



2024:DHC:9767



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 11th December, 2024*+ **MAC.APP. 22/2024**1. **SMT. GAYTRI DEVI**

W/o Late Shri Ramji VishwakarmaAppellant No. 1

2. **AJAY VISHWAKARMA**

S/o Late Shri Ramji VishwakarmaAppellant No. 2

3. **JANKI**

D/o Late Shri Ramji VishwakarmaAppellant No. 3

4. **NANDANI**

D/o Late Shri Ramji VishwakarmaAppellant No. 4

5. **VIJAY**

S/o Late Shri Ramji VishwakarmaAppellant No. 5

Petitioner Nos. 4 & 5 being minor through their
natural guardian i.e., mother (Appellant No. 1)**All R/o Nautan Hathiyagarh, Post Hatimpur,
District Deoria, Uttar Pradesh-274206**

Through: Mr. Pankaj Gupta, Advocate.

versus

1. **THE NEW INDIA ASSURANCE CO. LTD**Regional Office House J-129, 2nd Floor,
Satguru Ram Singh Road, J-Block,
Kirit Nagar, Delhi-110015Respondent No. 12. **MITHLESH KUMAR PASWAN**S/o Shri Kumud Paswan,
R/o H. No. 90-91-92, Tilak Enclave,



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Part-I, Mohan Garden, Uttam Nagar,
Delhi-110018

.....Respondent No. 2

3. **KUMUD PASWAN**

S/o Shri Ramji Paswan,
R/o H. No.14-15 & 90-91-92, Tilak Enclave,
Part-I, Mohan Garden, Uttam Nagar,
Delhi-110018

.....Respondent No. 3

Through: Mr. Salil Paul, Mr. Sahil Paul & Mr.
Sandeep Dayal, Advocates for R-1.

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MAC.APP. 25/2024 & CM APPL. 1526/2024

NEW INDIA ASSURANCE CO. LTD

Delhi Legal Hub RO (820000),
Core-3, 1st Floor, Scope Minar,
Laxmi Nagar District Centre,
Delhi-110092

.....Appellant

Through: Mr. Salil Paul, Mr. Sahil Paul & Mr.
Sandeep Dayal, Advocates.

versus

1. **GAYTRI DEVI**

W/o Late Shri Ramji Vishwakarma

.....Respondent No. 1

2. **AJAY VISHWAKARMA**

S/o Late Shri Ramji Vishwakarma

.....Respondent No. 2

3. **JANKI**

D/o Late Shri Ramji Vishwakarma

.....Respondent No. 3

4. **NANDANI**

D/o Late Shri Ramji Vishwakarma

.....Respondent No. 4

5. **VIJAY**

S/o Late Shri Ramji Vishwakarma

.....Respondent No. 5



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Petitioner Nos. 4 & 5 being minor through their natural guardian i.e., mother (Respondent No. 1)

**All R/o Nautan Hathiagarh, Post Hatimpur,
District Deoria, Uttar Pradesh-274206**

6. MITHLESH KUMAR PASWAN

S/o Shri Kumud Paswan,
R/o H. No. 90-91-92, Tilak Enclave,
Part-I, Mohan Garden, Uttam Nagar,
Delhi-110018

.....Respondent No. 6

7. KUMUD PASWAN

S/o Shri Ramji Paswan,
R/o H. No.14-15 & 90-91-92, Tilak Enclave,
Part-I, Mohan Garden, Uttam Nagar,
Delhi-110018

.....Respondent No. 7

Through: Mr. Pankaj Gupta, Advocate for R-1 to 5.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The cross Appeals under *Section 173 of the Motor Vehicles Act, 1988* have been filed on behalf of the Claimants and Insurance Company respectively, against the Award dated 11.10.2023.

2. In **MAC.APP.22/2024**, the Claimants have sought the enhancement of the compensation amount granted in the sum of Rs. 12,58,516/- along with interest @ 7% per annum, on account of death of Shri Ramji Vishwakarma in a road accident which took place on 04.12.2020.

3. The ***grounds on which the enhancement of compensation*** have been sought are as under: -



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- (i) that *50% contributory negligence* has been attributed to deceased Shri Ramji Vishwakarma incorrectly.
- (ii) that the *Loss of Consortium* has been granted in the sum of Rs. 44,000/-, though there are *five Claimants* and each of the five Claimants is entitled to Rs. 44,000/-.
- (iii) that the *interest has been granted @ 7% per annum*, and the same should be enhanced to 9% per annum.
4. In *cross Appeal i.e., MAC.APP. 25/2024, the Insurance Company has challenged the impugned Award on the following ground: -*
- (i) that the *Minimum Wages* of deceased, Shri Ramji Vishwakarma have been taken as per Delhi, when the deceased was the resident and working in Uttar Pradesh and the Minimum Wages of Uttar Pradesh i.e., Rs. 8,758/- should have been taken while calculating the compensation.
5. **Submissions Heard and Record Perused.**
6. *Briefly stated*, on 04.12.2020 at about 07:16 P.M., the deceased Shri Ramji Vishwakarma was near Paschim Vihar West Metro Station, Delhi, when the offending vehicle bearing Registration No. DL 4SBU 5132 (Hero Honda Bike) hit him because of which he had suffered fatal injuries and was taken to SGM Hospital, Mangolpuri, Delhi, where he expired on 13.12.2020 during the treatment.
7. An FIR bearing No. 697/2020 under *Sections 279/304A of the Indian Penal Code, 1860 (hereinafter referred to as "IPC, 1860")* was registered at Police Station Paschim Vihar, East, Delhi.
- Contributory Negligence:**
8. The *first ground of challenge* is that the *contributory negligence* has



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been attributed to the deceased Shri Ramji Vishwakarma.

9. The Claimants had examined *PW1 Smt. Gaytri Devi*, wife of deceased Shri Ramji Vishwakarma, who had deposed about the accident and about the income of the deceased. She admittedly was not the eyewitness.

10. Admittedly, the FIR No. 697/2020 under *Sections 279/304A of IPC, 1860* was registered at Police Station Paschmi Vihar, East, Delhi and after due investigations, the Chargesheet under *Sections 279/304A of IPC, 1860* had been filed against the Driver, Mithlesh Kumar Paswan.

11. The learned Claim Tribunal in the impugned Award dated 11.10.2023, observed that from the Site Plan, it is evident that the accident took place almost in the middle of the road where there was no Zebra Crossing. As per the MLC dated 04.12.2020 of deceased Shri Ramji Vishwakarma, he was under the influence of alcohol. Therefore, it was concluded that 50% contributory negligence was attributable to deceased Shri Ramji Vishwakarma.

12. *First and foremost*, the Chargesheet along with the documents which is collectively Ex.PW1/6, had been filed against the Driver, Mithlesh Kumar Paswan. There is no evidence led by the Driver, who was the other material witness to controvert the manner of accident. The Chargesheet so filed stated that there was negligence on the part of the driver of the offending vehicle.

13. *The moot question is whether 50% contributory negligence can be attributed to deceased Shri Ramji Vishwakarma?*

14. The Site Plan shows that the accident occurred on the extreme left side of the road at Point 'D' and not in the middle of the road, as has been observed by the learned Claim Tribunal. *Secondly*, even if there was no



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Zebra Crossing, there can be no presumption of negligence on the part of the pedestrian. The driver of the offending vehicle had the corresponding right to exercise due care and caution to ensure that he does not hit any person who may be crossing the road even if there is no Zebra Crossing. The driver of the vehicle has to recognise the first right of the pedestrian and to avoid any person who may be crossing the road.

15. The learned Claim Tribunal, therefore, fell in error in concluding that because there was no Zebra Crossing where the pedestrian was crossing the road, the negligence has to be attributed to deceased Shri Ramji Vishwakarma, especially when the point of accident is not in the middle of the road, but on the extreme left side of the road.

16. The other ground on which the negligence has been attributed to deceased Shri Ramji Vishwakarma is that in the MLC, it was recorded that the patient was having smell of alcohol. However, mere presence of smell of alcohol in itself is *ipso facto* not a factor to conclude to negligence, unless there was some cogent evidence to show that deceased Shri Ramji Vishwakarma was in such an inebriated condition, that he came suddenly in front of the vehicle without giving any time to the driver to apply breaks. No such facts have been brought on record. Therefore, mere presence of alcohol which could be on account of various reasons, including having taken some medicine, it cannot be said that deceased Shri Ramji Vishwakarma in any manner contributed to negligence in causing the accident.

17. The findings of the Claim Tribunal attributing 50% contributory negligence have to be, therefore, recalled. ***The compensation amount is to be worked afresh without deducting 50% from the wages of deceased Shri***



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Ramji Vishwakarma.

Minimum Wages:

18. The Insurance Company has asserted that the Minimum Wages have been taken of Delhi, when there is not an iota of evidence to prove that deceased Shri Ramji Vishwakarma was working as a Carpenter in Delhi.

19. To appreciate this assertion, reference be made to the testimony of PW1/Smt. Gaytri Devi who had deposed that deceased Shri Ramji Vishwakarma along with his father and maternal uncle, had been residing in Delhi, while the entire family was residing in Deoria, Uttar Pradesh. However, while it was deposed that deceased Shri Ramji Vishwakarma was the resident of Mangolpuri, Delhi, pertinently, no address of deceased Shri Ramji Vishwakarma of Mangolpuri, Delhi has been given nor any proof of any kind showing that he was working as a Carpenter in Delhi, has been furnished.

20. A reference may be made to the *Handing over Receipt of Dead Body Ex. PW1/4*, wherein deceased Shri Ramji Vishwakarma has been shown as resident of Deoria, Uttar Pradesh. In the Death Certificate, Funeral Receipt, medical documents, the deceased is shown as the resident of UP. Pertinently, *Niwas/Character Certificate* dated 11.12.2021 issued by the Gram Pradhan, certifies that deceased Shri Ramji Vishwakarma was the resident of Deoria, Uttar Pradesh. The Voter I-Card of deceased Shri Ramji Vishwakarma also shows him as the resident of Deoria, Uttar Pradesh. Not a single document has been produced to corroborate that deceased Shri Ramji Vishwakarma was residing and working in Delhi.

21. There can be no denying that the deceased could have been residing/working in Delhi, while his family resided in UP, but then the



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Appellants should have been able to adduce some evidence about his address, but unfortunately all the documents establish that he was not residing and working in Delhi.

22. The learned Claim Tribunal thus, fell in error in taking the Minimum Wages of Delhi when it should have been of Uttar Pradesh for unskilled worker.

23. Accordingly, *the income of deceased Shri Ramji Vishwakarma is hereby taken as per Minimum Wages for unskilled worker in Uttar Pradesh, which is Rs. 8,758/-p.m.*

Loss of Consortium:

24. The Claimants have also sought enhancement of compensation on account of Loss of Consortium. A sum of Rs. 44,000/- towards Loss of Consortium has been granted to the Claimants, when, in fact, there are five Claimants. In the light of the Judgment in National Insurance Company Limited vs. Pranay Sethi & Ors., (2017) 16 SCC 680, each of the five Claimants is entitled to Rs. 44,000/- towards Loss of Consortium. Accordingly, **Loss of Consortium is enhanced and calculated as Rs. 44,000/- x 5 = Rs. 2,20,000/-.**

25. The enhancement of the interest has also been sought on the ground that the accident involved in the present case was of 2020 and the interest was given @ 7% per annum.

26. Considering these facts, *the interest is hereby enhanced to 9% per annum from the date of filing of Claim Petition till the date of disbursement of the compensation amount.*

Relief:

27. In view of above, the compensation is revised as under: -



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S. No.	Heads	Awarded by Tribunal	Enhanced by this Court
1.	Income of deceased (A)	Rs. 15,492/-	Rs. 8,758/-
2.	Add-Future Prospects (B)	25%	Same
3.	Less-Personal Expenses of deceased (C)	1/4 th deduction	Same
4.	Monthly Loss of Dependency [(A+B)-C=D]	Rs. 14,524/-	Rs. 8,211/-
5.	Annual Loss of Dependency (D x 12)	Rs. 1,74,288/-	Rs. 98,532/-
6.	Multiplier (E)	14	Same
7.	Total Loss of Dependency (D x E=F)	Rs. 24,40,032/-	Rs. 13,79,448/-
8.	Medical Expenses (G)	NIL	Nil
9.	Compensation for Loss of Consortium (H)	Rs. 44,000/-	Rs. 44,000/- x 5 = Rs. 2,20,000/- (to each five Claimants)
10.	Compensation for Loss of Love and Affection (I)	NIL	Nil
11.	Compensation for Loss of Estate (J)	Rs. 16,500/-	Rs. 16,500/-
12.	Compensation towards funeral expenses (K)	Rs. 16,500/-	Rs. 16,500/-
13.	TOTAL	Rs. 12,58,516/-	Rs. 16,32,448/-



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	COMPENSATION (F+G+H+I+J+K = L)	(after deducting 50% on account of contributory negligence)	Rounded off to Rs. 16,32,500/- (no deduction on account of contributory negligence)
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28. The compensation amount of **Rs. 16,32,500/-** along with upto date interest @ 9% per annum, be deposited by the Insurance Company before the learned Claim Tribunal within four weeks, which may be disbursed in accordance with Award dated 11.10.2023.

29. The statutory amount deposited, be refunded to the Insurance Company.

30. Accordingly, both the Appeals along with pending Application(s) are hereby disposed of in the aforesaid terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024
S.Sharma