



2023:DHC:9022



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

Date of decision: 13.12.2023

+ **MAC.APP. 878/2018 & CM APPL. 40662/2018**
THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr.R.K. Tripathi, Adv.
versus

PRASOON AGARWAL & ORS Respondents

Through: Mr.S.N. Parashar, Adv. for R-1
to R-4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 28.07.2018 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACP No. 108/2016, titled *Smt. Prasoon Agarwal & Ors. v. Sh. Suresh Puri & Ors.*

2. The above Claim Petition was filed by the Claimants, that is, the respondent nos. 1 to 5 herein, claiming that on 26.05.2015 at about 8.30 AM., Sh. Akashdeep Agarwal/the deceased was on his way to his office of Reliance Company from his residence on his scooty bearing registration no. UP-14BD-6229. As he reached near Madri Road No.2, Pratap Nagar, District Udaipur, Rajasthan, he was hit from behind by the truck/trolla bearing registration no.RJ-27GA-2099 (hereinafter

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referred to as 'Offending Vehicle'). As a result thereof, he died at the spot of the accident itself.

3. The learned Tribunal, based on the evidence led before it, has held that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner.

4. The appellant challenges the above finding by contending that there was no cogent evidence produced by the Claimants before the learned Tribunal which would substantiate the said finding.

5. I am unable to find any merit in the said contention.

6. The learned Tribunal has placed reliance on the certified copies of the criminal record, which included the charge sheet, inquest proceedings, post mortem report of the deceased, seizure memo, and the FIR, etc. The learned Tribunal further notes that the respondent no.5 herein, that is, the driver of the Offending Vehicle would have been the best witness to challenge the version of the Claimants on the accident, however, he did not contest the Claim Petition. The learned Tribunal has, therefore, rightly drawn an adverse inference against the driver and the owner of the Offending Vehicle on the said issue.

7. I see no reason to disagree with the above finding of the learned Tribunal. The above challenge of the appellant is accordingly rejected.

8. The learned Tribunal has, by the Impugned Award, awarded a sum of Rs.50,05,984.50 to the Claimants towards loss of dependency. The learned counsel for the appellant submits that the above compensation has been calculated by the learned Tribunal by taking the monthly salary of the deceased as Rs.45,000/-. He submits that this amount included HRA of Rs.5,000/-, Conveyance Allowance of

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Rs.5,000/-, and other allowances of Rs.10,000/-, which should have been deducted from his income.

9. I do not find any merit in the said contention.

10. In *Sunil Sharma & Ors v. Bachitar Singh & Ors.*, (2011) 11 SCC 425, the Supreme Court has held as under:

“(a) Computation of Income

6. In *National Insurance Co. Ltd. v. Indira Srivastava S.B. Sinha, J. has observed that:* (SCC p. 767, para 9)

"9. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms."

7. His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that: (*Indira Srivastava case, SCC p. 768, para 12*)

"12. ... superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family."

8. This Court clarified that by opining that: (*Indira Srivastava case, SCC p. 771, para 17*)



“ ‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost in view of death of the deceased. It is in the nature of compensation for future loss towards the family income.”

and that: (Indira Srivastava case, SCC p. 772, para 19)

"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

9. In Raghuvir Singh Matolya v. Hari Singh Malviya this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

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11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased."

11. Based on the above, the challenge of the appellant is rejected.

12. The learned counsel for the appellant further submits that the learned Tribunal has erred in granting future prospects at the rate of



15% in favour of the Claimants. He submits that, in the present case, the deceased was working on a fixed salary and, therefore, in terms of the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, keeping in view the age of the deceased, which was 53 years at the time of the accident, future prospects of only 10% could have been granted.

13. The learned counsel for the respondent nos. 1 to 4/the Claimants, on the other hand, submits that the deceased was a confirmed employee working with M/s Reliance Chemotex Industries Ltd. He submits that, therefore, the learned Tribunal has rightly granted future prospects at the rate of 15% in favour of the Claimants.

14. I have considered the submissions made.

15. The letter dated 09.02.2015 (Ex.PW-1/2 (colly)), confirming the appointment of the deceased, also states that the other terms and conditions of his appointment in the letter dated 10.06.2014 shall continue. The said letter shows that the deceased was entitled to a fixed salary of Rs.45,000/-, and he was not entitled to Provident Fund, LTC, or Medical Reimbursement. His appointment could also be terminated at any time by giving 24 hours notice in writing without assigning any reason.

16. From the above it is apparent that the deceased did not have a permanent job but was on a fixed salary and was 53 years old at the time of the accident, therefore, applying the ratio of the judgment in *Pranay Sethi and Others* (Supra), future prospects of only 10% could have been granted by the learned Tribunal. The Impugned Award shall stand modified to this extent.



17. The learned counsel for the appellant further submits that the learned Tribunal has erred in deducting only 1/4th of the income of the deceased towards his personal and living expenses. He submits that, in the present case, only the wife and the mother of the deceased can be stated to be dependant on the deceased. He submits that, therefore, deduction of 1/3rd should have been made towards personal and living expenses of the deceased.

18. On the other hand, the learned counsel for the respondent nos. 1 to 4/Claimants submits that the deceased had left behind five dependants, that is, his wife, his son aged 27 years, his daughter aged 22 years, his mother aged 74 years, and his father aged 75 years. The father of the deceased unfortunately died during the pendency of the Claim Petition. He submits that the learned Tribunal has wrongly observed that father of the deceased cannot be said to be financially dependant on the deceased. He submits that, keeping in view the age of the father of the deceased, he was clearly financially dependant on the deceased. He further submits that, in any case, the appellant did not challenge the testimony of PW-1- Smt.Prasoon Agarwal (wife of deceased), who deposed that all five of the above were dependant on the deceased. He submits that merely because the son was aged 27 years, it cannot be said that he was not financially dependant on the deceased. He submits that the daughter, in any case, was aged only 22 years and unmarried and, therefore, was financially dependant on the deceased.

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



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20. In the present case, the appellant did not question the statement of the PW-1, that she herself along with her two children and the mother of the deceased were dependant on the deceased. Merely because the son of the deceased was aged 27 years, it cannot be presumed that he was not dependant on the deceased. The daughter, in any case, was only aged 22 years and it is not shown that she was married at the time of the accident. Therefore, no fault can be found in the learned Tribunal deducting only 1/4th from the income of the deceased towards his personal and living expenses.

21. The learned counsel for the appellant further challenges the award of interest at the rate of 9% per annum. He submits that the same is highly exorbitant.

22. I, again, find no merit in the above challenge.

23. The accident, in question, had taken place on 26.05.2015 and the Award was passed on 28.07.2018. As noted hereinabove, the deceased had left behind his entire family, including his parents, wife and two children. The Claimants are yet fighting for their 'just' compensation. Therefore, the award of interest by the learned Tribunal is found to be just and proper and warrants no interference from this Court.

24. In view of the above, the only modification in the Impugned Award is on the compensation awarded towards loss of dependency. The same shall stand re-calculated as under:

$$Rs.5,27,640 \times 110/100 \times 3/4 \times 11 = Rs.47,88,333/-$$

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25. The award shall stand modified to the above limited extent only.

26. This Court, by its *Interim* Order dated 01.10.2018, had directed the appellant to deposit the entire awarded amount along with interest with the learned Registrar General of this Court, and subject to such deposit, operation of the Impugned Award was directed to remain stayed. The said amount was directed to be converted into annual fixed deposit receipts with automatic renewal.

27. By a subsequent Order dated 30.01.2023, this Court directed release of 60% of the awarded amount in favour of the respondent nos. 1 to 4 as per the scheme of disbursal prescribed in the Impugned Award.

28. Now that the awarded amount has been reduced, the excess amount deposited by the appellant shall be released to the appellant along with interest accrued thereon. The remaining amount shall be disbursed to the respondent nos. 1 to 4 in accordance with the schedule of disbursal prescribed in the Impugned Award.

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

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

31. There shall be no orders as to costs.

NAVIN CHAWLA, J

DECEMBER 13, 2023/ns/am

Click here to check corrigendum, if any

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