



2023:DHC:8977



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 12.12.2023**+ **MAC.APP. 846/2018 & CM APPL. 38548/2018**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr.Manu Luv Shahalia, Adv

versus

CHANDRO DEVI & ORS Respondents

Through: Mr.Anshuman Bal, Adv. for R-
1 & 2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 25.07.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02, (West-District) Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in Petition No. 76337/2016, titled as ***Smt.Chandro Devi & Anr. v. Virant & Ors.***

2. It was the case of the claimants/respondent nos.1 and 2 herein before the learned Tribunal that on 13.11.2014, at about 07:35 P.M., their son, deceased Ashwani, was going on his motorcycle. When he reached near Industrial Area, Mundka, Delhi, a car bearing registration no.HR-26-AK-0805 (hereinafter referred to as the



‘Offending Vehicle’) came from behind at a high speed and in a rash and negligent manner and hit the motorcycle of deceased. The deceased fell down from his motorcycle and sustained fatal injuries. He was removed to the Sanjay Gandhi Memorial Hospital, where doctor declared him ‘brought dead’.

3. The learned Tribunal, on the evidence led before it, held that the respondent nos.1 and 2 were able to establish that the said accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner. As far as the compensation is concerned, the learned Tribunal awarded the following compensation in favour of the respondent nos.1 and 2:

S.No.	Heads	Amount(Rs.)
1.	Loss of Financial Dependency	Rs.25,20,000/-
2.	Funeral Expenses	Rs.15,000/-
3.	Loss of Estate	Rs.15,000/-
	Total	Rs.25,50,000/-

4. The learned Tribunal directed that the above compensation is to be paid by the appellant herein, along with interest at the rate of 9% per annum from the date of the filing of the Claim Petition, that is, 25.03.2015, till the realization of the said amount.

INCOME OF THE DECEASED:

5. The learned counsel for the appellant submits that in the present case, the learned Tribunal itself found that the respondent nos.1 and 2



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herein, that is, the claimants, were unable to prove the vocation and the earning of the deceased. He submits that merely because the deceased had done a Diploma in Electronic and Communication Engineering, and had a Degree in Bachelor of Arts, the learned Tribunal could not have assessed the income of the deceased on notional basis as Rs.20,000/- per month. He submits that in the absence of any proof of income or vocation, the learned Tribunal should have adopted the Minimum Wages notified by the State of Haryana for a Graduate for assessing the income of the deceased.

6. On the other hand, the learned counsel for the respondent nos.1 and 2/claimants submits that, in the present case, the deceased had a Diploma in Electronic and Communication Engineering from the State Board of Technical Education, Haryana (Ex.PW1/4). The deceased had also a Degree in Bachelor of Arts from the Bundelkhand University, Jhansi, (Ex.PW1/5). Based on the above, the learned Tribunal has rightly assessed the income of the deceased as Rs.20,000/- per month. He submits that even in the absence of the proof of income, the learned Tribunal is not denuded of its power to make a fair assessment of the income based on the educational qualification and other surrounded circumstances. He places reliance on the judgment of the Supreme Court in **Chandra alias Chanda alias Chandraram & Anr. v. Mukesh Kumar Yadav & Ors.**, (2022) 1 SCC 198.

7. I have considered the submissions of the learned counsels for the parties.

8. The deceased, at the time of the accident, was aged about 37



years. The learned Tribunal has found that the respondent nos.1 and 2 herein, that is, the claimants, could not prove on record the vocation or the earning of the deceased. Even in the present appeal, the respondent nos.1 and 2 have not placed any document on record that would even remotely show the income of the deceased or his vocation or even assist this Court to make a fair assessment of his income.

9. In ***Oriental Insurance Co. Ltd. v. Meena Variyal***, (2007) 5 SCC 428, the Supreme Court has held that the learned Tribunal, though, is to adjudicate on the Claim Petition filed by the claimants on the touchstone of preponderance of probability, however, at the same time, cannot completely ignore all the basic principles of establishing the quantum of compensation payable. It was held as under:-

“11.....Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the



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income that was being derived by the deceased from his employment.....”

10. In ***Manusha Sreekumar & Ors. v. United India Insurance Co. Ltd.***, 2022 SCC OnLine SC 1441, the Supreme Court held that the High Court should have determined the income of the deceased notionally on the basis of the Minimum Wages fixed for a ‘skilled worker’ under the Kerala Fair Wages Act.

11. In ***Chandra*** (supra), the Supreme Court was considering a case where the deceased was shown to have been holding a Driving Licence for a Heavy Motor Vehicle as on the date of the accident. He was, in fact, found driving a Heavy Motor Vehicle on the date of the accident. The Court, in the facts of that case, held as under:

“9.....In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month.

10. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor



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vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency.....”

12. In the present case, as even the vocation of the deceased could not be proved by the respondent nos.1 and 2, in my view, therefore, the learned Tribunal has erred in assessing the income of the deceased as Rs.20,000/- per month, founded only on the claim made by the respondent nos.1 and 2 which could not be proved by any other evidence. In my view, the income of the deceased in the present case can only be assessed on the basis of the Minimum Wages notified by the State of Haryana for a graduate prevalent as on the date of the accident.

13. The learned counsels for the parties agree that the Minimum Wages notified by the State of Haryana for a graduate at the time of the accident was Rs.13,170/- per month. Accordingly, the compensation towards the Loss of Dependency is re-assessed as under:

<u>S.No.</u>	<u>Heads</u>	<u>Amount</u>
1.	Income of the Deceased (A)	Rs.13,170/-
2.	Add-Future Prospects (B)	40%
3.	Less Personal Expenses of the	1/2



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	Deceased (C)	
4.	Monthly Loss of Dependency [(A + B) - C = D]	Rs.9,219/-
5.	Annual Loss of Dependency (D X12)	Rs. 1,10,628/-
6.	Multiplier (E)	15
7.	<u>Total Loss of Dependency</u> [D X12 XE = F]	<u>Rs. 16,59,420/-</u>

LOSS OF CONSORTIUM

14. The learned counsel for the respondent nos.1 and 2, however, submits that the learned Tribunal has also erred in not granting compensation in favour of the claimants towards the non-pecuniary head of loss of consortium.

15. I find merit in the said challenge.

16. In *National Insurance Company Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, as explained by the Supreme Court in *United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Anr.*, (2021) 11 SCC 780, the claimants were entitled to compensation towards the loss of dependency at the rate of Rs.40,000/- each, equivaling Rs.80,000/-. Though the respondent nos.1 and 2 have not filed any Cross Appeal or Cross Objection making a claim for the said amount, as the compensation amount towards loss of dependency is reduced, in my view, the same needs to be set off against the legitimate claim of the respondent nos.1 and 2. Accordingly, the respondent nos.1 and 2 are held entitled to compensation, as under:



<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of dependency	Rs.16,59,420/-
2.	Funeral expenses	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
4.	Loss of consortium	Rs.80,000/-
	<u>Total</u>	<u>Rs.17,69,420/-</u>

INTEREST

17. The appellant further challenge the rate of interest awarded by the learned Tribunal. The learned Tribunal by its Impugned Award has directed the appellant to pay the compensation along with interest at the rate of 9% per annum. The learned counsel for the appellant submits that keeping in view the rate of interest notified by the Reserve Bank of India, the interest could have been awarded only at the rate of 7% per annum.

18. I do not find any merits in the said challenge.

19. As noted hereinabove, the accident in question had taken place on 13.11.2014. The respondents are still struggling to get the compensation for the said accident, where they lost their loved one, their son. In my view, the rate of interest awarded by the learned Tribunal is not exorbitant or unreasonable. Accordingly, the said challenge of the appellant is rejected.

CONCLUSION AND DIRECTIONS

20. By the order of this court dated 19.09.2018, the appellant was directed to deposit the entire awarded amount with interest with the learned Registrar General of this Court. It was directed that the



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amount so deposited be converted into the Annual Fixed Deposit Receipt with automatic renewal. Thereafter, by an order dated 24.04.2019, an amount of Rs.16 lakhs was directed to be released in favour of the respondent nos.1 and 2.

21. Now as the compensation amount has been reduced, the excess amount deposited by the appellant shall be released in favour of the appellant along with proportionate interest accrued thereon. The balance amount shall be released in favour of the respondent nos.1 and 2 in accordance with the schedule of disbursal as prescribed by the Impugned Award.

22. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.

23. The appeal and the pending application are disposed of in the above terms.

24. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 12, 2023/Arya/SS

Click here to check corrigendum, if any