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

Date of decision: 15.09.2023

+ **MAC.APP. 975/2018**

MAHESH PRASAD & ORS Appellants
Through: Mr.Anshuman Bal, Adv.

versus

NATIONAL INS CO LTD & ANR Respondents
Through: Mr.S.L. Gupta, Mr.Asutosh
Sharma & Ms.Gunjan Sharma,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 30.07.2018 passed by the learned Motor Accidents Claims Tribunal, Shahdara District, Karkardooma Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MAC No. 1607/16, titled *Mahesh Prasad & Ors. v. Tilak Singh & Ors.*

2. The facts leading to the present appeal are that on 07.05.2015 at about 08:35 AM, deceased Smt. Neetu Devi was coming to her house after dropping her son at Sri Ram Public School, Dilshad Garden, Delhi. When she reached near Dilshad Garden Metro Station and was crossing the road, she was hit by a motorcycle bearing registration no. DL5SBL6254 (hereinafter referred to as the 'offending vehicle'), which was being driven



in a rash and negligent manner. As a result of the accident, she suffered fatal injuries.

3. The first grievance of the appellants against the Impugned Award is on the attribution of contributory negligence of 25% to the deceased for the accident. The learned counsel for the appellants submits that the driver and/or the owner of the offending vehicle did not lead any defence in the Claim Petition. The appellants duly proved the accident through the evidence of Mr. Vijay Thakur, who was examined as PW-2, and Mr. Krishna Murari Singh, who was examined as PW-3. In the course of cross-examination of PW-3, a question was put to him by the court as to who was at fault at the time of the accident, to which he answered that the accident had occurred due to the fault of both, the driver of the offending vehicle, as it was being driven at an excessive speed, as also the deceased, as she was crossing the road at a place where there was no zebra crossing or red light. Based on this answer by PW-3, the learned Tribunal attributed 25% of contributory negligence to the deceased for the accident.

4. Placing reliance on the judgment of this Court in ***Dilip Kumar Sah v. Parshotam Alia Purshotam Lala (Since Deceased) Through LRs & Anr.***, 2023:DHC:4978, the learned counsel for the appellants submits that as the driver and the owner of the offending vehicle had not pleaded any contributory negligence, let alone prove the same by way of any evidence,



the learned Tribunal has erred in attributing the contributory negligence to the deceased.

5. On the other hand, the learned counsel for the respondent no.1 submits that it is proved from the testimony of PW-3 that the deceased was crossing the road at a place where there was no zebra crossing or red light. PW-3 also admitted that the deceased was in the middle of the road in flowing traffic at the time of the accident.

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

7. PW-3 in his statement before the learned Tribunal has stated as under:-

“ On SA

....The victim was crossing the road from the cut near to Toll Tax Collection counter of MCD and by passers use this cut to cross the road but it is not a legal way to cross.....

xxxx by Ms. Suman, proxy counsel for Insurance Company.

.....The place of accident was not having any red light or Zebra Crossing where from deceased was crossing the road. Motorcyclist hit the victim directly from backside. It is correct that the deceased was in the mid of the road in flowing traffic at the time of accident. Police reached the spot in my presence.

Court Q. Who was in fault at the time of accident?

A. It was fault of both as motorcyclist was driving was in Excessive speed and victim was crossing the road without Zebra Crossing or red light. It is wrong to suggest that the accident took place by the fault of deceased.....”





8. From the reading of the above, it is apparent that the deceased was crossing the road in the full flow of traffic at the time of the accident. There was neither a zebra crossing nor any traffic light to regulate the traffic at that time. This was not a place to cross the road, especially in the early hours of the morning when the traffic is a little more than usual. In such circumstances, even in absence of a defence being laid by the owner and driver of the offending vehicle, in my view, no fault can be found in the decision of learned Tribunal attributing contributory negligence to the deceased.

9. At the same time, in the absence of a defence from the owner and driver of the offending vehicle, attribution of 25% of contributory negligence to the deceased appears to be highly excessive. The witness has stated that though, not legal, the place where the deceased was crossing the road, was used for the said purpose by others as well. In my opinion, therefore, contributory negligence of 10% should be attributed to the deceased. The Award shall stand modified to this extent.

10. The next challenge of the appellants is on the learned Tribunal in not granting loss of consortium in favour of the appellants. The learned Tribunal has not granted loss of consortium in favour of the appellants stating that the appellant no.1 is the husband of the deceased but as he has re-married, he is not entitled to loss of consortium.

11. I find the above reason to be incorrect.



12. In terms of the judgments of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, and as explained by *United India Insurance Company Limited v. Satinder Kaur and Others*, (2021) 11 SCC 780 and *Magma General Insurance Company Limited v. Nanu Ram and Others*, (2018) 18 SCC 130, each of the claimants are entitled to loss of consortium, be it paternal consortium or spousal consortium.

13. Accordingly, the Award shall stand modified and each of the claimants are held entitled to loss of consortium at the rate of Rs.40,000/-.

14. In view of the above, the amount of compensation amount is re-computed as under:-

Particulars	Amount
Income per annum	Rs.72,384/-
Multiplier of 17	
Future Prospects at 40%	
Loss of Dependency	$72,384 \times 140/100 \times 17 =$ Rs.17,22,739/-
loss of consortium 40,000/- x 3	Rs.1,20,000/-
Loss of Estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.18,72,739/-
Compensation awarded after deduction of 10% towards	Rs.16,85,465/-



contributory negligence	
Compensation Awarded by the learned Tribunal by the impugned award.	Rs.13,14,750/-
Total enhanced amount	Rs.3,70,715/-

15. The enhanced amount of compensation shall carry interest at the rate as was awarded by the learned Tribunal in the Impugned Award.

16. The respondent no.1 shall deposit the enhanced compensation with the learned Tribunal within a period of six weeks from today. The same shall be released in favour of the appellants/Claimants in accordance with the scheme of disbursement stipulated in the Impugned Award.

17. The appeal is allowed in the above terms.

18. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 15, 2023/rv/am