2023:DHC:9084

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

Date of decision: 15.12.2023

\+ **MAC.APP. 3/2016 & CM APPL. 78/2016**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr.A.K.Soni, Adv.

versus

RUKSANA & ORS ..... Respondents
Through: Mr.S.N. Parashar, Adv. for R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 08.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal) in MACT No. 60/2011, titled ***Ruksana & Ors. v. Furkan & Ors.***.

2. It was the case of the claimants, that is, the respondent nos.1 to 4 herein, before the learned Tribunal that on 24.11.2010, deceased-Sakil Ahmad @ Shakeel Ahmed Rangrez was coming to his house from Ghaziabad on his motorcycle bearing no. DL 5SAA-4907. As he reached at the T-Point Karhera, Mohan Nagar Road and was in the process of taking a turn from the side of the Karhera, a truck bearing no. HR 55J 5395 (hereinafter referred to as the 'offending vehicle'),

which was being driven by respondent no.5 herein in a rash & negligent manner, came and hit the motorcycle with great force due to which the deceased fell down on the road and sustained fatal injury, as a result of which he unfortunately died on the spot.

3. Based on the evidence led by the parties, the learned Tribunal in its Impugned Award has held that the accident occurred due to the rash and negligent driving of the offending vehicle by the respondent no.5 herein.

Negligence:

4. The learned counsel for the appellant submits that it was the deceased who was driving the motorcycle in a rash and negligent manner. He submits that the deceased was driving his motorcycle on extreme left side and took a sharp turn, which resulted in the accident.

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

6. The learned Tribunal, based on the testimony of the Investigating Officer of the case, that is, R3W1, and on the statement of the eye-witnesses, that is, PW2 and PW4, observed that the deceased stopped his motorcycle as the traffic light turned red, but the offending vehicle, which was coming behind it, did not stop and hit the motorcycle from the back. The offending vehicle, in fact, dragged the motorcycle for some distance. The learned Tribunal, therefore, disbelieved the stand of the appellant and the respondent no.5, that the accident had taken place when the deceased was taking a sharp right turn.

7. I find no reason to disagree with the above finding of the learned Tribunal. The plea of the appellant in this regard is

accordingly rejected.

Future Prospects:

8. The learned Tribunal in its Impugned Award, while determining the compensation towards the loss of dependency, has held that the deceased was aged between 41 to 45 years at the time of the accident. The learned Tribunal has further held that the deceased was working as a driver in Saudi Arabia and was earning in Saudi Riyal. The learned Tribunal has, however, awarded future prospects of increase of the income of the deceased at 30%.

9. The learned counsel for the appellant submits that in terms of the judgment of the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors.***, (2017) 16 SCC 680, and keeping in view the age of the deceased and his occupation, the future prospects of only 25% could have been granted by the learned Tribunal.

10. The learned counsel for the respondent nos.1 to 4 does not dispute the above position in law.

11. Accordingly, the Impugned Award shall stand modified and the respondent nos.1 to 4 are held entitled to future prospects of increase of the income of the deceased at 25%.

Deduction towards personal and living expenses:

12. The learned counsel for the appellant submits that in the present case, the learned Tribunal has erred in deducting only $1/4^{th}$ of the income of the deceased towards his personal and living expenses. He submits that this mistake may have occurred because the learned Tribunal felt that the deceased has left behind his mother in addition to his wife and two children. In fact, the deceased had left behind his

father, and there was no evidence on record which showed that the father of the deceased was financially dependant on the deceased. In support, he places reliance on the Ration Card (Ex.P-1), which does not mention the name of the father of the deceased as a family member of the deceased.

13. On the other hand, the learned counsel for the respondent nos.1 to 4 submits that the father of the deceased was aged around 60 years at the time of the accident. He submits that the wife of the deceased, that is, the respondent no.1 herein (PW-1), had also stated that the father of the deceased was financially dependant on the deceased.

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

15. It is not denied that the name of the father of the deceased is not mentioned as a family member of the deceased in the Ration Card (Ex.P-1). It might be because he was living separately. The respondent no.1 in her evidence by way of affidavit had also not stated that the father of the deceased was financially dependant on the deceased. Her only averment with respect to the father of the deceased was as under:

> *"4. I say that my husband left behind myself, aged-28 years, my two minor children namely Rehaaf Anzum aged, 11 years, Reehan aged-03 years and father-in-law Shafeeq Ahmad, aged-60 years are the only legal heirs of my husband. The Copy of Election I Card, passport of Petitioner No.I, birth certificate, passport, School I card of Petitioner no.2, birth certificate of Petitioner 3 and Ration Card are Exh.PW-1/13-19 (O.R.S.)."*

16. Merely being a legal heir to the deceased, does not necessarily

lead to a presumption that such person was also financially dependant on the deceased.

17. The statement relied upon by the learned counsel for the respondent no. 1 to 4, is the answer given by the PW-1 to a suggestion put to her by the learned counsel for the appellant in her cross-examination that the father of the deceased was not financially dependant on the deceased, which suggestion was denied by her. However, such denial, in absence of any positive submission/evidence in this regard by the claimants, or any other documents filed to support the same, in my view, cannot be accepted as a proof of the fact that the father of the deceased was financially dependant on the deceased. The father of the deceased also did not enter the witness box, though he was a claimant before the learned Tribunal.

18. In view of the above, the father of the deceased cannot be considered as financially dependant on the deceased. This leaves only three dependents, that is, the wife and the two children of the deceased. In terms of the judgment in ***Sarla Verma (Smt.) and Ors. V. Delhi Transport Corporation & Anr.***, (2009) 6 SCC 121, 1/3rd of the income should have, therefore, been deducted towards the personal and living expenses of the deceased. The Impugned Award shall stand modified to this extent.

Loss of Dependency:

19. In view of the above, the compensation payable to the respondent no. 1 to 4 towards loss of dependency is re-determined as under:

SR.5,04,000 x 125/100 x 2/3 = SR.4,20,000/-

20. The learned Tribunal determined the compensation payable to the claimants towards Loss of Dependency in Saudi Riyal (SR), as the deceased was working in Saudi Arabia and was earning his wage in Saudi Riyal. The learned Tribunal, thereafter, converted the compensation payable to Indian Rupees, by adopting the conversion rate of Rs. 12.135. Adopting the same rate of exchange, the computation towards loss of dependency is re-determined as under:

SR. 4,20,000/- x Rs.12.135= Rs.50,96,700/-

Non-pecuniary heads of compensation:

21. The next challenge of the appellant to the Impugned Award is on the compensation on non-pecuniary heads awarded by the learned Tribunal. The learned Tribunal has awarded the following compensation on the non-pecuniary heads (in rupees):

Love and affection	*Rs.200,000/-*
Loss of Consortium	*Rs.100,000/-*
Loss of Estate	*Rs.100,000/-*
Funeral expenses	*Rs.25.000/-*
Total	*Rs.4.25.000/-*

22. The learned counsel for the appellant submits that the above compensation is not in terms of the judgment of the Supreme Court in ***Pranay Sethi*** (supra).

23. The learned counsel for the respondent nos.1 to 4 does not dispute the above challenge.

24. Accordingly, the Impugned Award is modified. Compensation of following amount is awarded to the respondent no. 1 to 4 on non-pecuniary heads:

Sl.	Heads	Amount
1.	Loss of consortium	Rs.40,000x4 =Rs.1,60,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-
	Total	Rs.1,90,000/-

Revised compensation payable:

25. In total the respondent nos.1 to 4 are, therefore, held entitled to the compensation of Rs.52,86,700/- (*Rs.50,96,700/- + Rs. 1,90,000/-*). The same shall carry interest at the rate of 9% per annum, from the date of the Claim Petition, that is, 31.01.2021, till the date of deposit made by the appellant in compliance with the Order dated 04.01.2016 of this Court.

Directions:

26. By the Order dated 04.01.2016, this Court had directed the appellant to deposit the awarded amount with the learned Registrar General of this Court. It was further directed that only 50% thereof shall be released to the respondent nos.1 to 4 herein, in terms of the Impugned Award passed by the learned Tribunal. The remaining was directed to be kept in an interest bearing fixed deposit.

27. Now that the awarded amount has been reduced, the excess amount deposited by the appellant shall be released in favour of the appellant alongwith proportionate interest thereon. The balance amount shall be released in favour of the respondent nos.1 to 4 in

accordance with the schedule of disbursal as prescribed in the Impugned Award.

28. The statutory amount deposited by the appellant be also released to the appellant alongwith interest accrued thereon.

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

30. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 15, 2023/Arya/RP

Click here to check corrigendum, if any