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

Date of decision: 18.12.2023

- + **MAC.APP. 59/2018 & CM APPL. 1614/2018**
THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.Pankaj Seth, Adv.
versus
GEETA ROY & ORS Respondents
Through: Mr.Varun Sarin, Mr.Shailendra Singh, Ms.Parul Dutta & Ms.Babita Rawat, Advs.
- + **MAC.APP. 208/2018**
GEETA ROY & ORS Appellants
Through: Mr.Varun Sarin, Mr.Shailendra Singh, Ms.Parul Dutta & Ms.Babita Rawat, Advs.
versus
DINESH KUMAR & ORS (ORIENTAL INS CO LTD)
..... Respondents
Through: Mr.Pankaj Seth, Adv. for Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 30.10.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, East-District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in Suit No. 109/2016, titled as *Smt.Geeta Roy & Ors. v. Dinesh Kumar & Ors..*



2. As these are Cross-Appeals, the Oriental Insurance Company Limited hereinafter shall be referred to as the “Insurance Company”, while the claimants before the learned Tribunal shall be referred to as the “Claimants”.

3. It was the case of the claimants before the learned Tribunal that on 01.01.2012, at about 4 PM, the deceased Sh.Vishwajeet Roy along with other passengers was travelling from Kichha to Rudrapur in a Mahindra Maxi Cab bearing registration No. UK-06-TA-1371 (hereinafter referred to as the ‘Offending Vehicle’). The Offending Vehicle was being driven by its driver, Sh.Dinesh Kumar, at a high speed and in a rash and negligent manner. The driver of the Offending Vehicle lost control over the Offending Vehicle and rammed it into a tree, because of which the deceased suffered grievous injuries. The deceased was immediately shifted to the Government Hospital at Rudrapur, from where he was shifted to Dr. Shushila Tiwari Hospital, Haldwani. He was later shifted to the Brij Lal Hospital, Haldwani, and then to the Safdarjung Hospital, New Delhi, where he unfortunately died on 14.01.2012 due to the injuries suffered.

4. The learned Tribunal, placing reliance on the statement of Sh.Gautam Haldar (PW-3) who was a co-passenger with the deceased, held that the accident had occurred due to the Offending Vehicle being driven in a rash and negligent manner by its driver. The learned Tribunal rejected the submission of the Insurance Company that the deceased was not present in the



Offending Vehicle and did not suffer any injuries due to the accident in question. The learned Tribunal, thereafter, proceeded to award compensation of Rs.17,29,000/- along with interest at the rate of 9% per annum from the date of filing of the petition, that is, 16.08.2014, till the date of the payment, in favour of the claimants, saddling the liability to pay the same on the Insurance Company. The learned Tribunal rejected the plea of the Insurance Company seeking the right of reimbursement of the compensation paid to the claimants from the driver and owner of the Offending Vehicle.

Negligence:

5. The learned counsel for the Insurance Company submits that the claimants had been unable to prove that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner. He submits that the driver of the Offending Vehicle entered into the witness box and had deposed before the learned Tribunal as R1W1. He stated that it was a roadways bus that tried to overtake the Offending Vehicle in a rash and negligent manner and in order to save the Offending Vehicle from colliding with the said roadways bus, he had moved the Offending Vehicle onto a kachha road, however, it dashed against a tree. The learned counsel for the Insurance Company submits that, therefore, the accident in question had not taken place due to the Offending Vehicle being driven in a rash and negligent manner.

6. The learned counsel for the claimants refutes the above



submission by stating that PW-3, who is an eyewitness to the accident, has been rightly relied upon by the learned Tribunal to hold that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner.

7. I have considered the submissions made.

8. The learned Tribunal, in its Impugned Award, has rightly relied upon the statement of PW-3 Sh.Gautam Halder, who was also one of the passengers in the Offending Vehicle travelling along with the deceased, and who narrated that the Offending Vehicle was being driven at a high speed and in a rash and negligent manner by the driver thereof. The learned Tribunal has also rightly relied upon the other surrounding circumstances, which clearly indicate that the accident had occurred due to the Offending Vehicle being driven in a rash and negligent manner. I may quote from the Award as under:-

“21. RW-3 Gautam Halder proved that the passengers of the offending vehicle including him and the deceased sustained serious injuries. He was not cross-examined by the respondent No. 1 and 2. The respondent No.3/insurer has not cross-examined him on the aspect of rash and negligent driving of the offending vehicle by the respondent No. 1. The respondent No.3/insurer examined the respondent No. 11 driver (RIWI). He stated that at about 4.00 p.m., when he reached near Lalpur Police Chowki, a roadways bus tried to overtake the offending vehicle and in order to avoid the collision, the offending vehicle came on kachcha road and dashed against a tree. He admitted that he is facing trial in a criminal case in Rudrapur.

22. The respondent No. 1 is a professional driver. He was driving a passenger motor



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vehicle carrying passengers at the time of the accident. He was driving the offending vehicle in the hilly terrain. He was expected to drive the offending vehicle carefully. He was driving the offending vehicle in high speed. Even if the version of the respondent No. 1 is believed that he was trying to avert collision with a roadways bus overtaking him, there is no explanation as to why he could not control the offending vehicle. There is no explanation as to why he allowed the offending vehicle to dash against a tree on the road side. There is no explanation as to why he did not preempt such overtaking and maintained such a speed in which he could control the offending vehicle. Site plan of the place of the accident would show that the offending vehicle moved from the middle of the road to the extreme left side and beyond the road and hit against a tree resulting into death of several persons.”

Whether the deceased suffered injuries in the accident in question:

9. On the issue whether the deceased was at all travelling in the Offending Vehicle and sustained injuries in the accident in question, the learned counsel for the Insurance Company submits that there was no mention of the deceased in the FIR registered by the Police for the accident in question. The Police did not carry out any investigation as far as the deceased is concerned. He submits that, therefore, the claimants could not prove that the deceased had indeed suffered injuries in the accident in question.

10. On the other hand, the learned counsel for the claimants submits that the fact of the deceased suffering the injuries in the accident in question is proved by the statement of the



eyewitness PW-3 and also by the driver of the Offending Vehicle, that is, R1W1. He submits that immediately after the accident, the victims/injured were shifted to the Government Hospital at Rudrapur. As their identity was not known, they were shown as unknown at the time of admission. The deceased was thereafter shifted to the Sushila Tiwari Hospital at Haldwani, and from there to the Brij Lal Hospital. The Discharge Summary report of the Brij Lal Hospital states that he was admitted as a victim of a road accident. The same is also mentioned in the Discharge Summary of the Safdarjung Hospital, where the deceased was taken later and eventually died on 14.01.2012. He submits that, therefore, there was enough evidence to corroborate and prove that the deceased indeed suffered injuries due to the accident in question and died because of the same.

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

12. PW-3, in his statement, has categorically stated that he along with the deceased had boarded the Offending Vehicle at Kiccha. He also stated that the deceased suffered injuries in that accident in question. It is not shown that PW-3 was an interested witness or had any reason to depose falsely in favour of the claimants. In fact, R1W1, the driver of the Offending Vehicle, also admitted that the deceased was indeed travelling in the Offending Vehicle at the time of the accident and suffered injuries due to the same. In my view, there was no further



evidence or corroboration required to prove the above fact. However, from other surrounding circumstances also as have been delineated by the learned counsel for the claimants, this fact has been duly proved. The claimants have proved on record the Medical Records right from the admission at the Government Hospital, Rudrapur, till the unfortunate death of the deceased at the Safdarjung Hospital, New Delhi.

13. The claimants are not to prove their case beyond reasonable doubt but only on the touchstone of preponderance of probabilities, which, in my opinion, has been duly met by the claimants.

14. Accordingly, the above challenge of the Insurance Company stands rejected.

Income of the Deceased

15. As far as the compensation is concerned, the learned Tribunal has awarded compensation of Rs.11,86,000/- to the claimants towards loss of dependency. For assessing the compensation, the learned Tribunal has taken the minimum wages notified by the Government of NCT of Delhi as payable to a '*semi-skilled*' worker.

16. The learned counsel for the Insurance Company submits that as there was no evidence on record to show that the deceased was indeed working as a carpenter, the minimum wages for an '*unskilled*' worker should have been adopted by the learned Tribunal.

17. On the other hand, the learned counsel for the claimants



submits that the wife of the deceased (PW-1) had deposed that the deceased was working as a carpenter and earning approximately Rs.30,000/- per month. He submits that as the deceased was in an un-organized sector, the wife of the deceased could not produce further evidence in support of her assertion. He submits that notwithstanding the above, the Minimum Wages notified for a 'skilled' worker should have been adopted.

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

19. As noted hereinabove, in a claim petition filed by the victims of a road accident seeking compensation on account of the injury/death suffered, the strict rules of evidence applicable to a criminal trial are not applied; the claimants are to prove their case claimed only on the touchstone of preponderance of probabilities.

20. In ***Kubrabibi & Ors. v. Oriental Insurance Co. Ltd. & Ors.***, Civil Appeal No.5461 of 2023 dated 28.08.2023, the Supreme Court has held as under:

"It is unfortunate that in a case of the present nature, the High Court while assessing the evidence available on record, has sought to seek strict evidence with regard to the income of the deceased. When the wife and children of the deceased were before the Court, they would not be in a position to secure all evidence when the deceased earning member was not in secure job. Despite the same we note that in the instant case, a perusal of the judgment and award passed by the MACT, would indicate that an effort was made to



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examine the owner of the two wheeler repair shop where the deceased was said to be working. The High Court has discarded the same on the ground that no documents, to indicate that he is the owner of the shop and he had employed three persons, has been produced.

In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it.

(emphasis supplied)

21. In the present case, the wife of the deceased (PW-1) had stated that the deceased was working as a carpenter at the time of the accident. Though she was cross-examined by the learned counsel for the Insurance Company, the above statement could not be disturbed during such cross-examination. Merely because she could not produce further evidence on the income of the deceased, her statement on the vocation of the deceased cannot be discarded.



22. As the deceased was working as a carpenter, in my opinion, the learned Tribunal has erred in taking the minimum wages notified for a 'semi-skilled' worker as the income of the deceased. His income should have been notionally fixed on the basis of the minimum wages notified for a 'skilled worker' by the Government of NCT of Delhi at the relevant time.

23. The learned Tribunal, at the same time, has also erred in taking the minimum wages as notified with effect from 01.04.2012 as the basis for the income of the deceased. The learned counsel for the claimants fairly points out that as the accident had taken place on 01.01.2012, the minimum wages as notified with effect from 01.10.2011 should have been adopted. The same for a skilled worker was notified at Rs.8112/- per month. The loss of dependency shall accordingly be calculated taking the income of the deceased as Rs.8112/- per month.

24. The impugned Award shall stand modified to this extent.

Future Prospects:

25. The claimants further challenged the Impugned Award inasmuch as it does not grant future prospects of increase of income to the deceased.

26. In *National Insurance Company Limited v. Pranay Sethi And Others*, (2017) 16 SCC 680, it has been held that even for a self-employed person, future prospects of increase in income are to be taken into account. In the present case, the deceased was aged around 32 years. He is claimed to be self-employed, working as a carpenter.



27. Accordingly, in terms of the judgment in *Pranay Sethi* (Supra), future prospects at the rate of 40% are to be applied. It is ordered accordingly.

Loss of Dependency:

28. In view of the above, compensation towards loss of dependency is recalculated as under:-

S.No.	Particulars	Amount
1.	Income	Rs.8112/-
2.	Future Prospects	40%
3.	Deduction towards Personal & Living Expenses	1/4
4.	Multiplier	17
5.	Months	12
	<u>Total</u>	8112x140/100x3/4 x12x17 <u>=Rs. 17,37,590.4</u>

Compensation towards Non-Pecuniary Heads

29. The learned counsel for the Insurance Company challenges the compensation awarded by the learned Tribunal towards the Non-Pecuniary heads.

30. The learned Tribunal, in its Impugned Award, has awarded a sum of Rs.1,50,000/- each towards loss of consortium and loss of love and affection, and Rs.50,000/- each towards funeral expenses and loss of estate.



31. In view of the judgment of the Supreme Court in *Pranay Sethi* (Supra), the same cannot be sustained, and instead, the claimants are held entitled to compensation towards Non-Pecuniary heads as follows:-

S.No	Particulars	Amount
1.	Funeral expenses	Rs.15,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Loss of consortium (Rs.40,000 x 4)	Rs.1,60,000/-
	Total	Rs. 1,90,000/-

32. The compensation payable to the claimants shall stand modified accordingly.

Non-Grant of Right of Recovery

33. The last challenge of the Insurance Company is the refusal of the learned Tribunal to grant a right to the Insurance Company to recover the compensation paid to the claimants, from the owner of the Offending Vehicle.

34. The learned counsel for the Insurance Company submits that there were around thirteen passengers being carried in the Offending Vehicle at the time of the accident. He submits that as per the Registration Certificate of the Offending Vehicle, the maximum carrying capacity for the Offending Vehicle is nine persons. He submits that, therefore, there was an overloading of the Offending Vehicle, which entitles the Insurance Company to recover compensation payable, from the owner of the Offending



Vehicle.

35. He submits that, in any case, R1W1, the driver of the Offending Vehicle, admitted in his statement that he was picking up the local passengers and dropping them. He submits that, therefore, the Offending Vehicle was being used as a 'stage carriage' rather than as a 'contract carriage', for which the permit had been obtained. He submits that this would also be a violation of the Terms and Conditions of the Insurance Policy, entitling the Insurance Company to seek reimbursement of the compensation paid to the claimants from the owner of the Offending Vehicle.

36. I am unable to find any merit in the above contentions of the learned counsel for the Insurance Company.

37. The learned Tribunal, relying upon the statement of PW-3, who had stated in his testimony that there were around seven passengers in the Offending Vehicle at the time of the accident, and the statement of the driver of the Offending Vehicle (R1W1), who stated that there were eight passengers at the time of the accident, held that there was no violation of the Registration Certificate condition which gives a sitting capacity of the Offending Vehicle as nine passengers including the driver.

38. As noted by the learned Tribunal, the Investigator appointed by the Insurance Company was not examined before the learned Tribunal. His report, therefore, was not proved and cannot be relied upon for the said purpose.



39. I find no reason to disagree with the above finding.

40. As far as the plea of the Offending Vehicle being used as a 'stage carriage', again I find that no such plea was taken by the Insurance Company before the learned Tribunal in its Written Statement. A general plea of the Offending Vehicle been driven without a valid permit was taken. The owner of the Offending Vehicle remained *ex-parte*, presumably because the owner was holding a permit for the Offending Vehicle, which had come on record in the criminal trial. It is only on the statement of the driver of the Offending Vehicle, that is, R1W1, that now the Insurance Company makes its claim for seeking a reimbursement of the compensation paid.

41. In my view, merely on the statement of R1W1, such a claim cannot now be made by the Insurance Company. What the Insurance Company also has to prove is that the driver of the Offending Vehicle was picking up the local passengers with the knowledge and concurrence of the owner of the Offending Vehicle. It is only then that the Insurance Company would have been entitled to claim that there was a breach of conditions of the Insurance Policy by the owner of the Offending Vehicle. There is no such evidence led by the Insurance Company before the learned Tribunal.

42. Accordingly, the above challenges of the Insurance Company to the Impugned Award shall stand rejected.

Conclusion and Directions

43. This Court, by its *interim* order dated 16.01.2018, had



directed that on deposit of the entire awarded amount by the Insurance Company with the learned Tribunal, there shall be a stay on the enforcement of the Impugned Award, and the said amount shall not be released to the claimants but would be kept invested in a Fixed Deposit Receipts in a Nationalized Bank.

44. Now that the challenges in the appeals have been answered in the above manner, the Insurance Company shall deposit the balance/enhanced amount along with the interest at the rate and for the period as awarded by the learned Tribunal, with the learned Tribunal within a period of four weeks from today.

45. The compensation amount shall be released in favour of the claimants in accordance with the schedule of disbursal prescribed in the Impugned Award. It is made clear that all amount which would otherwise have become due and payable for release to the claimants as on today in terms of the schedule of disbursal, shall be released to the claimants in a lump-sum.

46. The statutory amount deposited by the Insurance Company be released in favour of the Insurance Company along with interest accrued thereon.

47. The appeals and the pending applications are disposed of in the above terms.

48. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 18, 2023/rv/ss

Click here to check corrigendum, if any