel for the appellant fairly admits that no evidence was led on the above issue. In absence of the same, in my view, the appellant now cannot be allowed to agitate this issue in the present appeal.

27. Accordingly, the plea is rejected.

Directions

28. By the *interim* order dated 01.06.2018 passed by this Court, the appellant was directed to deposit the entire awarded amount with interest with the learned Tribunal. It was further directed that 50% of the awarded amount shall be released in favour of the claimants, that is, the respondent nos.1 to 8 herein, in terms of the directions in the Impugned Award, while the balance shall be kept in an interest bearing fixed deposit receipt with the Nationalized Bank.

29. Now that the compensation amount has been enhanced, the appellant shall deposit the enhanced compensation with the learned



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Tribunal along with interest at such rate and for such period as was awarded by the learned Tribunal by its Impugned Award, within a period of six weeks from today. The compensation so awarded shall be released in favour of the respondent nos.1 to 8 in accordance with the schedule of disbursal as prescribed in the Impugned Award, with all amount becoming due and payable as on the first release, being released in a lump-sum.

30. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

31. The appeal and the cross-objections are disposed of in the above terms. The pending applications are also disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 20, 2023

RN/RP

Click here to check corrigendum, if any