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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 1st March, 2024**

\+ MAC.APP. 116/2024 & CM APPL. 10847/2024

SHRI RAM GEN. INS. CO. LTD. ..... Appellant

Through: Mr. Mohd. Mastofa & Mr. Hitesh Shakya, Advs.

versus

MUKESH DEVI & ORS. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 10848/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM APPL. 10849/2024 (delay in filing)

3. This is an application filed by the applicant/appellant seeking condonation of delay of 96 days in filing the present appeal.

4. For the reasons stated in the application and in the interest of justice, the same is allowed. The delay of 96 days in filing the present appeal is condoned.

5. The application stands disposed of.

MAC.APP. 116/2024

6. Original demand draft is not filed for the payment of statutory amount of deposit for preferring this appeal.

7. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988[1] challenging the impugned judgment-cum-award dated 01.08.2023 passed by the learned Presiding Officer, MACT-02 (South-West), Dwaraka, New Delhi[2].

8. No one is present on advance notice for the respondents/ claimants.

9. Learned counsel for the appellant/insurance company has vehemently urged that it was a case where learned Tribunal has erroneously held that respondent No.5 Rajinder Kumar was driving one Echer Canter bearing registration No. HR55M-8733[3] in rash and negligent manner overlooking the fact that the deceased was driving the motorcycle and it was a head on collusion.

10. It is further urged that the quantum of compensation is at a higher side since no evidence was brought forth on the record by the respondents No. 1 to 4/claimants that the deceased was gainfully employed and earning Rs. 11,430/- per month.

11. As regards the plea that the accident was a head on collusion between the two vehicles and the deceased was guilty of contributory negligence, PW-2 Lal Singh S/o Sh. Kartar Singh was examined on behalf of the claimants during the trial, who deposed that deceased was driving a motorcycle bearing registration No. HR-36U-6757 (Hero Honda Splendour) and the offending vehicle came from the opposite side at a high speed besides being driven rashly and

[1] MV Act
[2] Tribunal
[3] Offending vehicle

negligently which hit the motorcycle with a forceful impact. There was no suggestion given to this witness in the cross-examination when examined on behalf of the respondents No. 1 and 2 i.e. the driver and the owner of the offending vehicle as also by the learned counsel for the respondent No.3/ insurance company as to how or in what manner, if at all the deceased contributed to the accident. In other words, there was no suggestion that the deceased was anywhere also responsible and that any recklessness on his behalf contributed to the accident.

12. Therefore, it does not lie in the mouth of the appellant/insurance company to challenge the findings recorded by the learned Tribunal holding that the respondent No. 1 (respondent No.3 in the present appeal) i.e. the driver was guilty of rash and negligent driving.

13. As regards the challenge to the quantum of compensation is concerned, learned Tribunal had arrived at such conclusion that the deceased was earning Rs. 11,430/- per month considering the identity card and salary slip of the deceased, which was proved as Ex.PW-1/2 and Ex.PW-1/3 and also the fact that there was no challenge in the cross-examination of PW-1/Smt. Mukesh Devi, wife of the deceased that her husband was not gainfully employed or that he was not earning such amount of salary from a stable and permanent employment. The deceased was evidently 50 years of age at the time of the accident and accordingly, the learned Tribunal assessed the compensation as follows:

> "As per the judgment in the case of National Insurance Company Limited Vs. Pranay Sethi and others of Hon'ble Supreme Court the net income of the deceased is to be counted after deduction of tax

and future benefit have to be given @ 30%. There are four LRs of victim so he (deceased) is presumed to be spending 1/4h of his income on his personal expenses. Therefore, the income for the purpose of loss of dependency has to be taken as Rs.11,144.25 (11,430/- + 3429/-- 3714.75-) per month. (Paragraph 19)
Keeping in view the fact that the age of the deceased was 50 years old (as per postmortem report). So calculate loss of dependency, the multiplier has to be taken on the basis of age of deceased. A multiplier of 13 is thus taken in calculating loss of dependency. Counting in this way, loss of dependency comes to Rs. 17,38,503/- (11,144.25/- x 12 x 1.3). This amount of Rs. 17,38,503/- is allowed to petitioners no.1 to 4 as loss of dependency. (Paragraph 20)
Apart from amount mentioned above, petitioner no. 1 is also granted a sum of Rs.17,000/- for funeral expenses, Rs.17,000/- for loss of estate and Rs. 1,76,000/- (Rs. 44,000/- each to all the petitioners) for loss of consortium, making a total sum of Rs. 19,48,503/-. Detail of the whole award amount is:-

i. Loss of dependency	Rs. 17,38,503/-
ii. Funeral expenses	Rs. 17,000/-
iii. Loss of Estate	Rs. 17,000/-

(Paragraph 21)
Now coming to the extent of liability. It has already been held herein above that the deceased died due to rash and negligent driving of respondent no.1. He is primarily liable to make payment. However, the petitioner has made the respondent no. 3 (insurance company) as one of the party seeking direction to respondent no. 3 that it be directed to pay the compensation to the petitioners. It is not in dispute that the offending vehicle was insured with the respondent no.3 on the date of accident. Moreover, the evidence of the petitioner fully supports his case, therefore, this issue is decided in favour of the petitioners and against respondents by holding that petitioners are entitled for compensation from respondent no.3. (Paragraph 22)"

14. The aforesaid assumption of compensation has been done in terms of parameters set up in the case of **National Insurance Co. Ltd. v. Pranay Sethi**[4]. There is nothing to suggest that the learned Tribunal has committed any illegality or has taken any perverse approach in arriving at the impugned decision.

[4] (2017) 16 SCC 680

15. In view of the foregoing discussion, the present appeal is dismissed. The appellant/insurance company is directed to deposit the entire amount of compensation with accrued interest with the learned Tribunal 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 the impugned judgment-cum-award dated 01.08.2023 till realization.

16. The statutory amount for filing the present appeal of Rs. 25,000/- be deposited with the Registrar General of this Court within fifteen days from today, failing which it shall be liable to be recovered with penal interest @ 12% per annum from today till realization and the same shall stand forfeited to the State.

17. The appeal along with pending application stands disposed of.

DHARMESH SHARMA, J.

MARCH 01, 2024
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