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

Date of decision: 29th October, 2024

\+ **MAC.APP. 673/2018 & CM APPL. 28955-56/2018**

FUTURE GENERALI INDIA INSURANCE CO LTD.....Appellant
Through: Ms. Suman Bagga, Advocate.

versus

RAM SAKHEE & ORS (MAHAGUN REAL ESTATE PVT. LTD.)
.....Respondent
Through: Mr. Jatinder Kamra, Advocate for R-1 to 5.

\+ **MAC.APP. 236/2019**

RAM SAKHEE & ORS .....Appellants
Through: Mr. Jatinder Kamra, Advocate.

versus

RAM SIYA SAHU & ORS (FUTURE GENERALI INDIA INSURANCE CO. LTD.) .....Respondent
Through: Ms. Suman Bagga, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. ***The main Appeal bearing MAC.APP. 673/2018*** under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the *Insurance Company* challenging the Impugned Award dated 09.04.2018, whereby compensation has been granted in the sum of Rs. 39,76,630/-along with

interest @9 p.a. to the Claimants on account of death of Sh. Shiv Kumar in the road accident on 22.07.2015.

2. *The learned counsel for the Insurance Company* has challenged the Award on the ground of the involvement of the Cement Tanker insured with the Insurance Company, as being the offending vehicle. It is submitted that R1W-1/Sh. Ram Siya Sahu, driver had appeared as a witness and had deposed that he was driving the Tanker, but he denied that any accident was caused by him. He deposed that he reached the spot subsequent to the accident and was only an onlooker. However, he was pulled out of the vehicle/Tanker by the public and was falsely implicated in this accident. It is submitted that the testimony of R1W-1 cannot be discredited and it is established that the tanker was not involved in the accident.

3. Furthermore, the post mortem of the deceased was conducted on the day next to the accident but in the post mortem report it has been stated that the death had occurred 2-3 days prior to the date of post-mortem. It is argued that the post mortem report also creates a doubt about the accident.

4. The Insurance company had also challenged the quantum of compensation on the ***following grounds:***

(i) a deduction of Rs. 5,000/- was liable to be made towards conveyance allowance while computing the income of the deceased;

(ii) *future prospects* have been given as 30% instead of 25% as the deceased was not in a permanent job; and

(iii) the Interest has been granted at a higher rate and should be reduced to 7% p.a.

5. ***Learned counsel on behalf of the claimants*** has argued that the

offending vehicle was apprehended on the spot and even the FIR was registered. The testimony of the Driver in this regard, cannot be accepted and has rightly not considered by the Tribunal.

6. *It is further* explained that in the post mortem report what is reflected is 3/4th of a day and not 3/4 days, as is contended on behalf of the Insurance.

7. The ***Cross Appeal bearing MAC.APP. 236/2019*** has been preferred by the *Claimants/Ram Sakhee & Ors. under S.173 the Motor Vehicle Act, 1988* to seek enhancement of Compensation granted By the Tribunal *vide* Impugned Award dated 09.04.2018. An objection has been taken that the Ld. Tribunal has erroneously deducted Income Tax Rs.2650/- (which is not 10%) from his annual income, but in fact Rs.680/- per annum was liable to be deducted for giving adjustments of the statutory deductions.

8. Thus, the compensation is liable to be enhanced.

9. **Submissions Heard and Record Perused.**

Involvement of the Offending Vehicle:

10. *To appreciate the contention of the Insurance Company,* it would be pertinent to refer to testimony of PW-2/Sh. Lovlesh who, according to the FIR and his statement, was the pillion rider on the motorcycle and was an eye witness to the accident. He has deposed that on the date of accident i.e., 22.07.2015, he and his uncle Shri Shiv Kumar (deceased) were travelling towards Sector 15A, Noida. At about 06:40 P.M., on reaching Ikeda Cut, PS Bisrakh Gautam Budh Nagar, U.P., he requested his uncle to stop the motorcycle as he had to attend nature's call. The motorcycle was stationed on the side of the road while PW-2/Sh. Lovlesh, was standing on *kacha* portion of the road for the needful, when suddenly a TM bearing No. UP-16AT-3623 came from behind and hit the motorcycle. He further deposed

that the speed of the truck was so high that after hitting the motorcycle and crushing his uncle under its wheel, it rammed into the Green Belt area on the side of the road. The driver of TM bearing No. UP-16AT-3623 fled from the spot of accident after leaving the offending vehicle on the spot of accident. He also deposed that his uncle died on the spot due to the injuries. Thereafter, he called the Police which arrived on the spot soon after the accident.

11. He was cross-examined at length on behalf of driver/owner, but nothing material could be elicited in his cross-examination.

12. Pertinently, the testimony of PW2/Sh. Lavlesh that the accident was caused by the Respondent No.1/Ram Siya Sahu, while driving the Offending Vehicle-TM bearing No. UP-16AT-3623, in a rash and negligent manner, is reinforced by *R1W1/Ram Siya Sahu,* the driver who appeared in the witness box and admitted in his cross-examination that on 22.07.2015 i.e. the date of accident, *he was driving the offending vehicle* TM bearing No. UP-16AT-3623 and was going from 8 Murti to 4 Murti, Gautam Budh Nagar. Though he denied that he had hit the motor-cycle or that the rider of the motor-cycle got crushed under the tyre of his truck, *but he admitted that he was arrested at the spot on the same day*. He volunteered that he had reached the spot and public which had already gathered, pelted stones on him and one stone hit the front wind screen of the vehicle. *He got down to save himself and was arrested by the police.*

13. It can also not to be overlooked that the FIR No.200/2015 was also registered under Section 279/337/304A IPC at P.S. Bisrakh. The Chargesheet has been filed and the document and the investigations conducted therein ***further corroborate the involvement of the vehicle and***

the negligence of the driver in causing the accident.

14. The Insurance Company had also tried to create a doubt about the demise of Shiv Kumar in the accident by asserting that in the Post Mortem Report, the time of demise was stated as "*about 3/4 days ago*". However, it has been explained on behalf of the Claimants that it did not indicate 3-4 days, but in fact it is indicated as $3/4^{th}$ of the day, which corresponds to the date of accident.

15. ***The learned Tribunal has thus, rightly concluded the negligence on the part of Respondent No.1 in causing the accident and has rightly fixed the liability on the respondents.***

16. There is no merit on this ground of challenge by the Insurance Company.

The challenge to the Quantum of Compensation by both the Parties in the two Appeals is considered as under:

Loss of dependency: -

Tax deduction :-

17. The *first grievance* of the complainant is that Rs. 2650/- per annum has been deducted while calculating the annual salary of the deceased as Rs.23,850/-. However, only Rs.680/- per annum were deductible towards the Income Tax. There is no serious challenge in regard to the deductions towards income tax. ***Therefore, it is held that the income tax at the rate of Rs.680/-instead of*** Rs. 2650/- ***per annum was deductible from the annual salary of the deceased.***

Deduction towards Conveyance Allowance :-

18. In regard to the determination of the annual salary, the Insurance Company has also taken objection that as per his *Salary Slip,* the gross

salary of the deceased was Rs.26,500/-. It is reflected in the Salary Slip that Rs.5000/- per month were being credited towards the Conveyance. It has been rightly contended that the Conveyance was granted for the deceased while he was in employment. The submissions made are tenable as the amount given towards conveyance is consumable which would have been consumed by the deceased every month. ***Therefore, the amount of Rs.5000/- is liable to be deducted from the gross salary of Rs.26,500/-***

19. In view of the aforesaid, the loss of income per annum is calculated as Rs.26,500 – 5000 – 680 = ***Rs. 20,820/-.***

<u>Future Prospects : -</u>

20. The *next aspect* on which the calculation has been challenged is that the ***future prospects*** have been taken as 30%. The learned counsel for the Insurance Company submits that since the deceased was not in permanent job, he was entitled to only 25% of future prospects in terms of judgments in <u>*National Insurance Co. Ltd Vs. Pranay Sethi & Ors*</u>. 2017 SCC online 1270.

21. The learned counsel on behalf of the claimants, however, has clarified that he was in a regular job in a Private Company and was working as a Foreman which is a technical position.

22. Considering the submissions made and that the deceased was in regular job, the annual deduction of ***30% cannot be faulted and no interference is warranted in this regard.***

23. ***Thus, the Loss of Dependency is calculated as*** [Rs. 20,820 + Rs. 6246 (i.e. 30%) - 6766 (i.e. -1/4th)] x 14 x 12 = ***Rs. 34,10,400/-.***

<u>Non-pecuniary Heads : -</u>

24. Furthermore, the Loss of Consortium has been given as Rs.40,000/-;

however, since there are five claimants, therefore, the total compensation for ***Loss of Consortium is enhanced to Rs.2,00,000/-.***

Rate of Interest : -

25. The Insurance Company has also challenged the quantum of Interest. However apart from their bald assertions, nothing has been placed on record to support their alleged claim of interest @7% p.a.

26. ***Thus, it is held that the Ld. Tribunal has rightly granted the interest @9% p.a. and the same warrants no interreference.***

Relief:

27. The compensation amount is accordingly revised as under:-

S. No.	**Heads**	**Awarded by the Claim Tribunal**	**Modified by this Court**
1.	Income of deceased (per month) (A)	Rs. 23,850/- (after deducting Rs. 2,650/- towards income tax)	**Rs. 20,820/-** (after deducting Rs. 680/- towards income tax and Rs. 5000 towards conveyance)
2.	Add-Future Prospects -30%(B)	Rs. 7,155/-	Rs. 6,246/-
3.	Less-Personal Expenses of deceased -1/4 (C)	Rs. 7,751/-	Rs. 6,766/-
4.	Monthly loss of dependency [(A+B) – C = D]	Rs. 23,253/-	Rs. 20,300
5.	Annual loss of dependency (D x 12)	Rs. 2,79,045/-	Rs. 2,43,600/-
6.	Multiplier	14	14
7.	Total loss of dependency (D x 12 x E = F)	Rs. 39,06,630/-	**Rs. 34,10,400/-**
8.	Medical Expenses (G)	NIL	

9.	Compensation for loss of love and affection (H)	NIL	
10.	Compensation for loss of consortium (I)	Rs. 40,000/-	**Rs. 2,00,000/-**
11.	Compensation for loss of estate (J)	Rs. 15,000/-	Rs. 15,000/-
12.	Compensation towards funeral expenses (K)	Rs. 15,000/-	Rs. 15,000/-
13.	**TOTAL COMPENSATION** (F+G+H+I+J+K=L)	**Rs. 39,76,630/-**	**Rs. 36,40,400/-**

28. In view of the aforesaid discussion, the compensation for the claimants is recalculated as **Rs. 36,40,400/-** @9% p.a. from the Claimant till disbursement, which shall be disbursed on similar lines as has been detailed in the Impugned Award.

29. The two Appeals are accordingly disposed of, along with the pending Application(s), if any.

30. Statutory deposit of the Insurance Company be returned in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 29, 2024
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