



2024:DHC:8224



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 7th October, 2024

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MAC.APP. 31/2021, CM APPL. 1975/2021,CM APPL. 36119/2021

NATIONAL INSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Manoj Ranjhan Sinha, Mr.
Deepak Sain, Ms. Nisha and Mr.
Ashish K. Rathour, Advocates.

versus

SMT. NISHA JHA AND ORS.

.....Respondents

Through: Mr. Navneet Goyal, Advocate for
R-1 to R-4.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. An Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the Insurance Company/Appellant against the Award dated 21.09.2020 on the ground that *there was contributory negligence* proved on the part of the driver/deceased, thereby making the Insurance Company not liable to pay the compensation.

2. **The facts in brief** as stated in the impugned Award was that on 19.05.2015 at about 01:10 P.M, deceased Sanjeeb Kumar Jha, while travelling in his car bearing No.HR-10Y-2359 near NH1, GTK road, Near



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Sai Mandir, Alipur dashed from behind in a Truck bearing No.HR-55S 5267 that was allegedly parked in the middle of the road by its driver. Serious injuries were suffered by the driver of the car who later expired during the course of the treatment.

3. *The Detailed Accident Report (DAR)* was filed by the police before the Tribunal which was treated as Claim Petition under Section 166(4) of the Motor Vehicles Act, 1988. The *respondent No.1 to 5/claimants* sought compensation for the death of Shri Sanjeeb Kumar Jha.

4. Learned Tribunal decided the Claim Petition *vide* impugned Award dated 21.09.2020 and the Insurance Company was directed to pay a sum of Rs.83,88,960/- with interest @ 9% per annum from the date of filing of Claim Petition till the date of realization.

5. The appellant has *challenged* the Award on various grounds. *Firstly*, it is asserted that the negligence of the driver/deceased in causing the accident and not of the alleged stationary truck which was parked on the side of the road. It is claimed that the deceased's car dashed from behind into the insured vehicle/ truck that was parked at the side of 100 ft. road. Though it was alleged that the vehicle was parked in the middle of the road, but the Site Plan clearly demonstrates that it was parked on the left hand side of the road. The Tribunal has failed to appreciate that the accident happened in the broad day light at 01:00 P.M on 19.05.2015 and it cannot in any manner be believed that the alleged offending truck was not visible from a distance; the only conclusion that can be drawn is that the deceased was driving the vehicle in a rash and negligent manner.

6. The *second ground for challenge* is that the Tribunal has failed to make proper deduction of Income Tax from the income of the deceased as



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has been settled by the Supreme Court.

7. The *third ground of challenge* is that the compensation granted under Non-pecuniary heads and the rate of interest are not in accordance with the settled principles of law.

8. Thus, the Award is assailed and a prayer is made that it may be set aside.

9. ***The learned Counsel for the respondents*** has vehemently opposed the present Appeal. In the ***Written Synopsis*** of Respondent's No.1, 2, 4 and 5, it has been submitted that the impugned Award dated 21.09.2000 has rightly stated that the accident occurred due to the negligence of the Truck being parked in the middle of the road without any blinkers or indicators on. The driver of the offending vehicle neither put any reflector or any stone or tyre, etc. behind the truck. The blinkers lights of the truck was also not switched on at that moment.

10. The claimants have examined four witnesses namely *PW1/Nisha Jha* widow of the deceased, *PW2/Anil Pal* the eye witness, *PW3/Mahender Singh* HR of employer Company and *PW4/Sh. Ravi Sehrawat* from Income Tax Office. The Insurance Company had examined three witnesses i.e. *R3W1/Sh. Vivek Shukla* from Income Tax Department, *R3W1/(sic.) Shri Dharmender*, Single Window Operator Oriental Bank of Commerce and *R3W2/Sh. Ganesh Yadav* driver of the Truck.

11. The learned Tribunal had taken the salary of the deceased as Rs.75,000/- per month and deducted Rs. 35,000/- as Income Tax and taken the Annual Income after adjusting Income Tax, as Rs.8,65,000/-. 25% was added towards the future prospects while 1/4th was deducted towards the personal expenses and multiplier of 14 was applied to compute Loss of



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Dependency as Rs.1,00,91,700/-.

12. For the non-pecuniary Heads, the notional amount of Rs. 2 lakhs was added for Loss of Consortium, Rs.30,000/- for Loss of Estate and funeral Expenses and Rs.1,64,474/- towards Medical bills for hospitalization expenses. The total compensation was calculated as Rs.1,04,86,200/- which was **reduced by 20% on account of contributory negligence** and Rs.83,88,960/- along with interest @ 9% per annum, has been granted.

13. It is submitted that the main contention of the Insurance Company in the present Appeal is that the negligence was solely on the part of the deceased as he had hit a stationary vehicle from behind and therefore, the Learned Tribunal should have deducted more than 20% in lieu of contributory negligence.

14. However, it is pertinent to note that the driver gave his statement to the Police that on main highway road his truck broke down and he stopped it on the road. It was never stated by him that any safety devices were put behind the truck to warn the other road users. The Police case was against the truck driver and there was not an iota of evidence against the deceased. No complaint by the truck driver to higher Police officials or to the Court was made claiming false implication in the Police case. No reply or Written Statement was filed by the truck driver before the Tribunal in reply to the DAR, although the driver was represented through his counsel, on 14.05.2015.

15. The Police also recorded the statement of PW2, Shri Anil Pal, the eye witness who was duly cross-examined by the learned counsel for the Insurance Company but nothing to their benefit could be elicited. PW2/ Shri Anil Pal had categorically deposed that the vehicle was parked in the centre



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of the road. No question regarding putting of stones or reflector or switching on the indicator was asked by the driver, who was represented through his counsel on 14.07.2015.

16. Though the owner of the Truck improved his stand in the Reply by claiming that stones and wheels were put behind the truck, but the Insurance Company produced the driver of the truck as their own witness who stated to the contrary to what he had told to the Police in his statement. Even the Site Plan has not been proved on record by the Insurance Company and I.O ought to have been summoned to prove the same.

17. ***Learned counsel on behalf of the Claimant/Respondents*** has further argued that no vehicle can be parked and left stranded on the main road without proper safety measures such as switching on the indicators, putting reflectors behind the vehicle, putting stones/bricks etc to warn users of the obstruction on road due to the parking of the vehicle. The route where the accident occurred was a three lane road and not 100 ft. road as claimed by the counsel for the Insurance Company. A person driving his vehicle on main Highway road expects no obstruction on the road and if there was some obstruction due to any reason, proper indication ought to have been provided. The learned Tribunal in fact erred in holding that deceased contributed negligence and deducted 20% towards contributory negligence of the deceased.

18. The *second aspect which has been challenged is of Income Tax deduction*. It is submitted that in paragraph 22 of the impugned Award, learned Tribunal has calculated the Income Tax on the Annual income of the deceased. The benefit of savings done by the deceased was also not given. Rs.35,000/- as Income Tax was computed and deducted. No document to



show the discrepancy in computation of Income Tax has been placed on record, therefore, this ground is not tenable.

19. *Though the Insurance Company had also challenged the compensation granted for Non-pecuniary head and the rate of interest, however, the compensation granted is in accordance with law as stated in various judgments and is just and reasonable and not on a higher side. Likewise, the rate of interest granted is as per the rates which are being followed in all the judgments.*

20. It is, therefore, submitted that there is no merit in the Appeal, which is liable to be dismissed.

21. **Submissions heard and Record Perused.**

Deduction for Contributory Negligence

22. Essentially, the only ground on which the serious challenge has been made by the Insurance Company is that it was a case of *contributory negligence* on the part of the deceased and not the driver of the truck. For this, reliance has been placed firstly on the Site Plan wherein the truck was shown parked on the extreme left side of the road and not in the middle as was claimed by *PW2 Shri Anil Pal*, the eye witness. It was also argued that the blinkers had been switched on by the driver to indicate that the vehicle had broken down.

23. In this regard, the first material piece of evidence is the testimony of *PW2 Shri Anil Pal*, who had been categorical in his testimony that the vehicle was parked on the road and there were no indicators or blinkers put around the truck. Though the Insurance Company had given a suggestion that blinkers of the truck were switched on, but aside from a bald suggestion



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nothing more has been produced by the Insurance Company.

24. It is settled law that in case the vehicle breaks down in the middle of the road or on the side, it is pertinent that the blinkers must be switched on and there must be stones etc. put around the broken vehicle to ensure that the other vehicular traffic is aware of the vehicle parked on the side of the road. It cannot be overlooked that when a vehicle is stationary on the road side, it may not be possible for the driver of the other vehicle to comprehend that the vehicle is stationary unless there is enough indication around the stationary vehicle.

25. In the present case, not only has PW2 Anil Pal deposed that there were no blinkers or indicators around the truck, but pertinently, the driver who was examined during the investigations by the Police had also admitted that he had parked the vehicle on the road side as the tyres burst and he had not put any indicator around it.

26. It has been argued on behalf of the respondents that when the driver was produced by the owner in response to the Notice under Section 133 of Motor Vehicles Act, he gave a statement wherein he nowhere averred that he had put the indicator or blinkers around the broken truck.

27. It cannot be overlooked that though the negligence was on the part of the truck driver in parking the vehicle on the road side without putting indicators, but *the learned Tribunal has already deducted 20% by attributing contributory negligence to the deceased and the same warrants no interference.*

Income Tax deductions:

28. Another plea was taken that the Income Tax was not deducted and the



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interest was on higher side, but the same was not seriously contested by the Insurance Company. *In the impugned Award, the learned Tribunal had rightly taken into account the Income Tax deductions, while arriving at the compensation amount and requires no modification.*

Interest:

29. The appellant/insurance Company has challenged the interest rate on the grounds that the interest awarded @ 9% is exorbitant as per the prevailing rates of interest and it was claimed that the same be reduced to @7.5% p.a.

30. In the present case the unfortunate accident happened on 19.05.2015 and the Award was passed in 2020. In a similar case of Oriental Insurance v. Reena Raghav, 2023 SCC OnLine Del 6695, wherein the deceased was a 5 year old girl-child who fell victim to a road accident in 2019, the interest was granted @9% p.a. while passing the Award of Compensation in the Year 2023.

31. While relying upon the judgment of the Apex Court in Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in Reena Raghav (Supra) refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal by observing that the appellant/Insurance Company had only orally made a submission claiming the prevalent rate of interest to be 7.5% p.a., and that too on the basis of Google search and no document had been placed to support the plea of interest being too high.



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32. In light of the above judgments and considering that in the present Appeal as well, apart from making a bald claim about the prevailing rate of interest, the appellant has not filed on record any document to show the rate of interest that was prevailing between the year 2015 to 2020, *there is no reason to interfere with the rate of interest awarded, @9% p.a., by the learned Tribunal.*

Compensation under Non- Pecuniary Heads:

33. Under this head, the notional amount of Rs. 2 lakhs was granted for Loss of Consortium, Rs.30,000/- for Loss of Estate and funeral Expenses and Rs.1,64,475/- towards Medical bills for hospitalization expenses.

34. The amounts granted are on the conservative side and do not warrant any reduction.

Conclusion:

35. There is no infirmity in the impugned Award and the present Appeal is hereby dismissed.

36. The statutory amount, if any, deposited by the Insurance Company, be returned in accordance with law.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 7, 2024

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