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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 04.09.2023

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MAC.APP. 318/2017 & CM APPL. 12431/2017

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.A K Soni, Adv.

versus

LALITA AGARWAL & ORS Respondents

Through: Mr.Rupendu Singh, Adv. for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 05.07.2016 passed by the learned Motor Accidents Claims Tribunal (West-01), Delhi (hereinafter referred to as the 'Tribunal') in Old Suit no. 95/2013 (New MACT Case No. 76247/2016), titled *Smt. Lalita Agarwal and Ors. v. Puneet Chawla and Ors..*

2. The brief facts leading to the present appeal are that on 12.11.2012 at about 2030hrs, the deceased, Sh. Naresh Kumar Aggarwal was travelling as a pillion rider on a motor cycle bearing No. DL-10S-7463 (hereinafter referred to as the 'offending vehicle'). The offending vehicle was being driven by respondent no.4 herein, in a rash and negligent manner. When the motor cycle reached at the Service Road, Mayapuri Depot crossing, the offending vehicle slipped, resulting in the fall of

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the deceased. The deceased suffered fatal injuries and died as a result thereof. The above Claim Petition was filed by the wife and children of the deceased, that is, the respondent nos.1 to 3 herein, claiming compensation.

3. The learned Tribunal, by way of the Impugned Award, has directed the appellant to pay compensation of Rs.25,76,123/- along with interest at the rate of 9% per annum from the date of filing of the Detailed Accident Report (in short 'DAR'), that is, 12.02.2013, in favour of the respondent nos. 1 to 3 and respondent no.6 (the father of the deceased) herein.

CHALLENGE REGARDING NON-GRANT OF RECOVERY RIGHTS

4. The first challenge of the appellant to the Impugned Award is on the refusal of the learned Tribunal to grant to the appellant a right to recover the compensation paid by the appellant to the respondent nos.1 to 3 and the respondent no.6 herein from the respondent nos.4 and 5 herein, being the driver and the owner of the offending vehicle.

5. The learned counsel for the appellant submits that the driving licence produced by the respondent no.4 herein was fake and not genuine. He submits that in order to prove the same, the appellant had examined Sh.Vineet Raj Srivastva, Junior Clerk, District Kanoj, U.P. as R3W1, and Sh.Dev Mani Bhartiya, ARTO, Farukhabad as R3W2. He submits that from the evidence, it could not be shown that the respondent no.4 was having a valid driving licence at the time of the accident.



6. I am unable to agree with the submission made by the learned counsel for the appellant. The learned Tribunal has examined the testimony of R3W1 and R3W2 produced by the appellant itself, and has found as under:-

“32. In the present case the alleged offending vehicle was insured with the insurance company /respondent No.3 at the time of accident. Regarding genuineness of the DL of the driver of offending vehicle is concerned, the witness R3W1 has proved the letter duly signed by ARTO Sh. Dev Mani Bhartiya, ARTO, Farukhabad Ex.R3W1/1. He has produced the Permanent Driving License Register showing that driving license number. He has further deposed that the driving license was issued in the name of the driver of the offending vehicle Sh. Puneet Chawla vide No.16243/FKD/09. He has proved the copy of the page of the issuance of said driving license on the aforesaid register is Ex. R3W1/2. The other witness R3W2 has also produced the record i.e DL issuance register, address and age proof of DL holder namely Punit Chawla (respondent No.1), learning license register; driving test report of holder of DL, copy of FIR No. 334/13 u/s 409 IPC. He has also proved the DL issuance register containing original of Ex. R3W1/2. He has further admitted that payment qua above-said DL is reflected in DL register at point B vide Ex. R3W1/2. From the testimony of the witnesses examined by the insurer R3W1 and R3W2, this court has come to the conclusion that the driver of the offending vehicle was holding valid and effective driving license as on the date of accident. Hence, the plea of the insurance company stands rejected.”

7. The above finding of the learned Tribunal could not be shown to be faulty by the learned counsel for the appellant. I,



therefore, find no merit in the above challenge of the appellant to the Impugned Award.

CHALLENGE TO QUANTUM OF COMPENSATION UNDER VARIOUS HEADS

8. The next challenge of the appellant to the Impugned Award is on the compensation awarded in favour of the respondent nos.1 to 3 and respondent no.6 herein on the various heads. Each of these heads shall be considered by me separately in the following judgment.

FUTURE PROSPECTS

9. The learned counsel for the appellant submits that in the present case, it had been established that the deceased was self employed and was not having a permanent job. Placing reliance on the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi* (2017) 16 SCC 680, he submits that as the deceased was aged 46 years as on the date of the accident, an addition of only 25% should have been made towards future prospects of his income.

10. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the deceased was doing private business and was earning Rs.35,000/- per month at the time of the accident. He submits that the respondent no.1 had filed before the learned Tribunal, the Income Tax Return of the deceased for the Assessment Year 2012-13. She had also proved the Rent Agreement executed between the deceased and Sh.Vinod



Gupta, which showed that the deceased was running a hotel on the said premises on rent. She also proved the Lease Deed dated 14.09.2012 executed between Sh.Jagiri Lal and the deceased. He submits that the respondent nos.1 to 3 had also examined Sh.Mahipal Singh, Office Superintendent, Income Tax Office, ITO Ward no. 26(4) as PW-2, to prove the Income Tax Return of the deceased for the years 2011-12 and 2012-13.

11. He submits that the learned Tribunal has rightly relied upon the judgments of this Court in ***Raj Pal & Ors v. New India Assurance Co. Ltd.***, Neutral Citation 2013:DHC:4710 and in ***ICICI Lombard General Insurance Co. Ltd. v. Angrej Singh & Ors.***, Neutral Citation 2013:DHC:5020, to hold that the income of the deceased is to be appreciated for future prospects, and the same should be taken as 30% (in paragraph 21 of the Impugned Award, a typographical error is made, it is 30% and not 50%).

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

13. From the assertions of the learned counsel for the respondent nos.1 to 3 and those recorded in the Impugned Award, it is evident that the deceased was self employed and was not in any '*permanent job*' on the date of the accident. In ***Pranay Sethi (Supra)***, the Supreme Court, on the addition of future prospects, has directed as under:-

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and



was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

(Emphasis supplied)

14. As the deceased was self employed and was aged 46 years on the date of the accident, in terms of the judgment of the Supreme Court in ***Pranay Sethi*** (Supra), only 25% should have been added to the income of the deceased towards future prospects. The Award shall, therefore, stand modified to this extent.

DEDUCTION FROM THE INCOME OF THE DECEASED TOWARDS PERSONAL EXPENSES

15. The learned counsel for the appellant submits that, in the present case, only the respondent nos.1 to 3 were shown to be dependent on the income of the deceased; the respondent no.6 herein was, in fact, added as a ‘proforma respondent’ in the Claim Petition. He submits that there was no evidence led by the respondent nos.1 to 3, of the respondent no.6 herein being



dependent on the deceased. He submits that, therefore, in terms of the judgment of the Supreme Court in ***Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another***, (2009) 6 SCC 121, 1/3rd of the income of the deceased should have been deducted towards his personal expenses.

16. The learned counsel for the respondent nos.1 to 3, on the other hand, submits that the respondent no.6 herein being of old age, was financially dependent on the deceased. He submits that therefore, the learned Tribunal has rightly deducted only 1/4th from the income of the deceased towards his personal expenses.

17. I have considered the submissions made by the learned counsels for the parties. In ***Sarla Verma*** (Supra), the Supreme Court, on the issue of deduction to be made from the income of the deceased towards his personal expenses, has held as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also



the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

(Emphasis supplied)

18. In the present case, there was no evidence led by the respondent nos.1 to 3 to show that the respondent no.6 herein was dependent on the deceased. In view of the judgment of the Supreme Court in *Sarla Verma* (supra), therefore, there were only three dependents on the deceased, that is, the respondent nos.1 to 3 herein. 1/3rd of the income of the deceased should, therefore, have been deducted by the learned Tribunal from the income of the deceased towards his personal expenses. The Award shall stand modified to this extent.

CHALLENGE TO THE QUANTUM AWARDED UNDER NON-PECUNIARY HEADS

19. The last challenge of the appellant to the Impugned Award is on the amount awarded as compensation towards non-pecuniary heads.

20. The learned counsel for the appellant submits that by the Impugned Award, the learned Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/-



towards loss of care and guidance towards minor children; Rs.25,000/- towards funeral charges; and, Rs.10,000/- towards loss of estate. He submits that in view of the judgment of the Supreme Court in *Pranay Sethi* (Supra), the above amounts deserve to be modified.

21. The above submission of the learned counsel for the appellant could not be disputed by the learned counsel for the respondent nos.1 to 3.

22. Accordingly, the Award of compensation on the above heads is set aside. Instead, the respondent nos.1 to 3, and respondent no.6 shall be entitled to the following:-

Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/- x 4= Rs.1,60,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.1,90,000/-

23. The Impugned Award shall stand modified to this extent.

24. In view of the above, the respondent nos.1 to 3 and respondent no. 6 are entitled to the following amounts:-

Loss of Dependency	[184704 + (25% of 184704)] – [1/3 of annual income + prospects] x 13= Rs. 20,00,960/-
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Loss of estate	Rs.15,000/-
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Loss of consortium	Rs.1,60,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.21,90,960/-

25. The learned counsel for the appellant submits that in terms of the order dated 29.03.2017 of this Court, the appellant has deposited the entire awarded amount along with interest, with the learned Tribunal.

26. As the compensation amount has been reduced, the excess amount deposited by the appellant shall be released by the learned Tribunal in favour of the appellant herein along with proportionate interest. The remaining amount shall continue to be released in favour of the respondent nos.1 to 3 and respondent no.6 in accordance with the schedule of disbursement as stipulated in the Impugned Award.

27. The statutory amount deposited by the appellant along with interest accrued thereon shall be released by the Registry of this Court in favour of the appellant.

28. The appeal along with pending application is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 4, 2023/rv