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

% ***Date of decision: 03rd December, 2024***

+ **MAC.APP. 200/2019, CM APPL. 5626/2019**

HDFC ERGO GENERAL INSURANCE CO. LTD

.....Appellant

Through: Mr. A.K. Soni, Advocate.

versus

UMA DEVI & ORS

.....Respondent

Through: Mr. J.P.N. Shahi, Advocate for R-1 to R-3.

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 Vehicle Act, 1988 has been filed on behalf of the Appellant/Insurance Company against the Impugned Award dated 16.11.2018 vide which the compensation, in the sum of Rs.50,35,000/- along with interest @ 9% per annum, has been granted to the respondents no 1-3/claimants on account of demise of Shri Tek Chand aged 57 years in a road accident on 06.05.2012.*

2. *The Insurance Company has challenged the Award on the following grounds:*

(i) *That there was no eye witness to prove the negligence of the offending vehicle and rather the manner in which the accident has occurred reflects contributory negligence on the*



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part of the deceased;

(ii) the *salary of the deceased* has been erroneously assessed as Rs.53,831/-, without deducting the amount of Rs.3,031/- reflected in the Salary Slip as arrears and Rs.500/- towards Tea Allowance.

(iii) that the *deductions towards personal expenses* have been made of $1/3^{\text{rd}}$ when in fact it should have been $1/2$, since the wife and the two major daughters were working;

(iv) *Multiplier of 9* has been incorrectly applied without considering that the deceased was aged 57 years at the time of accident and was going to retire on attaining age of 58 years; and

(v) the compensation under loss of love and affection has not been granted in accordance with the judgment of National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.

3. ***The learned counsel on behalf of the Claimants/Respondents*** has submitted that the learned Tribunal *vide* cogent reasons has held the sole negligence of Driver and involvement of the offending vehicle. It is further submitted that the calculations have been done correctly and the Loss of Dependency has been calculated in accordance with law. Rather, the compensation under *non-pecuniary heads need to be reduced*. It is, therefore, submitted that the Appeal is without merit and is liable to be rejected.

4. **Submissions heard and record perused.**

Involvement of the Offending Vehicle and Contributory Negligence: -

5. *Briefly stated*, on 06.05.2012 at about 5:00 PM, Sh. Tek Chand



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(deceased) was going on his *Honda Activa No. HR26B 4541* when suddenly a Santro GLS car bearing registration no. DL 10 CA 0445 (*Offending Vehicle*) being driven rashly, recklessly and negligently by Respondent No. 4, Sh. Inder Dutt Salwan, came from behind and hit the Honda Activa. Consequently, the deceased fatal injuries to which he succumbed on 12.05.2012.

6. FIR No.114/2012 dated 12.05.2012 under Section 279/337/304A IPC 1806 P.S. Delhi Cantt. After due investigations, the Chargesheet was filed by the Police against the *Driver/Respondent No. 4* of the Offending Vehicle. Detailed Accident Report (DAR) was filed on the basis of the Charge Sheet.

Negligence of the Driver of the Offending Vehicle:

7. The first ground of challenge is that no witness had been examined to prove the negligence of the driver of the offending vehicle. Even though no eye witness had been examined by the Claimants/Respondents, but the Driver of the Offending Vehicle examined the eye witness *RIWI-Sh. Ritesh Jain*, to depose about the manner of the accident. The eye-witness deposed that he was following the Santro Car/Offending Vehicle which had hit the scooter of the deceased. The speed of the vehicle was around 40-50 Kms. Though it has been explained that it was a green DTC Bus which was being driven in a rash and negligent manner and the accident was caused because the DTC Bus which over took his car and the other vehicles in front of him from the left side, because of which the deceased driver of the scooter in an attempt to avoid the bus, swerved in front of the offending vehicle.

8. During cross-examination, he was unable to tell the speed of the scooter or from which side the bus had overtaken. However, he explained that it was the front portion of the car which hit the back and side of the



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scooter.

9. *The testimony of RIW1- Sh. Ritesh Jain* essentially explains the manner of accident and evidently the factum of the offending vehicle hitting the scooter of the deceased has not been denied by either party. Thus, the negligent driving of the driver of the offending vehicle is established.

10. Furthermore, the Chargesheet has been filed against the *Driver of the Offending Vehicle/Inder Dutt Salwan* who is facing trial in the Criminal Court.

11. In the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del.

12. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that the key-point of negligence of the driver as set up by the Claimants is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. Thus, filing of Charge-Sheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. The subsequent acquittal of the accused may be of no effect on the assessment of the liability required in motor vehicle accident cases.

Contributory Negligence:

13. *Another plea* has been raised by the Insurance Company is that the Deceased had contributed to the accident and thus, compensation amount is liable to be deducted towards contributory negligence.



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14. However, in the light of the testimony of R1W1, there is nothing to show that the deceased himself contributed to the accident and thus, there is no merit in the contention raised.

15. *The learned Tribunal has rightly concluded that it was the Driver/Inder Dutt Salwan who had caused the accident while driving the Santro Car/Offending Vehicle in the rash and negligent manner.*

Quantum of Compensation:

Loss of Dependency :-

a) Income of the deceased: -

16. The first aspect is that the gross salary of Rs. 56,351/- p.m. as per *the Salary Certificate Ex.PW2/2* has been considered and after deduction of Income Tax of Rs. 2,520/- has been assessed as **Rs.53,831/-** .

17. However, the perusal of the *Salary Slip Ex.PW2/1* reflects that the salary of the deceased included *Transport Allowance in the sum of Rs.2640/- and Tea Allowance of Rs.500/-*.

18. In the case of *Oriental Insurance Company v. Jashuben and Ors* (2008) 4 SCC 162, the Apex Court has discussed the aspect of inclusion of allowances and has observed that the amounts which were paid to the deceased as **perks**, should be included for computation of his monthly income as the same would have constituted a part of his monthly income by way of contribution to the family. However, the *allowances which were for personal benefit* were liable to be deducted.

19. Relying upon the above judgment, a Co-ordinate Bench of this Court has observed in the case of *Ram Charan & Ors. vs The New India Assurance Co. Ltd. & Ors.*, MAC.APP. 433/2013 decided on 18 October, 2022, that including all incentives, bonuses or allowances to the income would be of



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inconsistent logic as the legal heirs would reap the benefits of certain allowances regardless of whether they enjoyed the same status prior to the demise of the deceased or not.

20. *Thus, evaluating the nature of the allowance/perk becomes a decisive factor for determining whether such allowance/perk would constitute a part of the actual income of the deceased.*

21. Pertinently, in the present case, the *Transport Allowance in the sum of Rs.2640/- and Tea Allowance of Rs.500/-*, were the consumable perks in the nature of reimbursements, the benefits of which were reaped by the employee individually and was thus, liable to be deducted.

22. Likewise, there are past arrears of Rs.7912.92 which have been included in the Salary Slip of the deceased for the month of April, 2012, which also was not part of the salary and was liable to be deducted.

23. Thus, the net salary, therefore, is reassessed as :-

- i. Rs. 56,351/- p.m. – Rs. 2520/- (Income Tax) = **Rs.53,831/-** .
- ii. Total of deductible incentives/allowances = Rs.2640 + 500 +7912.92
= **Rs. 11,052.92/-**
- iii. Net Salary after deductions = Rs. 53,831-11,052.92 =
Rs.42,779/- per month

b) Deduction towards Personal Expenses :-

24. The *second aspect* is that the wife and the two daughters of the deceased were working and cannot be taken as financially dependent on the deceased as the wife is gainfully employed with the Delhi Administration having monthly salary of Rs.40,000/- per month, Rs. 10,000/- from the Department of deceased under Group Insurance Scheme and Rs.20,000/- per month as pension.



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25. The Apex Court in National Insurance Company Ltd. vs Birender AIR 2020 SC 434 while examining the issue that whether the major, married and gainfully employed sons of the deceased would be entitled to “loss of dependency”, opined that the sons were earning a meagre sum of 1 lacs-1.5 lacs per annum and were financially dependent upon the income of their mother, who contributed her entire salary towards household expenses.

26. In the judgment passed by the Madras High in Branch Manager, ICICI Lombard General Ins. Co Ltd. v. Kaliyamoorthy, 2018 KHC 5479 (2020) 11 SCC 356, it was observed that married daughters, a father or mother or brother, can always seek monetarily help from their father/husband/son, and could be dependent upon them. Similarly, a mother can continuously render her valuable service to her daughter, even if the daughter is married and a married daughter would still continue to assist her mother, or father, in the case of need. ***Thus, this contribution by means of service or income, both can be taken into account to determine the quantum of compensation.***

27. This judgment was relied upon by the Kerala High Court in United India Insurance Co. Ltd v. Shalumol in MACA No. 1768 of 2021, wherein the Court expanded the scope of “Loss of Dependency” to include the married daughters and the parents of the deceased. It was observed that:-

“50. It would be preposterous to accept the contention of the learned counsel for the Appellant that a 25 year old daughter would be no longer dependent on her 49 year old mother because she was given in marriage. The bond between a mother and a daughter is eternal. I reminisce the quotation of Cardinal Mermillod “No matter how old she may be, sometimes a girl just needs her mom.”

51. Even if dependency is a relevant criterion to claim



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compensation for loss of dependency, it does not mean financial dependency is the ‘ark of the covenant’. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money”

28. Similarly, in *MFA No. 102868/2014* titled as *Reliance General Insurance Company Ltd v. Gangappa* decided vide Order dated 04.08.2022, the Karnataka High Court examined whether the major married daughters can be treated as dependents of the deceased mother. While relying upon *Birender* (Supra), it was opined that :-

“23. The Apex Court in the said judgment further held even married sons are also entitled for compensation. This Court also cannot make any discrimination whether they are married sons or married daughters and hence, very contention that married daughters of deceased are not entitled for compensation cannot be accepted and the Court has to take note of the rationale behind in coming to the conclusion of even married sons and major sons are eligible to claim compensation and hence the married daughters also entitle for compensation on all the heads and not to limit only for conventional heads.

24. Counsel for respondents/claimants also relied upon a judgment of Kerala High Court in the case of *Shalumol supra*. In paragraph Nos. 50 and 51 of the said judgment, Kerala High Court also held that bond between the mother and daughter is eternal and further observed that even if the dependency is relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the ‘ark of the covenant’. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency so



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on and so forth, which can never be equated in terms of the money.

25. Having considered the principles laid down in the judgments referred to supra, this Court has taken note of recent judgment of the Apex Court in Birender, wherein it is held that even married sons are entitled for compensation not only on conventional heads but also on loss of dependency. Hence, the very contention of the appellant-insurance company cannot be accepted.”

29. While referring to all the above decisions, a Co-ordinate Bench of this court in Ram Charan vs New India Assurance Co. Ltd., 2022 SCC OnLine Del 5146, held that the five children of the deceased i.e. one major son and four married daughters were dependant on their deceased mother and would thus, be entitled to Loss of Dependency. It was observed that:-

“13. This Court is in respectful agreement with the view expressed by the Kerala High Court and Karnataka High Court in this regard. Nevertheless, it cannot be denied that the loss of other forms of support endured by the Appellants is immeasurable. By virtue of the Motor Vehicles Act, 1988, being a welfare legislation, there is no cogent reason to deny the Appellants from obtaining compensation for their loss of dependence, regardless of the nature or form of the dependence. There cannot be any discrimination between married sons and married daughters and hence both of them are entitled for the compensation under the head ‘Loss of Dependency’. Based on the above findings, this court is of the view that the Appellants are entitled to receive compensation under the head of ‘Loss of Dependency’.”

30. In the present case, PW-1/Sh. Uma Devi, wife of the deceased, has



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deposed that the deceased was contributing a major portion of his entire salary for the upkeep of his wife and daughters. He used to give his wife a sum of Rs.40,000/- to 45,000/- p.m. for household expenses and upkeep of the claimants and his contribution towards the household expenses was regularly increasing with the rise in income, cost of living and inflation. Since the Appellant has not presented any proof to the contrary, there is no reason to disregard the statement of *PW-1*. The deceased was admittedly an earning member of the family. Hence, being the man of the house, it is evident that he was contributing his earnings towards the family expenses. Applying the above principles in the present case, it cannot be overlooked that though the daughters and the wife might be having some earnings, but they continued to be the responsibility of the deceased.

31. Further, the support a man, as father or as a husband, would have provided in the times of need to his daughters and wife cannot be measured in money. Thus, while deciding the entitlement of Loss of Dependency one has to keep in mind the support the deceased was providing, which could be emotional or care giving support or financial support in situations where the claimant still relies on the deceased's income for any substantial aspect of their life, which could include a contribution towards the standard of living or education etc.

32. ***Thus, in the facts of the present case, the deduction of 1/3rd amount towards personal expenses of the deceased have been rightly made by the learned Tribunal and the same warrants no interference.***

c) Age and Multiplier :-

33. It has been challenged that *Multiplier of 9* has been incorrectly applied without considering that the deceased was aged 57 years and was



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about to retire at the age of 58 years.

34. This contention is not tenable as admittedly the deceased was 57 years old at the time of the accident and the same is supported by his *Driving License-Ex. PW-1/2* which reflects his date of birth as 10.06.1955. ***The accident occurred on 06.05.2012 and the Tribunal has rightly assessed the multiplier as '9'.***

35. Therefore, the Loss of Dependency is recalculated as under :-

a) Income of the Deceased	:	Rs.42,779/- p.m.
b) 15% addition towards Future prospects	:	Rs. 6417/-
c) 1/3 rd deduction towards Personal and living expenses	:	Rs.16,398/-
d) Monthly Loss of Dependency (Rs.42779 + Rs.6417 – Rs.16,398)	:	Rs.32,798/-
e) Annual Loss of Dependency to the family of deceased (Rs.32,798 X 12)	:	Rs.3,93,576/-

Total Loss of Dependency to the family of deceased

(Rs.3,93,576 X 9) : Rs.35,42,184/-

36. In view of the above, the **total Loss of Dependency** to the family of the deceased comes to Rs.35,42,184/- which is rounded off to **Rs.35,50,000/-**.

Non-Pecuniary Heads :-

37. It has also been challenged by the Insurance Company that the



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Compensation under the non-pecuniary heads should be enhanced.

38. The Id. Tribunal has granted Rs. 25,000/- each to the two daughters towards loss of Love and Affection and has granted Rs. 40,000/- to the wife for Loss of Consortium.

39. In Light of the judgment of *Pranay Sethi (Supra)*, the Loss of Consortium (inclusive of Loss of Love and Affection) is revised as **Rs. 40,000/- X 3 = Rs. 1,20,000/-**.

40. *The compensation under the heads of Loss of funeral Expenses and Loss of Estate has been granted as Rs, 15000 each and the same does not warrant any modification.*

Relief:-

41. The Total amount of compensation is thus, revised as under:-

Sl. No.	Heads	Amount Awarded by learned Tribunal	Amount awarded/modified by this Court
1.	Loss of Dependency	Rs.44,57,160/-	Rs. 35,50,000/-
2.	Medical Expenses	Rs.4,57,782/-	Rs.4,57,782/- (Same)
3.	Loss of Love and Affection to Children	Rs.50,000/-	Rs. 1,20,000/-
4.	Loss of Consortium	Rs.40,000/-	
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/- (Same)
6.	Loss of Estate	Rs.15,000/-	Rs.15,000/- (Same)
TOTAL COMPENSATION		Rs.50,34,942/- (rounded of to Rs.50,35,000/-)	Rs.41,57,782/- (rounded of to Rs. 41,60,000/-)

42. Thus, the total compensation granted to the Claimants is re-calculated



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as **Rs. 41,60,000/-** along with interest @9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 16.11.2018 of the learned Tribunal. The excess amount, if any be returned to the Insurance Company, along with the Statutory deposit.

43. ***The Appeal is allowed.***

44. The Appeal stands disposed of along with the pending application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 3, 2024

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