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

Reserved on : 17.10.2022

% ***Pronounced on : 11.05.2023***

\+ **MAC.APP. 6/2016**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Arihant Jain, Advocate for Ms. Shandha Devi Raman, Advocate.

versus

VIMLESH @ BIMLA & ORS ..... Respondents

Through: Mr. Sukhbir Singh, Advocate and Mr. Mohit Upadhaya, Advocate for R-1 to R-4.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal under section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant- Insurance Company against the Award dated 05.10.2015 passed by the Ld. Tribunal.

2. In brief the facts of the case are that Nihender Singh was working as a Head Constable in Delhi Police. On 28.09.2011, he was on duty for Interceptor checking on the DND Flyover Road going towards Noida, in the Lajpat Nagar Traffic Circle, New Delhi. At about 07.30 AM, one Tavera car (Offending Vehicle) bearing No UP-30A-8891, dark grey colour, was coming from Maharani Bagh side at high speed. The interceptor vehicle announced to the erring driver to reduce the speed but the driver of the

offending vehicle failed to do so rather he intentionally increased the speed and tried to flee from the spot. Head Constable Nihender Singh and Ct. Ankit signaled the driver to stop the offending vehicle when it crossed the interceptor but the driver after coming near HC Nihender Singh, extended threats to crush HC Nihender Singh and Ct. Ankit underneath the offending vehicle. When they tried to stop him, the driver accelerated the offending vehicle, hitting Ct. Ankit violently and crushing HC Nihender Singh and then he fled away from the spot. The injured was removed to Max Hospital for medical treatment and thereafter, the injured was referred to Trauma Centre AIIMS, however, the victim succumbed to the injuries sustained in the accident and was declared dead. A case FIR No. 346/2011 under section 302 IPC was registered at Police Station Sunlight Colony, New Delhi.

3. On the basis of the pleadings of the parties, the Ld. Tribunal framed the following issues:

> ***"(i) Whether the deceased Sh. Nihender Singh sufferedfatal injuries in a road vehicular accident that tookplace on 28.09.2011 due to rash and negligent driving of vehicle bearing registration no. UP-30A-8891 by respondent no.3?***
>
> ***(ii) Whether the petitioners are entitled for any compensation? If so, to what amount and from whom?***
>
> ***(iii) Relief."***

4. I have heard the learned counsel appearing on behalf of the Appellant as well as Respondent nos. 1 to 4 and have perused the records of this case.

5. It is submitted by the learned counsel for the Appellant- Insurance Company that the learned Tribunal has failed to consider the fact that son of the deceased was not dependant on the deceased and is gainfully employed with Delhi Police since 2010. It is further contended that the specific assertions made by the Insurance Company in its written statement regarding the invalid/fake driving license was not denied by Respondent no. 5 and 6 before the Ld. Tribunal and the fake driving license was for LMV vehicle whereas the offending vehicle was LMV commercial. It is further submitted that the Ld. Tribunal has erred in awarding exorbitant amount of compensation towards non-pecuniary heads and the income of the deceased has erroneously been taken as Rs. 25,722/- per month.

6. On the other hand, Ld. counsel for the respondent No. 1 to 4 has disputed aforesaid claim of the appellant-Insurance Company with submissions that there is no infirmity in the impugned award dated 05.10.2015 passed by the Ld. Tribunal, inasmuch as the Ld. Tribunal has already dealt with each and every issue raised by the appellant-Insurance Company herein in great detail while passing of the impugned award and contends that there is no merit in the present appeal, accordingly, it deserves to be dismissed.

7. The Ld. Tribunal while deciding the issue of fake driving license of the offending vehicle, made the following observations:

> *"37. In **National Insurance Co. Ltd. V. Swaran Singh & Ors.,** the Hon'ble Supreme Court of India dealt with the aspect of liability in case of violation of terms of insurance policy. The Hon'ble Court summarised its findings as under:-*

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2){a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defences(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case,

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the

> ***accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.***
> ***(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or will not have to be determined in each case.***

38. Considering the observations and directions of the Hon'ble Supreme Court, the contention of the Ld. Counsel for the Insurance cannot be accepted."

8. The findings given on this issue against the appellant-Insurance Company were mainly on the ground that it can be reasonably inferred from the aforementioned that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or any third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver.

9. As far as the contention of the learned counsel for the appellant that the specific assertions made by the Insurance Company regarding the invalid/fake driving license were not denied by the Respondent no. 5 and 6, this Court is of the opinion that the same cannot be accepted as the burden lies on the insurance company to prove that licence of the driver of offending vehicle was fake, by examining the author of the document

(RTO), and unless the same is proved as a fake document, the shifting of the liability on the owner does not arise.

10. In ***Nirmala Kothari Vs. United India Insurance Co. Ltd., Civil Appeal Nos. 1999-2000 of 2020 (Arising Out of SLP (C) Nos. 14739-14740 of 2018),*** the Hon'ble Supreme Court has held and observed as follows:

> *"11. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."*

11. Now coming to the issue raised by the Ld. Counsel for the appellant that the son of the deceased is not entitled to any compensation as he was not dependant on the deceased and is gainfully employed with Delhi Police since 2010, does not cut much ice as it has been reiterated time and again that major, married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads

only. Reliance can be placed on the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Birender and Ors., Civil Appeal Nos. 242-243 of 2020 (Arising Out of SLP (C) Nos. 976-977 of 2020).***

12. Perusal of the Award dated 05.10.2015 shows that the learned Tribunal has awarded a sum of Rs. 1,00,000/-, Rs. 1,00,000/- and Rs. 25,000/- towards '*Loss of Estate', 'Loss of Consortium'* and '*Funeral Expenses'*, respectively.

13. In the instant case, the deceased was aged 47 years at the time of the accident and left behind his widow, mother and two children as his dependents. 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 towards '*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 amount awarded by the Tribunal towards '*Loss of Estate', 'Loss of Consortium'* and '*Funeral Expenses'* stands modified to the following extent:

i) Loss of Estate: Rs. 16,500/-

ii) Loss of Consortium: Rs. 44,000 x 4 (dependents) = Rs. 1,76,000/-

iii) Funeral Expenses: 16,500/-

14. 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."***

In view of the above, the amount of Rs. 3,00,000/- awarded by the learned Tribunal towards *'loss of love and affection'* shall be deducted from the awarded amount.

15. Therefore, the appeal stands partly allowed only to the extent of deduction towards *'loss of love and affection',* and the amount awarded towards '*Loss of Estate', 'Loss of Consortium'* and '*Funeral Expenses'* stands modified to the extent of Rs. 16,500/-, Rs. 1,76,000/- and 16,500/-.

16. After deducting the aforesaid amount of Rs. 3,00,000/- awarded by the Tribunal towards *'loss of love and affection'* from the final award amount, the compensation amount shall be deposited by the appellant-Insurance Company, along with interest accrued thereon, before the learned 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.

17. Accordingly, the appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the award.

18. The Tribunal shall re-compute the compensation amount in terms of the directions contained herein. Trial Court Record be sent back along with a copy of this Judgment for compliance.

19. The matter shall be listed before the concerned Tribunal on 25th May, 2023 for the purpose of re-computation of award amount and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

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