



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

% **Judgment reserved on : 01 March 2024**
Judgment pronounced on : 02 July 2024

+ **MAC.APP. 52/2017 & CM APPL. 29170/2023**

NATIONAL INSURANCE CO LTD Appellant
Through: **Mr. Manoj Ranjan Sinha, Mr. Deepak Sain & Ms. Nisha,**
Adv.

versus

ASHOK KUMAR KOCHHAR & ORS Respondents
Through: **Mr. D.K. Sharma & Ms. Seema,** Adv. for R-1 to R-3
along with R-2 in person.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 07.10.2016 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, (South-East), Saket Courts, New Delhi, claiming that the amount of compensation is on the higher side, arbitrary and unfair.

FACTUAL BACKGROUND

2. Shorn of unnecessary details, the DAR² was filed on 22.02.2016 to the effect that on 07.01.2016, Smt. Chander Kochhar, who was travelling on an Activa two-wheeler scooter bearing registration No.

¹MV Act

²Detailed Accident Report



DL-3SBX6967 which was being driven by her husband viz., respondent No.1, was hit by a bus bearing registration No. DL-1PA-7811³ being driven by the respondent/driver⁴-Ravinder, as a result of which, she sustained fatal head injuries and died at the spot. Consequently, an FIR⁵ No. 15/2016 under Section 279/337/304-A of the IPC⁶ was registered at Police Station Kalkaji against the respondent/driver-Ravinder.

3. Notices of the DAR/claim petition for compensation moved on the behalf of the legal heirs of the deceased viz., the husband and two sons, were duly served upon the respondent/driver as well as the registered owner⁷ of the offending vehicle, but they failed to appear and contest the claim petition. Evidently, the offending vehicle was insured for third party risks with the appellant/insurance company and the learned Tribunal vide the impugned judgment-cum-award dated 07.10.2016 held that the driver/Ravinder was responsible for causing the accident since he was driving the offending vehicle in a rash and negligent manner and thereby, resulting in fatal injuries to the deceased, and this finding is not assailed in the instant appeal.

4. As regards the quantum of compensation, the learned Tribunal found that the deceased was 59 years of age at the time of accident

³ Offending vehicle

⁴ Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

⁵ First Information Report

⁶ Indian Penal Code, 1860

⁷ Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.



and she was working as an Accountant with Central Council for Research in Ayurvedic Sciences and was getting a salary of Rs. 56,975/- per month. She was survived by her husband and two adult sons namely Sunny Kochhar and Raman Kochhar. The learned Tribunal also considered that her husband namely Ashok Kumar Kochhar, was 65 years of age. Thus, based on the salary slip of the deceased for the month of December, 2015 Ex.PW-1/4 and deducting Rs. 3504/- towards transport allowance and further carrying deduction of Rs. 3363/- towards income tax, the net salary of the deceased was reckoned to Rs. 50,108/- [Rs. 56,975 - 6867 (3504+3363)] per month.

5. However, considering the component of basic salary @ Rs.16,790 + Dearness Allowance (DA), the salary income was reckoned to be Rs. 42,244/-. The learned Tribunal deducted 50% of the income of the deceased towards personal use and living expenses and thus, the annual income for the purpose of ascertaining loss of dependency was worked out to be Rs. 2,53,464/-. Further, applying the multiplier of '7', the loss of dependency was worked out to be Rs.17,75,000/- (rounded off). Lastly, each of the dependents i.e. the husband and two children, were awarded a total of Rs. 1,50,000/- towards loss of love and affection; Rs. 50,000/- each towards funeral expenses and loss of estate besides Rs. 1,50,000/- towards loss of consortium. Thus, the total amount of compensation was arrived at Rs. 21,75,000/- along with interest @ 9% per annum from the date of filing of the DAR till realization.

6. Learned counsel for the appellant/insurance company, while challenging the quantum of compensation awarded by the learned



Tribunal, was mercifully brief and it was urged that since the surviving husband was also a Pensioner, the award of compensation towards loss of financial dependency was not sustainable and it was urged that the claimant-husband was only entitled for compensation on account of loss of estate and in this regard, the compensation should have been assessed in terms of the decision in the case of **Keith Rowe v. Prashant Sagar**⁸.

7. *Per contra*, learned counsel for the claimants vehemently urged that the learned Tribunal did not commit any grave irregularity in assessment and the compensation has been awarded rather on the extreme lower side, which should be *suo moto* enhanced by this Court.

ANALYSIS AND DECISION:

8. Having heard the learned counsels for the rival parties at the Bar and on perusal of the record including the digitized Trial Court Record, this Court has no hesitation in holding that the impugned judgment-cum-award cannot be sustained as it exists and the same requires interference and modifications.

9. The core issue is how and in what manner the compensation needs to be assessed in case of death of a wife when the surviving husband is himself financially independent. The issue came up for consideration in the case of **Keith Rowe (supra)**. It was a case where the deceased-wife was 31 years of age, having no child from the wedlock and in such background, the Court summarized the principles of law as under:-

(i) The law contemplates two categories of damages on the death of

⁸ 2010 SCC OnLine Del 4686



a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (*Note:* for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of Loss to Estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased. A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim Loss of Dependency, and in cases where the claimants who are not dependents claim Loss to Estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of Loss to Estate. The method of selection of multiplier is however the same in both cases.



10. It is pertinent to mention that this Court in the aforesaid judgment, relied on a decision of the Karnataka High Court in the case of **A. Manavalagan v. A. Krishnamurthy**⁹, wherein the Court held that where the surviving husband was not financially dependent on the deceased/wife, there was no question of determination of loss of financial dependency except that the compensation has to be reckoned towards loss of estate, which should be $\frac{1}{3}$ rd of the annual income of the deceased applied by the suitable multiplier. Thus, in the case of **Keith Rowe (supra)**, this Court assumed the income of the deceased/wife @ Rs. 13,000/- per month towards which, 50% was added towards future prospects and $\frac{1}{3}$ rd was assessed towards loss of estate to which, the multiplier of '15' was applied.

11. It appears that the learned Tribunal was not apprised of the decision in the case of **Keith Rowe** and it is but apparent that the learned Tribunal has committed grave errors in assessing the compensation towards loss of financial dependency on account of death of the wife of the claimant-husband. There is no gainsaying that the case law is replete with the proposition that the compensation has to be just and reasonable and not a bounty. In a contemporary Indian society, which is by and large a patriarchal set up, while the death of the wife would definitely entail pain and misery to the surviving husband, the element of financial dependency has to be discounted

⁹ 2004 SCC OnLine Kar 222



and the loss would be in the nature of loss to estate¹⁰.

12. Hence, considering the Basic pay + DA, which comes to Rs.42,244/- and also the fact that the deceased was 59 years of age and she would have retired in a year and would have been getting pension as well, future prospects @ 15% is to be added i.e. Rs. 6,336.6/- (rounded off to Rs. 6,337) and the amount comes to Rs. 48,581/-, 2/3rd of which would be the monthly loss to the estate i.e. Rs. 16,194/-. Further, applying the multiplier of '9', the figure comes to Rs.17,48,916/- (Rs. 48,581 x 1/3 x 9 x 12). Further, each of the claimants is awarded compensation towards loss of consortium, which comes to Rs. 1,20,000 (40,000 x 3) besides Rs. 15,000/- towards loss of funeral expenses. Thus, the total compensation comes to Rs. 18,83,916/-.

13. Accordingly, the impugned judgment-cum-award passed by the learned Tribunal is hereby set aside and the respondents/claimants shall be entitled to a total compensation of Rs. 18,83,916/- (Rupees Eighteen Lacs Eighty Three Thousand Nine Hundred Sixteen Only) with interest @ 7.5 % from the date of filing of the claim petition till realization.

14. Needless to state that the interest is also being reduced from 9% to 7.5% since this Court has been taking a consistent view that the rate of interest should ordinarily be @ 7.5%, particularly in view of the fact that the DAR was filed on 22.02.2016 and the impugned judgment-cum-award was delivered within a period of eight months.

¹⁰ This Court has taken a similar view in another case titled "Oriental Insurance Company Ltd. v. Pawan Kumar Sharma" 2024 SCC OnLine Del 2708 decided on 15.04.2024.



15. The interim order passed by this Court dated 16.01.2017, whereby the operation of the impugned judgment-cum-award was stayed, is hereby vacated. The compensation so awarded shall be paid to the two sons of the deceased, which is quantified @ Rs. 40,000/- each with accrued interest and the balance amount shall be paid to the respondent No.1/husband with accrued interest. The compensation shall be paid within four weeks from today, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum from the date of this judgment till realization.

16. Accordingly, the appeal preferred by the appellant/insurance company is allowed. The amount of Rs. 25,000/- towards statutory deposit be released to the appellant/insurance company forthwith.

17. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JULY 02, 2024

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