



2023:DHC:9140



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

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Reserved on: 11th December, 2023

Pronounced on: 19th December, 2023

+ **MAC.APP. 356/2015 & CMA 6948/2015**

RELIANCE GENERAL INSURANCE CO. LTD Appellant

Through: Mr. A.K. Soni, Adv.

versus

REENA & ORS.

..... Respondents

Through: Mr. R.S. Lathwal, Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) assailing award dated 17.01.2015 by the Presiding Officer, MACT, Central District, Delhi in Suit No. 188/2010 titled as “**Smt. Reena & Ors. v. Shri Sandeep & Ors.**” The Tribunal held that the claimants were entitled to Rs. 26,11,000/- with interest @ 9% p.a. from the date of filing the claim. The wife of the deceased, Reena was held entitled to 50%, and the parents were held entitled to 25% each of the awarded amount.



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Factual Background

2. Respondent No. 1 is widow of Late Rajiv Singh while respondent no. 2 and 3 are mother and father of deceased Rajiv Singh, respectively. The deceased succumbed to injuries sustained by him in a road accident.

3. On 02.12.2009, at about 9:30 P.M. the deceased, Rajiv Singh, was travelling along with one Sandeep, the driver of the vehicle, which was loaded with vegetables, bearing registration No. DL 1 LG 8898 (Tata 407). Their vehicle met with an accident near Maan Dhaba, Murthal, District Sonapat, Haryana and Rajiv Singh was rushed to the local government hospital. From there he was moved to Lok Nayak Jai Prakash Hospital Delhi, where he succumbed to his injuries on 03.12.2009. The accident was attributed to rash and negligent driving of Sandeep.

4. The MACT framed the following issues:

“(i) Whether the deceased Sh. Rajeev Singh had died due to the injuries sustained by him in an accident which took place on 02.12.2009 because of rash and negligent driving of vehicle bearing registration No. DL 1 LG 8898 by respondent No. 1?”

“(ii) Whether the petitioners are entitled to any compensation if so, to what amount and from whom?”

“(iii) Relief.”

5. The MACT found that as per the testimonies of PW-1 and the petitioner (respondent No. 1 herein) as well as the record, that the deceased suffered fatal



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injuries in the accident due to rash and negligent driving of the vehicle. As regards the compensation for the LRs of the deceased, the MACT calculated it on the basis of the following factors:

S.No.	Component of Compensation	Amount
1.	Loss of financial dependency (1,98,000 X 18 X 2/3)	Rs. 23,76,000/-
2.	Loss of Love and affection	Rs. 1,00,000/-
3.	Loss of Estate	Rs. 10,000/-
4.	Funeral Expenses	Rs. 25,000/-
5.	Loss of consortium to wife	Rs. 1,00,000/-
	TOTAL	Rs. 26,11,000/-

Submissions by Counsel for the Appellant:

6. Counsel for the appellant/Insurance Company, based his contentions in support of the appeal on the following grounds:

a. *Firstly*, that there is no material evidence on record to prove any rash and negligent driving on the part of the driver of the offending vehicle. Further, respondent no.1 failed to examine any eyewitness to prove any negligence on part of respondent no.4. There is only DD entry No.22 dated 03.12.2009 Ex. PW-6/A which does not indicate any negligence on part of respondent no.4. According to



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appellant's counsel, MACT erred in appreciating testimonies of PW-1, PW-5 and PW-6 and attested copies of criminal record produced, in reaching the conclusion that the deceased suffered fatal injuries due to negligent driving of the driver of the offending vehicle. As per him, negligence is required to be proved as per section 166 of the Act. Reliance is placed on a judgment of this Court in *New India Assurance Co. Ltd. v. Shashi Negi*, 2016 SCC OnLine Del 3044.

b. *Secondly*, it is contended that monthly income of the deceased has been wrongly assessed at Rs.11,000/- per month despite there being no salary certificate or salary receipt on record. Reliance has also been placed on the bank statement which shows variation in amounts paid by the employer of the deceased. Therefore, minimum wages ought to have been applied instead of Rs.11,000/-.

c. *Thirdly*, MACT erred in allowing 50% future prospects to income of the deceased which ought not to have been more than 40%. This was contrary to the ratio as per decision of Hon'ble Supreme Court in *National Insurance Co. Ltd. V. Pranay Sethi & Ors.* (2017) 16 SCC 608.

d. *Fourthly*, the counsel contended that the MACT wrongly granted non-pecuniary damages to the tune of Rs.2,35,000/- which ought not to have been more than Rs.70,000/- in light of the findings in *Pranay Sethi* (supra).



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e. *Lastly*, it is contended that the MACT erred in granting 9% per annum interest and states that as per the prevailing bank rate, it should have been 7% only.

Submissions of Counsel for the Respondents:

7. In response, counsel for the respondents refuted the submissions made by counsel for the appellant submitting as under:

- a. Lack of an FIR was not detrimental to the case considering that when respondent no.4 came to know that the deceased had died, he himself went to PS Murthal District Sonapat and got DD.No.22 dated 03.12.2009 (Ex. PW-6/A) recorded. However, he had not mentioned the true facts about the accident in order to save himself.
- b. Two DD entries being DD No.6 and DD No.9 were recorded, after admission of the deceased to the hospital and after his death respectively (Ex. PW-5/A & PW-5/B respectively).
- c. It is contended that as regards expenses incurred, Rs. 25,000/- were spent on transportation of the deceased's remains from Sonapat to Delhi and from Delhi to Farukhabad, as also other amounts for his treatment.
- d. The income of the deceased, at the time of his death was Rs.16,000/- per month by way of his salary since he was working as a Consignment Supervisor with M/s. Ganesh Transport Company, Narela, Delhi (on monthly salary of Rs. 11,000/-) and he was also earning Rs.5000/- per month by giving private tuitions. Since there



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was no receipt for private tuitions, reliance was placed on testimony of PW-2 Sanjeev Khatri, who deposed that deceased used to give private tuitions, and he himself also used to pay Rs.3,000/- per month to the deceased for tuitions of three children. As regards the monthly salary of Rs.11,000/- from M/S Ganesh Transport Company, Narela, Delhi, he relied upon the evidence produced by PW4.

e. Reliance was also placed on the statement of account filed by PW-4 (Ex. PW-4/1) and variation in the bank statement was due to the advance salary received by the deceased.

f. No suggestion was put to claimants to dilute the aspect of monthly salary.

g. Respondents are elderly parents and widow of deceased and state they have received only 30% of the award amount till date and pray that the appeal be rejected.

8. This Court has perused the records and heard the counsels for the parties. Pursuant to an assessment of the documents and contentions, this Court is of the view that the appeal by the Insurance Company does not merit consideration and is therefore dismissed for the following reasons:

8.1 As regards the proof of rash and negligent driving, it is evident that the truck driver himself had made a statement which was recorded as DD No.22 dated 03.12.2009. This was a case where the deceased was an occupant in a vehicle which was being driven rashly and negligently. The respondents contended that an FIR was not



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registered considering the fact that the delinquent himself i.e. the driver of the truck, had not voluntarily admitted that he was driving in a rash and negligent manner. The DD entry recorded that the truck driven by respondent no.4 collided in a stationery Santro Car, short of any other circumstance which would provide a reason for the accident. The negligence of the driver of a moving vehicle colliding with a vehicle that was stationery, would be evident. This fortifies the conclusion drawn by MACT that it was rash and negligent driving by the respondent no.4.

8.2 Reference has also made to PW-5/A and PW-5/B (DD 6 and DD 9 respectively). These DDs were recorded at the stage of admission of the deceased in the hospital and after his death. There is nothing on record to suggest in these DDs that there was any other circumstance, or the involvement of any other vehicle, which would have led to the accident. The lack of an FIR therefore, would not be fatal to the case of the respondents. Moreover, the story given by the respondent no.4 for burst tyre finds no corroboration in the investigation which ensued.

8.3 MACT also took judicial note of the fact that in Uttar Pradesh in a large number of motor vehicle accidents, no formal FIRs are registered and therefore this could not offer a reason for not considering claim of the respondents.



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8.4 Further, the postmortem report dated 03.12.2009 adverts to injuries sustained by the deceased which led to his death following impact of the cargo vehicle he was in.

8.5 The MACT relied upon a decision of this court in ***National Insurance Co. Ltd. v. Pushpa Rana***, 2007 SCC OnLine Del 1700 wherein it was held that:

“12. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgement of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal; 2007 (5) SCALE 269. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver.

13. On the basis of these observations, I feel that there is no infirmity in the impugned award of the learned Tribunal.”

(emphasis supplied)



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8.6 The MACT has rightly relied upon the above in order to reach the conclusion that the accident occurred due to rash and negligent driving by the respondent no.4.

8.7 As regards compensation, PW-4 (the proprietor of M/s. Ganesh Transport, Narela) had tendered evidence deposing that the deceased was working as Consignment Supervisor with the company and placed on record certified copies of bank statements. In his cross examination, he stated that the company maintains attendance registers of the employees and the deceased was employed in the company from January, 2009. Thus, there cannot be much doubt regarding the monthly salary of Rs.11,000/- being received by the deceased and the evidence was enough to corroborate the statement of claimants.

8.8 As regards the assessment of Rs.5,000/- as income from private tuitions, PW-2 had deposed that he used to pay the deceased Rs.3,000/- per month for tuitions of his three children. In his cross examination, he stated that he did not have any proof however, he stood by his statement that Rs.3,000/- were being paid as tuition charges. However, the said PW-2 was working with M/s. Ganesh Transport, as well (where the deceased was employed). Besides, there was no other witness who deposed regarding the payment of tuition fee to the deceased. In this view of the matter, the MACT was not wrong in taking a conservative estimate and treating the income of the deceased at Rs.11,000/- per month.



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8.9 Further, since age of the deceased was 25 years which was confirmed by the copy of the PAN Card as well and absence of any contrary evidence on record, the multiplier of 18 was adopted.

8.10 Since he was in a permanent job, the addition of 50% towards future prospects was taken on the basis of decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**, (2013) 9 SCC 54.

The MACT clearly applied the law as was applicable at that time and even after the decision of **Pranay Sethi** (*supra*), it could be reasonably assessed that the deceased was in a permanent job in a company and therefore, deserved addition of 50% towards future prospects. Therefore, this Court sees no reason to dilute the compensation awarded by the MACT.

8.11 The respondents are elderly parents and widow of the deceased and have received only 30% of the awarded amount. The accident occurred in 2009 and it has been 16 years since the occurrence of fatal accident resulting in the death of a young 25 years old man for no fault of his.

8.12 As regards non pecuniary damages, aside from standardization provided in **Pranay Sethi** (*supra*) by the Hon'ble Supreme Court in 2017, the MACT was not wrong in using a reasonable discretion in 2015, rendered prior to the directions issued in **Pranay Sethi** (*supra*).



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8.13 Besides the fact that the body of the deceased had to be transported from Sonapat to Delhi and then to Farukabad for the cremation, it would have incurred huge expenses, which the claimants have stated as part of their evidence. This would, in any event, ramp up the claim components and therefore, the question of diluting the award to a lesser value, at this stage, may not be just and reasonable.

8.14 As regards the rate of interest, 9% as awarded, is a reasonable rate of interest as has been held by this Court in *Gopi Chand Gupta v. Mohd. Mohsin* (2022) SCC OnLine Del 2269 which relied upon previous decisions of the Court and sustained the interest at 9%.

9. The appeal is therefore dismissed, and the impugned award of the MACT stands confirmed. The Respondents may take steps for release of the remaining awarded compensation in terms of the MACT award.

10. Pending applications, if any, are rendered infructuous.

11. Judgment be uploaded forthwith on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 19, 2023/sm

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 20.12.2023
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