



2023:DHC:8724



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 05.12.2023***

+ MAC.APP. 743/2019 & CM APPL. 37347/2019
UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION Appellant

Through: Mr.Shadab Khan, Adv.

versus

SMT. RAJ RANI & ORS. Respondents

Through: Ms.Sucharita Ghosh, Adv. for
R-1 & R-2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 04.05.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (North-West District), Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.79/2017, titled as ***Smt.Rajrani & Anr. v. Sh. Saurabh Dubey & Anr.***

2. It was the case of the respondent nos.1 & 2, that is, the claimants before the learned Tribunal, that on 01.10.2016 at about 08:30 a.m., their son, the deceased-Sh. Ajay Garg, was travelling as a pillion rider on a Scooty bearing registration no. UP-16AV-7224, which was being driven by Sh. Rakesh Bansal. When they reached near Indirapuram Chowk, Ghaziabad, one bus bearing registration no. UP-14CT-0058 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by the respondent no.3 herein in rash and

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negligent manner and at a very high speed, came from the backside and hit the scooty on which the deceased was travelling. As a result of the accident, the deceased fell down on the road and sustained fatal injuries. He was removed to the SJM Hospital, from where he was referred to the Fortis Hospital, and then to the MMG Hospital, where he was declared as 'Brought Dead'.

3. The learned Tribunal, on appreciation of evidence led before it, has held that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner. The learned Tribunal has also granted the following compensation in favour of the respondent nos.1 and 2:

<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Dependency	Rs.23,85,000/-
2.	Compensation on account of non-pecuniary loss	Rs.15,000/- Rs.15,000/- Rs.80,000/- = Rs.1,10,000/-
	Total	Rs.24,95,000/-

4. The appellant is aggrieved of the compensation granted in favour of the respondent nos.1 and 2 under the head of loss of dependency.

5. The learned counsel for the appellant submits that the deceased was admittedly a 'bachelor' aged around 19 years. He submits that in terms of the judgment of the Supreme Court in *Sarla Verma (Smt)*

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and Ors. v. Delhi Transport Corporation & An., (2009) 6 SCC 121, half of the income of the deceased should have been deducted towards his personal and living expenses, for determining the compensation payable towards the loss of dependency.

6. On the other hand, the learned counsel for the respondent nos.1 and 2 submits that the respondent no.2, in his Evidence by way of Affidavit as PW-2 before the learned Tribunal, had stated that the deceased was the sole bread earner of the family, while PW-2 was staying back home and looking after his physically immobile wife, that is, the respondent no.1 herein, who was suffering from a spinal injury problem. The learned counsel for the respondent nos.1 and 2 submits that the said witness was not cross-examined on this aspect by the appellant. She submits that, therefore, it was proved that even the respondent no.2, that is, the father of the deceased was dependent on the deceased, and the learned Tribunal has rightly deducted only 1/3rd of the income of the deceased towards his personal and living expenses.

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

8. What is of the most relevance in the present case is that the learned Tribunal has held that the respondent no. 1 and 2 were unable to prove that the deceased was working at all. In fact, the learned Tribunal has assessed the income of the deceased on the basis of the Minimum Wages of a skilled worker. The relevant finding of the learned Tribunal is reproduced as under:

“24. The petitioners have claimed that the





deceased Sh. Ajay Garg was working as a Manager (sales) with M/s. Bansal Steels, C-84, Sec-9, Noida 201301 and was getting a salary of Rs. 18,000/- per month excluding the incentives of Rs. 2000/- per month. On the contrary, the respondents have vehemently refuted the claim taking the stand that the deceased Sh. Ajay Garg was infact a student preparing for B.Tech. examination. Adverting to evidence which has come on record, petitioner has placed on record a letter issued on behalf of one M/s Bansal Steels as Ex. PW1/6 which is a letter issued by the Proprietor of the M/s. Bansal Steel. Interesting to note here that the aforesaid proprietor happens to be the same Sh. Rakesh Bansal on whose scooty, the deceased was a pillion rider. Interesting to further note here that the aforesaid Sh. Rakesh Bansal was examined by the petitioners as PW-3 in his capacity as an eye witness to the incident but there is no iota of any evidence in his entire deposition of having employed the deceased with his firm M/s. Bansal Steels or have issued the letter dated 01.12.2016 of which he was the actual author. Even otherwise, the petitioners have also failed to prove the mode of salary or file any document showing credit of salary in the account of deceased and even have failed to file the ITR or any other document reflecting the aforesaid. On the contrary, the respondents have duly examined R-1 Sh. Saurabh Dubey, who in his deposition in Ex. RIW1/1 has deposed on oath that the deceased was preparing for B. Tech. examination and has even filed the reports Mark-B and Mark-C, though, during cross examination, he has stated that he is not actually aware about the avocation of the deceased. Since, the factum of the deceased working and the salary has not been proved and keeping in view of the fact that the tribunal is further not bound by strict rules of procedure and the fact that the present proceedings are under a beneficial legislation, the tribunal deem it appropriate to consider





the minimum wages of a skilled worker as the income of the deceased Sh. Ajay Garg to be Rs. 11,830/-."

(Emphasis supplied)

9. The above finding of the learned Tribunal has not been assailed by the respondent nos. 1 & 2, by filing any appeal against the same. Once it is held that the respondent nos. 1 and 2 have been unable to prove that the deceased was working at the time of the accident, the statement of PW-2 that he was also dependent on the income of the deceased cannot be believed.

10. The learned Tribunal, while directing the deduction of only 1/3rd of the income of the deceased towards the personal and living expenses, has not given any reason for the same. I may quote paragraph 25 of the Impugned Award, as under:

*"25. The deceased Sh. Ajay Garg was survived by his parents. During the cross examination of PW-1 and PW-2 Smt. Rajrani and Sh. Mahender (parents of the deceased) by Ld. Counsel for the respondents, have deposed that they were the only dependents of the deceased. Therefore, the loss of estate is to be taken as 2/3rd of the income of the deceased. As such a deduction of 1/3rd is to be made from the income of the deceased accordingly and in terms of **Sarla Verma** case."*

11. In **Sarla Verma** (supra), the Supreme Court has, in a case relating to the case of the compensation for the death of a bachelor, held as under:

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as





personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.”

12. In my view, the learned Tribunal has therefore, erred in directing the deduction of only $1/3^{\text{rd}}$ of the income of the deceased for his personal and living expenses. The same should have been deducted as half of the income of the deceased.

13. In view of the above, compensation awarded to the respondent nos.1 and 2 towards the loss of dependency, and consequently the total compensation, shall stand reduced and is re-assessed as under:

<u>S.No.</u>	<u>Particulars</u>	<u>Amounts</u>
1.	Income	Rs.11,830/-
2.	Months	12
3.	Multiplier	18
4.	Future Prospects	40%
5.	Deduction towards Personal & Living Expenses	1/2
6.	LOSS OF DEPENDENCY	=11830x12x18x140/100x 1/2 = Rs.17,88,696/-
7.	Non-Pecuniary Heads	Rs.1,10,000/-





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8.	<u>Total</u> <u>Compensation</u>	<u>Rs.18,98,696/-</u>
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14. This Court, by its order dated 21.08.2019, had directed the appellant to deposit the awarded amount along with interest before the learned Tribunal. Out of the amount so deposited, 80% thereof was directed to be released in favour of the respondent nos.1 and 2.

15. Now as the compensation amount stands reduced, the excess amount deposited by the appellant be released in favour of the appellant along with interest accrued thereon. The remaining amount shall continue to be released in favour of the respondent nos.1 and 2 in terms of the schedule of disbursal as prescribed by the learned Tribunal in its Impugned Award.

16. The appeal partially succeeds in the above terms. There shall be no order as to cost.

17. The statutory amount deposited by the appellant be returned back to the appellant along with interest accrued thereon.

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

NAVIN CHAWLA, J

DECEMBER 5, 2023/Arya

Click here to check corrigendum, if any

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