



2024-1563



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

% **Judgment reserved on : 14th February, 2024**
Judgment pronounced on : 2nd April, 2024

+ **MAC.APP. 265/2019 and CM APPL. 8124/2019 (Stay)**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: **Ms. Kanchan Kaur Dhodi, Adv.**

versus

PROMILA PRABHAKAR & ORS Respondents
Through: **Mr. Ram N. Sharma and Mr.**
Trivedi Prafulla, Advs. for R-1
and 2
Mr. Y.R. Sharma, Adv. for R-5

+ **MAC.APP. 351/2019**

PROMILA PRABHAKAR & ANR Appellants
Through: **Mr. Ram N. Sharma and Mr.**
Trivedi Prafulla, Advs.

versus

GULBIR SINGH & ORS (NEW INDIA ASSURANCE CO LTD) Respondents
Through: **Mr. Y.R. Sharma, Adv. for R-2**
Ms. Kanchan Kaur Dhodi, Adv.
for R-3/Insurance Company

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above noted cross-appeals filed under Section 173 of the Motor Vehicles Act, 1988¹ by the parties assailing the impugned judgment-cum-award dated

¹ The Act



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17.12.2018 passed by the Presiding Officer, Motor Accident Claims Tribunal, Patiala House, New Delhi² in Motor Accident Claim Petition No. 58/2018³, whereby the learned Tribunal awarded compensation in favour of the claimants/parents of the deceased and fastened the liability to pay the compensation upon the appellant/insurance company. For convenience, MAC.APP. 265/2019 shall be the lead case.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the claimants that on 11.10.1997, their son deceased/Vikas Prabhakar, along with his two nephews, their wives and a six months old baby, were travelling from Delhi to Punjab in a Maruti car bearing registration No. DL-9C-1769, driven by his cousin Anurag Kalia. Upon reaching near Kurukshetra, the car stopped behind a truck bearing registration No. HR-03-6917 ('hereinafter referred to as the offending vehicle') due to a traffic jam. Suddenly, the offending vehicle/bus, driven by Satender Singh/respondent No. 2, approached from behind in a rash and negligent manner, colliding with the car's rear side. Consequently, the deceased and some other occupants sustained multiple injuries, with the deceased and the baby suffering fatal skull injuries resulting in their immediate demise. Initially, S.K. Prabhakar, the deceased's father and one of the two claimants before the learned Tribunal, filed the claim petition on 29.07.1999 and the owner/Gulbir Singh,

² Tribunal

³ Claim petition



driver⁴/Satender Singh and the insurance company were impleaded as respondent Nos. 1, 2 and 3 respectively. The brother and sister of the deceased were impleaded as respondents No. 4 and 5.

3. Notice was issued to all the respondents, however, respondent No.2, along with respondents No. 4 to 6 were not present despite notice. Consequently, the learned Tribunal proceeded *ex-parte* against them *vide* order dated 31.10.2003. Even respondent No. 1, who was served through publication, did not attend and was proceeded *ex-parte* *vide* order dated 14.07.2004. It is pertinent to mention here that the respondents No. 1 and 2 were again proceeded *ex-parte* on 07.03.2006. Evidently, only respondent No.3/insurance company, contested the inquiry by filing its written submissions wherein they acknowledged that the offending bus was insured with them under the name of one Madan Kumar, on the date of the accident. However, they alleged that the said bus was being driven without a valid Driving Licence⁵ (DL), thus absolving them from liability to pay compensation.

4. Based on the pleadings, the learned Tribunal framed the following issues:

- “1. Whether the deceased Vikas Prabhakar received fatal injury in road accident dated 11.10.1997 because of rash and negligent driving of Tourist Bus no. DL-IP-3703 driven by respondent no.2, owned by respondent no.1 and insured with respondent no.3? OPR.
2. If issue No.1 is proved in affirmative to what amount of compensation the petitioner is entitled to and from whom?
3. Relief.”

⁴ Section 2(9) of MV Act: “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 Section 2(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.



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PROCEEDINGS BEFORE THE TRIBUNAL AND THE IMPUGNED ORDER:

5. Suffice to state that issue No.1 was decided in favour of the claimants, holding respondent No.2/driver responsible for causing the fatal accident. The learned Tribunal *vide* impugned judgment-cum-award dated 23.07.2012 awarded a sum of Rs. 4,12,700/- as compensation to the petitioners, holding respondent Nos. 1 to 3 and 6 to be jointly and severally liable, and directed the insurance company to pay the amount of compensation. Consequently, the insurance company/respondent No.3 preferred an appeal MACA No. 1117/12 against the judgment and one cross-appeal bearing MACA No. 184/13 was also preferred by the petitioners. Both the appeals came to be decided by this Court *vide* judgment dated 04.12.2017. This Court *vide* this judgment set aside the above judgment passed by the learned Tribunal and remanded the matter back to the Tribunal with directions that the claimants be allowed to lead their evidence with regard to the earnings of the deceased.

6. During the course of hearing of final arguments, it surfaced that Madan Kumar, the insured of the offending bus, was not made a party to the petition, and hence, Madan Kumar was impleaded as respondent No. 6 under Order I Rule 10 of the Civil Procedure Code, 1908⁶. On being served and on putting appearance, respondent No.6 filed an application to summon respondent Nos. 1 and 2, the owner and driver of the offending vehicle respectively on the date of accident. Further, respondent No.6 in his written submissions took the plea that he had



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already sold the offending vehicle to respondent No.1/Gulbir Singh, who was the owner on 21.07.1997 i.e., prior to the date of the accident dated 11.10.1997, and hence, he denied his liability to pay any compensation. Further, respondent No.2/Satender Singh appeared and filed his written submissions, wherein he claimed himself to be a relative of respondent No.1 and acknowledged the fact the he was employed as a driver with respondent No.1 but the circumstances which led to the accident were beyond his control despite his due diligence.

7. The learned Tribunal, after the matter was remanded back by the High Court, observed that as per the petitioners, the deceased was a freelance photographer and had completed a two-year diploma course in photography and mechanical training. The learned Tribunal, while evaluating the compensation with regard to Loss of financial dependency, observed that although the deceased was engaged in freelance photography and pursued an MSCE course in computers, no evidence was brought on record to substantiate his annual income of 24,000 pounds from the business of freelance photography, wedding photography, modelling etc.

8. The main plank of the challenge by the learned counsel for the appellant/insurance company is that the predecessor bench of the learned Tribunal had reckoned the minimum wages for a graduate as a parameter to arrive at the compensation amount for loss of financial dependency, which amounted to only Rs.2,544/- per month at that relevant time. However, the claimants contested that since the

⁶ CPC



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deceased was a UK national, applying the criterion of minimum wages prevailing in India was erroneous, and instead, the minimum wages of the UK should have been applied. It is pertinent to mention here that the accident took place on 11.10.1997 and it appears on internet search that the law on minimum wages in the UK came into force only on 01.04.1999 i.e. two years later.

9. Therefore, on a final note, the learned Tribunal assessed the minimum wages of the deceased as per the UK laws and arrived at a figure of '4561' pounds per annum. It would be expedient to reproduce the relevant observations made by the learned Tribunal in this regard, which read as:

“27. It has been observed that in the petition itself the address of deceased as well as of the petitioners is given to be of London, U.K. and during course of earlier inquiry also various documents were placed on record by the petitioners to show that the deceased was a British National and a permanent resident of London, U.K. The address of petitioner no.2/PW1 given in his above affidavit filed in evidence is also of London, U.K. and even the diploma in photography of deceased, earlier relied upon by the Ld. Predecessor of this tribunal, is stated to have been obtained by the deceased from U.K. and not from India. Again, even the documents tendered on record during the course of this further inquiry conducted after remand of the matter, through the statement made by Ld. Counsel for the petitioners, also substantiate the claim of petitioners regarding the deceased being a British National. The statement Ex.P-1, which is the original statement of bank account of the deceased, is found to be of a bank of London having a London address of the deceased and even copy of his passport Ex.P-2, copy of his National Insurance Number Card Ex.P-3 and original electoral list containing entries of the register of electors for the year 1998 show him to be a U.K. National. The documents Ex.P-5 to P-8 further show that even cremation of the deceased, after his death in the accident involved in this case, was performed in U.K. on 22.10.1997 at South-West, Middlesex Crematorium, Hounslow Road, Hanworth, Feltham. Hence, it will be totally unjust for the petitioners if the minimum wages of India are taken and made applicable in the present case, though the



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evidence led on record suggests to the reasonable satisfaction of this tribunal that the deceased was a British National. It is well settled that the onus placed upon the petitioner in an inquiry under the M.V. Act is even much lesser than that placed on a party in a civil suit where the facts can be proved by the principle of probabilities. Therefore, it is held that the loss of dependency caused to the petitioners on account of death of deceased Vikas Prabhakar of this case is liable to be calculated on the basis of minimum wages as applicable in U.K. at the relevant time of accident.

As per the above table showing income tax rates in U.K. for the block years 1997-98 and 1998-99, the tax liability of the deceased for the block year 1997-98 comes to 1202 Pounds as during this block 20% tax rate was applicable upto an income from 1 to 4100 Pounds, 23% tax rate was applicable upto an income from 4101 to 26100 Pounds and over 26100 Pounds, the tax rate was 40%, whereas in the block year 1998-99 the tax liability of deceased comes to 1196 Pounds as during this block 20% tax rate was applicable upto an income from 1 to 4300 Pounds, 23% tax rate was applicable upto an income from 4301 to 27100 Pounds and over 27100 Pounds, the tax rate was 40%. The average of these two tax liabilities comes to 1199 Pounds (1/2 of 1202 + 1196) and therefore, the net annual earnings of the deceased come to **4561** Pounds (5760 Pounds – 1199 Pounds).”

10. Lastly, the learned Tribunal was of the view that the evidence of R3W1 with respect to violation of permit conditions of the offending vehicle was insufficient to establish that the vehicle was operating without a valid permit at the time of the accident. Further, placing reliance on several judgments of the superior courts, the learned Tribunal denied the recovery rights to the appellate insurance company and fastened upon it the liability to pay the compensation to the claimants. Further, holding respondent No.2/driver as the principal tort-feasor as also holding respondent No.6/registered owner guilty, the learned Tribunal held them jointly and severally liable. Accordingly, the Tribunal awarded a sum of Rs. 64,84,000/- (Rupees



Sixty-Four Lacs Eighty-Four Thousand Only) as compensation to the claimants.

GROUND OF APPEAL:

11. The impugned award-cum-judgment dated 17.12.2018 has been assailed primarily several grounds. Firstly, it is argued that the learned Tribunal has reckoned the minimum wages of UK despite the fact that there was no UK specific law on minimum wages when the accident occurred i.e. 11.10.1997 and there is nothing on the record to prove the income of the deceased as the claimants have failed to prove his income. Another objection is raised that the learned Tribunal deducted the average of two tax liabilities @ 1199 pounds despite absence of sufficient material on record. Lastly, it was contested that the learned Tribunal has considered 40% increase in the deceased's income as per the decision in **National Insurance Co. Ltd. v. Pranay Sethi**⁷, which is not sustainable in law as the aforementioned judgment is applicable only to the Indian citizens and there is no observation in the judgment with respect to the fact that it would also be applicable to the foreign nationals.

12. Insofar as the MAC. APPL. 351/2019 is concerned, the appellants/claimants claim that the learned Tribunal wrongly assessed the minimum wages @ 4561/- UK Pounds after deducting the amount towards income tax, which was totally unwarranted, and rather, minimum wages should have been assessed @ 5760 UK Pounds. The claimants seek a total compensation of Rs. 1,88,81,550/- including reimbursement towards funeral expenses, about which evidence was

⁷ (2017) 16 SCC 680



led to the effect that 1165 UK Pounds were spent, which is equivalent to Rs. 90,000/- and it is also pointed out that interest has been awarded at a meagre rate of 7.5 % from the date of accident i.e. 11.10.1997 till passing of the previous judgment dated 23.07.2012, whereas it should be allowed for the entire period and that too @ 15% per annum.

ANALYSIS AND DECISION:

13. I have given my thoughtful consideration to the rival submissions made by the learned counsels for the parties at Bar. I have also perused the record of the present appeals besides the digitized Trial Court record.

QUANTUM OF COMPENSATION:

14. Insofar as the quantum of compensation is concerned, the date of birth of the deceased was 28.08.1971, and therefore, at the time of accident, he was about 26 years of age. During the course of trial/proceedings, evidence had been produced to the effect that the deceased held a graduate degree and had completed a two-year diploma in photography. While the learned Tribunal noted that no documented proof of the deceased's earnings was proven on the record, assessing the loss of financial dependency solely on the basis of minimum wages of a skilled person in India, specifically in Delhi, lacks justification. This Court finds that the approach adopted by the learned Tribunal in considering the minimum wages applicable in the UK, since the deceased was a British national, cannot be faulted on any justifiable grounds. Merely because the minimum wages concept was introduced in the UK after two years of the accident, there is no ground to discard it. Rather, it serves as a plausible indicator of the



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deceased's financial standing on a modest scale. It would be expedient to reproduce the reasons that prevailed in the mind of learned Tribunal in making the assessment of compensation under the head of loss of financial dependency that goes as under:

“.....It has been observed that in the petition itself the address of deceased as well as of the petitioners is given to be of London, U.K. and during course of earlier inquiry also various documents were placed on record by the petitioners to show that the deceased was a British National and a permanent resident of London, U.K. The address of petitioner no.2/PW1 given in his above affidavit filed in evidence is also of London, U.K. and even the diploma in photography of deceased, earlier relied upon by the Ld. Predecessor of this tribunal, is stated to have been obtained by the deceased from U.K. and not from India. Again, even the documents tendered on record during the course of this further inquiry conducted after remand of the matter, through the statement made by Ld. Counsel for the petitioners, also substantiate the claim of petitioners regarding the deceased being a British National. The statement Ex.P-1, which is the original statement of bank account of the deceased, is found to be of a bank of London having a London address of the deceased and even copy of his passport Ex.P-2, copy of his National Insurance Number Card Ex.P-3 and original electoral list containing entries of the register of electors for the year 1998 show him to be a U.K. National. The documents Ex.P-5 to P-8 further show that even cremation of the deceased, after his death in the accident involved in this case, was performed in U.K. on 22.10.1997 at South-West, Middlesex Crematorium, Hounslow Road, Hanworth, Feltham. Hence, it will be totally unjust for the petitioners if the minimum wages of India are taken and made applicable in the present case, though the evidence led on record suggests to the reasonable satisfaction of this tribunal that the deceased was a British National. It is well settled that the onus placed upon the petitioner in an inquiry under the M.V. Act is even much lesser than that placed on a party in a civil suit where the facts can be proved by the principle of probabilities. Therefore, it is held that the loss of dependency caused to the petitioners on account of death of deceased Vikas Prabhakar of this case is liable to be calculated on the basis of minimum wages as applicable in U.K. at the relevant time of accident.

The document Ex.P-X (colly) filed on record by Ld. Counsel for the petitioners consists of the background behind the



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legislation of Minimum Wages Act, 1998 of U.K. and also a comparative table showing the rates of minimum wages applicable in the above country during the period from 01.04.1999 to 01.10.2012. As per this document, the minimum wages for an adult above 21 years of age in U.K. as on 01.04.1999 were 3.60 Pounds per hour. The accident in this case took place on 11.10.1997 and the above document also shows that prior to the above legislation, there was no codified law prescribing minimum wages for workers and the above Act of 1998, which came into force w.e.f. 01.04.1999, was in fact the outcome of an electoral promise of the Labour Party in U.K. during its 1997 election campaign. Since there is a considerable gap between the date of accident, i.e. 11.10.1997, and the date on which this legislation came into force, this tribunal is not applying the minimum wages of 3.60 Pounds per hour as made applicable w.e.f. 01.04.1999. However, in the absence of there being any clear and specific evidence on record on this aspect and in light of the document Ex. P- X (colly), in the considered opinion of this tribunal, the minimum wages in U.K. as applicable at or around the date of accident can be safely taken to be around 3 Pound per hour. On an average and by reasonable international standards, the working hours for adults in any country are 8 hours per day and for 5 days in a week. Hence, going by the above rate of minimum wages of 3 Pounds per hour, the daily earnings of the deceased can be taken as 24 Pounds, his weekly earnings to be 120 Pounds, his monthly earnings to be 480 Pounds and his annual earnings to be 5760 Pounds.

Further, in view of the settled law on the subject, the tax liability of the deceased, if any, is liable to be reduced from his above annual earnings as his 'income' means the actual income less than the tax paid, as was also approved in the case of Pranay Sethi (Supra). However, on search from the inter-net, though, a table containing the rates of income tax in U.K. from the years 1990-91 to 2018-19 has been traced out (a copy of which has been taken out from the inter-net and placed in court file), but from the said table it is not clear if the block years mentioned in the said table are the financial years or assessment years. Hence, in the considered opinion of this tribunal, it will be safe to take average of the amounts of tax shown applicable for the block years 1997-98 and 1998-99 in the said table.

As per the above table showing income tax rates in U.K. for the block years 1997-98 and 1998-99, the tax liability of the deceased for the block year 1997-98 comes to 1202 Pounds as during this block 20% tax rate was applicable upto an income from 1 to 4100 Pounds, 23% tax rate was applicable upto an income from 4101 to 26100 Pounds and over 26100 Pounds, the tax rate was 40%,



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whereas in the block year 1998-99 the tax liability of deceased comes to 1196 Pounds as during this block 20% tax rate was applicable upto an income from 1 to 4300 Pounds, 23% tax rate was applicable upto an income from 4301 to 27100 Pounds and over 27100 Pounds, the tax rate was 40%. The average of these two tax liabilities comes to 1199 Pounds (1/2 of 1202 + 1196) and therefore, the net annual earnings of the deceased come to 4561 Pounds (5760 Pounds - 1199 Pounds).

In the order sheet dated 09.09.2011, it is found recorded that on an average the value of a Pound in comparison to Indian currency was Rs.59.28 on the day of accident and copy of some document downloaded from the inter-net on this aspect is also found to be part of the record. It is also appears to be correct as on web search the value of one Pound against Indian currency as on 03.11.1997 is being shown to Rs.60.37. Hence, the value of the British Pound at the relevant time of accident can be safely taken as Rs.59/- per Pound on the day of accident and the net annual earnings of the deceased in Indian currency thus comes to Rs.2,69,099/- (4561 Pounds X Rs.59).

Since the deceased was unmarried, in terms of the law laid down by the Hon'ble Supreme Court in the cases of Sarla Verma and Pranay Sethi & Ors. (Supra), 50% of his earnings will be deducted towards his personal and living expenses, as was also done in the earlier judgment/award, and further since there is no proof of any permanent/fixed employment of the deceased on record, the petitioners are only held entitled to addition of 40% in the above earnings of the deceased towards future prospects in view of the above Constitution Bench decision in the case of Pranay Sethi (supra) and judgment dated 02.11.2017 of the Hon'ble Delhi High Court in MACA No.798/2011 in the case Bajaj Allianz General Ins. Co. Ltd. Vs. Pooja & Ors, and not 50% as was earlier granted in the previous judgment/award.

Thus, the loss of dependency qua deceased in the present case comes to Rs.32,02,278.10 (Rs.2,69,099/- X 140/100 X 50/100 X 17) and the said amount is being awarded to the petitioners under this head.”

15. At the outset, the aforesaid reasoning appears to be flawless. Rather, it is evident that the learned Tribunal adopted all the relevant parameters for computation of the compensation in terms of the decision in the case of **Pranay Sethi** (supra). At the cost of repetition, the plea by the learned counsel for the appellant that there was no specific law of minimum wages in UK does not cut much ice.



16. Likewise, the plea of the learned counsel for the claimants that the component of income tax should not have been deducted from the minimum wages is also not sustainable. The Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation**⁸ categorically provided that deductions towards income tax have to be made from the salary and allowances. The Supreme Court in the case of **United India Insurance Company Limited v. Patricia Jean Mahajan**⁹ had an occasion to hold that the economic standards of a foreign country *vis-a-vis* Indian economic conditions, have also to be considered and in this regard, the aspect of deceased had he been employed in India may also be reckoned. It was observed as under: -

“19. In the present case we find that the parents of the deceased were 69/73 years. Two daughters were aged 17 and 19 years. The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs 47, comes to Rs 10.38 crores and with multiplier of 13 at the conversion rate of Rs 30 the amount comes to Rs 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much undercompensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the

⁸ (2009) 6 SCC 121

⁹ (2002) 6 SCC 281



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amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that the parents are residing in India, in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. a purchase factor of 10 years. We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench. We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier. We have already given our reasons in the discussion held above.”

17. The aforesaid dictum, when applied to the instant matter, has no gainsaying that although the deceased was an Indian national, he was having a dual citizenship and evidently, a citizenship of the United Kingdom. Even a foreign national, in a similar situation, is entitled to certain constitutional rights and there is no reason why notional earnings of the deceased should be restricted based on economic and financial wherewithal of the parent country.

18. Although, it appears that the UK laws providing for minimum wages for its citizen came to be implemented two years after the motor accident in question, the learned Tribunal has very fairly adopted one out of several parameters to arrive at a fair and just compensation. The amount of 4,561 UK pounds per annum is not, by any account, exaggerated but rather very fairly arrived at. This Court, therefore, finds no ground to interfere with the quantum of



compensation based on notional standards of minimum wages applicable in the UK, as the deceased was a UK citizen.

19. Lastly, as there was documentary proof that the funeral of the deceased was done in United Kingdom and an amount of 1165 UK Pounds was spent, which is equivalent to Rs. 90,000/-, the claimants are also entitled to said amount. Further, the claimants are also entitled to loss of consortium @ Rs. 40,000/- each. Hence, the total amount of compensation is accordingly worked out as under:

Sr. No.	HEADS	AMOUNT
1.	Total compensation awarded by the learned Tribunal (excluding interest)	Rs.32,02,278/-
2.	Funeral Charges	Rs.90,000/-
3.	Loss of Consortium	Rs.80,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.33,87,278/-

RECOVERY RIGHTS:

20. Admittedly, the offending vehicle was insured for the period in question showing respondent No.6/Madan Lal as the registered owner. Although respondent No.6 testified in his evidence that he had sold the offending vehicle to respondent No.1 on 21.07.1997, prior to the date of accident that occurred on 11.10.1997, insofar as respondent No.6 remained the “registered owner” within the scope and ambit of Section 2(30)¹⁰ of the Act and for non-compliance of the provisions of

¹⁰ **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;



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Section 50¹¹ of the Act, he remains liable as a “registered owner” of the offending vehicle. That being the case, it is in the evidence that

¹¹ **50. Transfer of ownership.**—(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

(a) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,—

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgement received by the transferred if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where—

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the



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there was an existing valid permit to ply the offending bus for transport purposes and therefore, there being a privity of contract between the appellant/insurance company and respondent No.6/Madan Lal, the appellant/insurance company cannot absolve itself of its liability to indemnify the registered owner.

21. At the cost of repetition, there has been no violation of the terms and conditions of the insurance policy. It would be pertinent to refer to the observations made by learned Tribunal on the above, which goes as under:

“.....In case of Sidharth Khetrapal & Ors. (Supra), the Hon'ble High Court has upheld the findings given by a Claims Tribunal exonerating the registered owner of an uninsured vehicle and holding the subsequent purchaser/possessor of the same to be jointly and severally liable alongwith driver thereof. These findings were given by the Hon'ble High Court while referring to and interpreting the provisions contained in Section 2 (30) of the Motor Vehicles Act, 1988, which defines the expression 'owner', and also Section 50 of said Act dealing with transfer of ownership. The relevant observations made by his Lordship in this case are being reproduced as under:-

25. The registration of the vehicle in the name of an individual is of import. It generally proceeds on the presumption that the person in whose name the vehicle is registered is the person responsible for its use. This attracts to him the vicarious liability. But then, it being a rebuttable presumption, it cannot be a thumb rule that in all cases the registered owner must be held accountable. If the registered owner can show, by credible evidence, like in the present case, that he had no control over the vehicle or that the vehicle was with someone else, over whom, or use of the vehicle by whom, he had no control, he cannot be held

fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.



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accountable, the liability in such case shifting on to the person who had the control over the vehicle.

26. In the present case, the delivery receipt (Ex.RW1/4) dated 09.10.2000, duly acknowledged by the third respondent affirms that he had received possession of the vehicle on sale from the second respondent. This coupled with the agreement (Ex.RW1/3) and, more importantly, the statement recorded by the court of Chief Judicial Magistrate on 27.02.2000 (Ex.RW1/26) giving no objection in favour of the third respondent for release of the vehicle in his favour, as was the prayer of the latter to the said court, which evidence has gone unimpeached in so far as the third respondent is concerned, leaves no room for doubt that the vehicle had actually been sold by the second respondent unto the third respondent, for consideration, on 09.10.2000.

27. In above facts and circumstances, the tribunal has correctly held the third respondent to be the person vicariously liable, rightly exonerating the second respondent of any responsibility.

However, recently in the case of Naveen Kumar Vs. Vijay Kumar & Ors., 2018 AIR (SC) 983, the Full Bench of the Hon'ble Supreme Court dealing with a case of multiple transfers of an uninsured vehicle has allowed an appeal filed by the last purchaser of the offending vehicle and has set aside the judgment of the Hon'ble Punjab & Haryana High Court holding him to be liable to pay compensation, which in turn set-aside the judgment/award passed by a Claims Tribunal holding the registered owner of the offending vehicle, alongwith driver thereof, to be liable for making payment against an award passed in the said case. In this case, the Hon'ble Supreme Court has clearly ruled that in view of the provisions contained in Section 2 (30) of the M.V. Act, the liability to pay the awarded amount can only be fastened upon the registered owner of a vehicle. The relevant observations made by their Lordships in this case are as under:-

"12. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to



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transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi.

13. The submission of the Petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In Dr TV Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled.

14. For the above reasons we allow the appeal and direct that the liability to compensate the claimants in terms of the judgment of the Tribunal will stand fastened upon the First respondent. The judgment of the High Court is set aside. In the circumstances of the case, there shall be no order as to costs."

Hence, though, otherwise, respondent no.1 being the subsequent purchaser and possessor of the offending bus would also have been held liable for consequences of the above rash and negligent act of driving of offending bus by respondent no.2, whom respondent no.1 had employed as a driver thereon, jointly and severally with some or the other respondents, but in view of the law laid down by the Hon'ble Supreme Court in the case of



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Naveen Kumar (supra) liability cannot be fastened upon respondent no.1 and hence, respondent no.2 being the driver of the offending vehicle and the principle tort-feasor, respondent no.6 being its registered owner and respondent no.3 being insurer are held jointly and severally liable to pay the above amount of compensation.

It is the contention of Ld.Counsel for respondent no.3 that respondent no.3 is not liable to pay any compensation to the petitioners in the present case as respondent no.6 and respondent no.1 failed to get transferred the insurance policy of the said vehicle from the name of respondent no.6 to the name of respondent no.1 and the same continued to stand in records of the Insurance Co. in the name of respondent no.6, though the evidence reflects that he had already sold the offending vehicle to respondent no.1 prior to the date of accident. Facts in this regard have already been discussed in detail above and the same are not in dispute or challenge and the said respondents have even subsequently not come forward to represent their case/defence on this aspect. Further, Ld. Counsel for respondent no.3 has also referred to the depositions made by their Assistant Manager Sh. R.K. Sambharwal as R3W1 on this aspect.

It is observed that this witness had brought on record one permit verification report of the offending bus purported to have been given by the concerned transport authority at Rajpur Road Headquarters, Delhi and as per this report tendered on record as Ex.R3W1/1 (2 pages), the permit of the said vehicle was in the name Archana, w/o. Sh. Surender Kumar and it was valid from 28.11.1998 to 20.11.2000 and it was not covering the date of accident i.e. 11.10.1997. This report was part of another report Ex.R3W1/2 given by their investigator namely AAR GEE ASSOCIATES. Further, as per this witness the insurance policy no. 3131080121745 for the period from 27.02.1997 to 26.02.1998 in respect of the offending bus was issued in the name of one Randhir Singh and it was transferred in the name of Madan Kumar (respondent no.6) on 18.03.1997 vide cover note no. 096635 dated 18.03.1997 and the above policy was marked by him as Mark R3W1/3 and the cover note was marked as R3W1/4. Thus, it has been submitted on behalf of respondent no.3 that the above insurance policy was never transferred in the name of respondent no.1 Gulbir Singh from respondent no.6 Madan Kumar, though respondent no.6 has claimed to have sold the said vehicle prior to the date of accident, i.e. 11.10.1997, and it is the contention of Ld. Counsel for respondent no.3 that there was no privity of contract between them and respondent no.1 to indemnify him for the said accident. It is also argued that since respondent no.6 ceases to be



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owner of the vehicle on above sale, respondent no.3 is also not liable to indemnify him or any other person on his behalf.

However, as has already been discussed above, since in view of the propositions of law laid down by the Hon'ble Supreme Court in the case of Naveen Kumar (supra) the liability to pay compensation amount has to be fastened upon the respondent no.6 only being registered owner of the offending vehicle and not upon I respondent no.1 being its subsequent purchaser or possessor, the above argument of Ld. Counsel for respondent no.3 loses its worth. Further, since, respondent no.6 has to be held responsible to pay the awarded amount being registered owner of the offending vehicle, respondent no.3 being insurer of the said vehicle is also equally responsible to indemnify him as per the contract of insurance because it has not been disputed on behalf of respondent no.3 that as on the date of accident, there was a valid policy of insurance in force issued by them in respect of the offending bus and that too in the name of respondent no.6 himself. Hence, respondent no.3 being insurer of the offending bus cannot be exempted from their liability as the same is co-extensive with that of the registered owner, i.e. respondent no.6.

It has been observed that even in its previous judgment/ award, this tribunal had turned down the request of Ld. Counsel for respondent no.3 for discharging them from liability or for granting a right of recovery of the awarded amount, while rightly relying upon the judgment of the Hon'ble Supreme Court in the case Pushpa @ Leela & Ors. vs. Shakuntala & Ors., (2011) 2 SCC 240. In the said case, the prime question before the Hon'ble Supreme Court was only about the liability to pay compensation amount as determined by a Motor Accident Claims Tribunal, i.e. whether liability to pay it was of the purchaser of a vehicle alone or of its registered owner or both of them or of insurer of the said vehicle. In that case, it was held by the Claims Tribunal that only the subsequent purchaser of the offending vehicle was liable to pay compensation amount and this finding was even upheld by the Hon'ble High Court of Himachal Pradesh. However, in appeal filed by the claimants, the Hon'ble Supreme Court, while discussing the relevant provisions contained in Section 2 (30) and 50 of the M.V. Act and also some existing judgments on the subject including the law laid in the celebrated judgment in the case of Dr. T.V. Jose Vs. Chacko P.M., (2001) 8 SCC 748, has observed that the registered owner of the offending vehicle and the insurance co. were equally liable to make compensation and the relevant observations made by their Lordships in the above case are as under:-

“14. The decision in Dr. T.V. Jose was rendered under the Motor Vehicles Act, 1939. But having regard to the



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provisions of section 2(30) and section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd.

15. Learned counsel for the insurance company submitted that even though the registered owner of the vehicle was Jitender Gupta, after the sale of the truck he had no control over it and the possession and control of the truck were in the hands of the transferee, Salig Ram. No liability can, therefore, be fastened on Jitender Gupta, the transferor of the truck. In support of this submission he relied upon a decision of this Court in National Insurance Company Ltd. vs. Deepa Devi & Ors., (2008) 1 SCC 414. The facts of the case in Deepa Devi are entirely different. In that case the vehicle was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act, 1951. In that circumstance, this Court observed that the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remained under requisition, the owner did not exercise any control over it: the driver might still be the employee of the owner of the vehicle but he had to drive the vehicle according to the direction of the officer of the State, in whose charge the vehicle was given. Save and except the legal ownership, the registered owner of the vehicle had lost all control over the vehicle. The decision in Deepa Devi was rendered on the special facts of that case and it has no application to the facts of the case in hand.

16. In light of the discussion made above it is held that the compensation amount is equally realisable from respondent no.3, Oriental Insurance Company Ltd. and it is directed to make full payment of the compensation amount as determined by the Claims Tribunal to the appellants within two months from the date of this judgment."

However, since now in the above Full Bench decision of the Hon'ble Supreme Court in the case of Naveen Kumar (supra) the appeal filed by a subsequent purchaser seeking his exoneration



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has been accepted, only the registered owner and insurer of the offending vehicle, alongwith driver thereof, can be held liable to pay the above amount of compensation and therefore, they are being held liable to pay it jointly and severally.

So far as issue of violation of permit of the offending vehicle is concerned, it is observed that the evidence led on record through R3W1 is not enough to prove the said violation. It cannot be inferred therefrom that the vehicle was without a valid permit on the date of accident, as the duration from 28.11.1998 to 20.11.2000 of the permit shown in the above report of transport authority and the surveyor of the respondent no.3 might be showing the duration and existing validity of the renewed permit and it cannot be inferred therefrom that previously it was being plied without a valid permit. Again, it is also now well settled that if the vehicle had a valid permit and fitness certificate at a point of time and if either of these documents stood expired on the date of accident but was renewed or granted afresh after the date of accident, then it amounts to a technical violation only. Reference in this regard can be made to a judgment of the Full Bench of the Hon'ble High Court of Kerala in the case of Augustine V.M. Vs. Ayyappankutty & Ors., MACA Nos. 2526/2009 and 2507/2010 decided on 04.03.2015, wherein it was held that if the offending vehicle is used for the same purposes as authorized by the permit or fitness certificate, then the insurer cannot take defence of Section 149 (2) (a) (i) (c) of the MV Act as the non-renewal of permit or fitness certificate by its owner is a technical violation only and it does not entitle the Insurance Co. to the recovery rights. The relevant observations made by their Lordships in the above case are as under:-

"16. In order to enable the insurance company to take up the defence under Section 149 (2) (a) (i) (c) it must be shown that the use of the transport vehicle was for a purpose not allowed by the permit under which the vehicle was used. Instances may occur where transport vehicles intended or permitted for a particular purpose are used for another purpose. For example, if a transport vehicle permitted only for carrying goods, carries passengers and capsizes en route causing injuries to the passengers, certainly, the insurer can taken up the defence under Section 149 (2) (a) (i) (c). However, if such a vehicle is used only for the permitted purpose, and the accident occurs when the permit or fitness certificate ceased to exit, it amounts to a technical violation only, which will not entitle the insurer to disown the liability to third parties. For avoiding the liability relying on Section 149 (2) (a) (i) (c),



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the insurer should plead and prove that the offending vehicle was used for a purpose not authorized by the permit. It is true, that the vehicles in these cases ceased to have fitness certificate as well as permit on their expiry. We are unable to agree that the breach of condition in respect of non-renewal of certificate of fitness or permit would entitle the insurer to take up the defence under Section 149 (2) (a) (i) (c) of the Act. We are of the definite view that Thara v. Syamala (cited supra) does not lay down the correct law. In both these cases, there is no contention by the insurer that the vehicles were used for a purpose not allowed by the permit. There is nothing on evidence to show that the breaches alleged were fundamental breaches which have contributed to the cause of the accident. In the absence of any evidence to show that the breach was so fundamental as to lead to the accident, there cannot be an automatic direction to allow the insurance company to recover the amount from the owner. Therefore, on facts also the appellants are entitled to succeed."

Moreover, the non-renewal of the permit or fitness etc. of a vehicle cannot also be considered to be a fundamental breach of the terms and conditions of the insurance policy if the vehicle is being used for the same purpose for which it has been authorized to be used. To avoid its liability, the insurance company must prove that the breach being alleged was fundamental in nature. Reference in this regard can also be made to a Three Judges Bench decision of the Hon'ble Supreme Court in case of Lakhmi Chand vs. Reliance General Insurance (2016) 3 SCC 100.

In view of above, respondent no.3 is even not held entitled to any recovery rights and it being the insurer of the offending vehicle is directed to deposit the above award amount with the UCO Bank, Patiala House Court Branch by way of crossed cheques/DDs in name of the petitioners within 30 days from today, failing which it will be liable to pay interest at the rate of 12% per annum for the period of delay. In case even after passage of 90 days from today, respondent no.3 fails to deposit this compensation with proportionate interest, in that event, in light of the judgment of the Hon'ble High Court of Delhi in the case of New India Assurance Company Limited Vs. Kashmiri Lal, 2007 ACJ 688, this compensation shall be recovered by attaching the bank account of the insurance company with a cost of Rs.5,000/-."

AWARD OF INTEREST:

22. Without further ado, the impugned judgment-cum-award insofar as it restricted the interest from the date of accident i.e.



11.10.1997 till the earlier judgment dated 23.07.2012, cannot be sustained in law. There is no gainsaying that the claimants have been deprived of just and fair compensation throughout this prolonged litigation and there are no reasons to restrict the interest period in the manner done by the learned Tribunal. However, the award of interest @ 7.5% is clearly unassailable, for which, reference can be invited to an earlier decision of this Court in the case of **The Oriental Insurance Co. Ltd. v. Sohan Lal**¹², in which, this Court relied upon a decision in the case of **National Insurance Co. Ltd. v. Yad Ram**¹³ and observed as under:

“This affirms the view of the learned Single Judge that there is no fixed rate of interest on compensation that can be applied under the M.V. Act and the grant of appropriate rate of interest shall be governed by several factors which are to be determined on a case-to-case basis. In the instant case, the motor vehicle accident had occurred on 01.07.2018 and the claim petition was filed on 30.08.2018. The award was passed on 03.07.2023, i.e., within 05 years from date of filing of the claim petition. Considering that due to the Covid-19 pandemic that brought the world to a standstill, there has been an evident delay in adjudication. It is, thus a fit case where the rate of interest should be brought down to 7.5% p.a. The award of interest @7.5% p.a. along-with the awarded compensation, would also commensurate with the rate of interests, which are being given by the nationalised banks on Fixed Deposit Receipts as per Reserve Bank of India guidelines.”

23. Accordingly, the claimants shall be entitled to a total compensation of Rs. 33,87,278/- (Rupees Thirty Three Lacs Eighty Seven Thousand Two Hundred Seventy Eight Only) with interest @ 7.5% from the date of accident i.e. 11.10.1997 till realization.

¹² MAC APP. 70/2024 decided on 19.03.2024

¹³ 2023 SCC OnLine Del 1849



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24. In view of the foregoing discussion, the MAC. APPL. 265/2019 filed by the appellant/insurance company is hereby dismissed. Insofar as MAC. APPL 351/2019 is concerned, the same is partly allowed to the extent discussed hereinabove.

25. Both the appeals are disposed of accordingly along with pending application.

DHARMESH SHARMA, J.

APRIL 02, 2024

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