NEUTRAL CITATION NO: 2023:DHC:3360

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

Reserved on : 23.08.2022

% ***Pronounced on : 11.05.2023***

\+ **MAC. APP. 740/2017 & CM APPL. 29719/2017 (stay)**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. J. P.N. Shahi, Advocate.

versus

NEETU DEVI & ORS .... Respondents

Through: Mr. Rahul Rohtagi, Advocate for R-1 to 4 (through video conferencing)

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.07.2017 with the following prayers:-

> *"a. Allow/admit the appeal of the appellant and set aside/modify the award dated 18.07.2017 passed by Sh. Sanjay Sharma, Judge, MACT, KKD Courts, in the case titled as Smt. Neetu Devi Vs. Shanawaz ors. in Suit No. 606/2016, thereby reduce the quantum of compensation.*
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> *b. Any other relief which this Hon'ble Court deems fit and proper, in the facts and circumstances of the present case may also be granted in favour of Appellant and against the Respondents."*

2. In brief the facts of the case are that Sanjay Verma @ Sanjay Lodhi, aged 36 years working as a professional driver, died as a result of injuries suffered in a motor vehicular accident which occurred on 26.03.2016 at 3.00 a.m. on Moradabad-Hapur Road, near Star Light Tourist Hotel, Garh Mukteshwar, Distt. Hapur, U.P., when the truck bearing registration No. UP 13 T 8672 being driven by Sanjay Verma @ Sanjay Lodhi rammed into rear portion of the truck bearing registration No. UP 21 N 9547 (offending vehicle) which was stationed just adjacent to the divider without any caution signal and parking indicator by the driver (respondent no. 5 herein) of the offending vehicle.

3. I have heard the learned counsel for the appellant as well as learned counsel appearing on behalf of respondent nos. 1 to 4 and have perused the records of this case.

4. It is submitted by learned counsel for the appellant that learned Tribunal has failed to take into account the negligence on part of the deceased who was also responsible for the said accident. He submitted that learned Tribunal has wrongly assessed the income of the deceased without any cogent proof as Rs.15,000/- per month and has erred in awarding Rs.4,00,000/- towards non-pecuniary head. It is further submitted that learned Tribunal has failed to appreciate that deceased was a permanent resident of UP and since the accident occurred in UP, the minimum wages of UP should be applicable. It is further submitted by Ld. counsel for the appellant that the learned Tribunal did not consider the fact that there was a

delay of 42 days in lodging the FIR, and no specific reasons were given by the legal heirs in respect of the delay in lodging of the present FIR.

5. On the other hand, it is submitted by learned counsel appearing on behalf of respondent no. 1 to 4 that the claimants were not granted any compensation under the head of future prospects and the respondents are entitled to the same in light of decision passed in ***National Insurance Co Ltd. vs. Pranay Sethi & Ors. (SLP (C) No. 25590/2014 decided on 31.10.2017).*** It is further submitted that the driver of the offending vehicle (respondent no. 5), though denied involvement of the offending vehicle in the accident, but failed to question PW-2 Sagir Khan in his cross-examination, on material aspect that the offending vehicle was stationed on the road without any indicator or rear light. He further submitted that there is nothing in the testimony of PW-2 Sagir Khan to disbelieve him and the same remained unchallenged before the learned Tribunal. It is further submitted that the amount of Rs.4,00,000/- awarded under the non-pecuniary head is just and reasonable. It is further submitted by learned counsel for respondent no. 1 to 4 that the residence of the claimants and deceased was at Delhi which is manifestly clear from the memo of parties filed by the appellant in the present appeal and further submitted that the deceased owned an Eicher Mini Truck No. UP 13 T 8672 and was holding a commercial driving license. The deceased had got his truck insured for the period from 02.07.2015 to 01.07.2016 and also paid premium of Rs. 21,660/-, and since at the relevant time, minimum wages paid to a skilled worker were Rs. 11,154/-, therefore, the monthly income of the deceased was legitimately assumed to be Rs. 15,000/- per month. Learned counsel for the respondent

no. 1 to 4 in support of his contention with regard to delay in registration of FIR has placed reliance upon ***Ravi vs. Badrinarayan & ors.*** (***SLP (C) No. 11974/2008 decided on 18.02.2001), Kiran Singh & ors. vs. Suresh Rajurohit & Ors. (Civil Misc. Appeal No. 2549/2016 decided on 15.02.2021)*** and ***Shabana & Ors. vs. Vidhyasagar & Anr. (MFA No. 201993/2018 (W) decided on 10.02.2022***).

6. As far as the contention of the Ld. Counsel for the appellant that there is a delay in lodging of the FIR, no doubt, there is a delay of 42 days in lodging of the FIR but no prejudice has been shown to be caused to the appellant due to the said delay, and thus, this contention has no force in it.

7. Having heard the counsel for the appellant and perusing the Award dated 18.07.2017, the relevant paras where the learned Tribunal has observed regarding the ***Income of the deceased*** reads as follows:-

> *"24. The petitioners stated, in their petition, that the deceased was a professional driver and he was earning Rs. 15,000/- per month. She deposed on the strength of affidavit* **Ex.Pw1/A** *that the deceased used to transport goods and drive Eicher Mini Truck No. UP 13 T 8672 which was owned by him. She deposed that the deceased was earning Rs. 15,000/- per month. In her cross-examination, she stated that she has no documentary proof to show that the deceased was earning Rs. 15,000/- per month. Besides this, there is no challenge to her testimony regarding avocation and income of the deceased.*
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> *25. In the absence of formal evidence regarding income of the deceased, the best method to ascertain the income of the deceased is the rates of minimum wages as applicable at the prevalent time. However, it is not necessary that in every case such recourse should be taken in the presence of reliable evidence to prove the avocation and income of the deceased.*

> *26. The deceased owned Eicher Mini Truck No. UP 13 T 8672. He was holding a commercial driving license. He was driving the said truck at the time of the accident. The deceased had the license to drive the transport vehicle since 30.03.2010 which was revalidated on 09.04.2013. He was running the said mini truck since 05.02.2010. He had national permit for goods carriage since 05.02.2010. He got his truck insured for the period from 02.07.2015 to 01.07.2016 and paid premium of Rs. 21,660/-. At the relevant time, minimum wages paid to a skilled worker was Rs. 11,154/-. Therefore, the monthly income of the deceased can be legitimately assumed at Rs 15,000/- per month."*

8. In absence of any documentary evidence of the proof of income, the court can ascertain the monthly income on basis of minimum wages is well settled by a catena of judgments. Reliance can be placed upon ***Neeta vs. Maharashtra SRTC (Civil Appeals No. 348-349/2015 decided on 13.01.2015), The New India Assurance Co. Ltd. vs. Ramesh & Ors. (MAC APP. No.342/2008 decided on 26.08.2009) and Kumari Chunni Kumari & Ors. vs. Balwant & Ors. (MAC APP.No.378/2004 decided on 01.02.2010).***

9. In the instant case, the deceased was aged 36 years at the time of the accident and as per the respondents, he was working as a driver and earning Rs. 15,000/- per month. In my view, the Ld. Tribunal has legitimately assessed the income of deceased to be Rs 15,000/- per month, keeping in view that the deceased had his truck insured for the period from 02.07.2015 to 01.07.2016 and was paying premium of Rs. 21,660/-, furthermore, at the relevant time, minimum wage paid to a skilled worker was Rs. 11,154/- and therefore, the monthly income of the deceased was legitimately taken to be Rs 15,000/- per month. This court is of the opinion that the Ld. Tribunal has rightly assessed the income as Rs. 15,000/- per month and the same does not call for any interference on this count.

10. Perusal of the impugned award shows that the tribunal failed to award any future prospects considering that respondents have not led any evidence to prove the income of the deceased much less than progressive rise in the income of deceased.

11. In ***National Insurance Co Ltd vs. Pranay Sethi, (2017) 16 SCC 680,*** decided by the Hon'ble Supreme Court on 31.10.2017, it is observed and held as under:

> *"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."*

12. In ***Hem Raj vs. Oriental Insurance Co. Ltd., (2018) 15 SCC 654,*** decided by the Hon'ble Supreme Court on 22.11.2017, it is observed and held as under:

> *"7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made.."*

13. In ***Kirti & Anr vs. Oriental Insurance Company, Civil Appeal No. 19-20 of 2021 (Arising out of SLP (C) No. 18728-29 of 2018),*** decided by the Hon'ble Supreme Court on 05.01.2021, it is observed and held as under:

> *"14. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation induced increase in wages.*"

14. Insofar as the grant of compensation under non pecuniary head is concerned, the deceased left behind his father, widow and three children as his dependants. On the basis of the judgments in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680], Magma General Insurance Co. Ltd. vs. Nanu Ram & Ors [(2018) 18 SCC 130], United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)*** and ***The New India Assurance Company vs. Somwati, Civil Appeal No. 3093 of 2020 (Arising out of SLP (Civil) No. 23478 of 2019)***, amount of compensation for '*Loss of Estate', 'Loss of Consortium'* and '*Funeral Expenses'* is fixed at Rs 15,000/-, Rs 40,000/- and Rs 15,000/-, respectively with an increase of 10% after a period of three years.

In view of the above, the following amounts are awarded under the conventional heads:

i) Loss of Estate: Rs. 16,500/-
ii) Loss of Consortium: Rs. 44,000 x 5 (dependants) = Rs. 2,20,000/-
iii) Funeral Expenses: 16,500/-

15. In ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)*** decided by the Hon'ble Supreme Court, it is observed and held as under:

> *"The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra). At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.*
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> *In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*
>
> *The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is* ***no justification to award compensation towards loss of love and affection as a separate head."***

16. Accordingly, the amount of Rs. 1,50,000/- awarded by the learned Tribunal towards *"loss of affection"* shall be deducted from the awarded amount.

17. Furthermore, keeping in view the settled legal principles laid down by the Hon'ble Supreme Court of India in ***S. Chandrasekharan & Ors. vs. M. Dinakar & Anr., Civil Appeal Nos. 4688-4689 Of 2022 (Arising***

out of SLP (C) Nos. 8119-8120 of 2019) and ***National Insurance Company Ltd. vs. Mannat Johal & Ors., Civil Appeal Nos.4079-4081 of 2019(Arising out of SLP (C) Nos. 742-744 of 2019),*** the rate of interest stands reduced from 9% per annum to 7.5% per annum from the date of filing of the claim petition till the date of realization.

18. In view of the above, the impugned award to the said extent requires a modification, therefore, it is directed that as the deceased was below 40 years of age, the future prospects shall be taken at 40% of the established income of the deceased. On that basis, after taking into account the established income of deceased alongwith future prospects, the compensation granted by this court towards non pecuniary heads and the reduced rate of interest, the Tribunal shall re-compute the entitlement of the respondents in terms of the directions contained herein.

19. After deducting the aforesaid amount of Rs. 1,50,000/- awarded by the learned Tribunal towards *"loss of affection"*, the compensation amount along with interest accrued thereon, shall be deposited by the appellant-Insurance Company, with the Tribunal within a period of four weeks of the computation by the Tribunal. The same be released to the beneficiaries of the award in terms of the scheme of disbursement which shall be specified therein.

20. Accordingly, the appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the award. Trial Court Record be sent back along with a copy of this Judgment for compliance.

21. The matter shall be listed before the concerned tribunal on 24th May, 2023 for the purpose of re-computation and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

MAY 11, 2023/ p