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

% ***Date of Decision: 2nd December, 2024***

\+ **MAC.APP. 116/2020**

1. SMT. RAJVINDER KAUR
W/o Late Sh. Suraj .....Appellant No.1

2. MST. SEHAJ
S/o Late Sh. Suraj ....Appellant No.2

3. MST. HARJOT
S/o Late Sh. Suraj ....Appellant No.3

4. MS. JYOTI
W/o Sh. Ram Kumar ....Appellant No.4

5. SH. RAM KUMAR
S/o Late Sh. Tirth Ram .....Appellant No.5
Through: Mr. S.N. Parashar, Advocate.

versus

1. THE UNITED INDIA INSURANCE CO LTD
....Respondent No. 1

2. SH. RATTAN PAL SINGH
S/o Sh. Santosh Singh ....Respondent No. 2

3. M/S CHANSON MOTORS PVT. LTD. ...Respondent No.3
Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. Cross Appeal bearing MAC. APP. 116/2020 under Order XLI Rule 22

read with Section 151 of the Code of Civil Procedure, 1908 ('CPC' *hereinafter*) has been filed on behalf of the Claimant against the Impugned Award dated 15.05.2019 *vide* which the compensation, in the sum of Rs.13,38,000/- along with interest @ 9% per annum, has been granted, on account of demise of Suraj Soni, aged 26 years in the road accident on intervening night of 03.05.2018 and 04.05.2018.

2. The enhancement of compensation is sought on the following *grounds*:-

(i) that the deduction towards personal expenses should have been 1/4th instead of 1/3rd as per the five Claimants; and

(ii) that the contributory negligence of 50% has been attributed to the Deceased without any basis.

3. Submissions heard.

4. ***Briefly stated,*** on the intervening night of 03.05.2018 and 04.05.2018 Shubham Soni, Ankush and Suraj Soni/Deceased were travelling on a two wheeler scooter bearing no. DL-4SAD-2821. At about 1.00 am when they were joining Patel Nagar Road near Metro Pillar no. 210, from main Bazar Shadipur, offending Innova Car bearing no. DL-1VB-8475 came at very fast speed and hit their scooter. Consequently, they fell and sustained injuries. Suraj Soni/Driver sustained a head injury. It was alleged that driver stopped the car and sent Shubham Soni and Suraj Soni to the RML hospital where Suraj Soni succumbed to his injuries.

5. FIR No. 125/18 got registered for the offence punishable under Sections 279/337/304-A of *Indian Penal Code, 1860* ('IPC' *hereinafter*) at PS Ranjeet Nagar, Delhi.

6. The Detailed Accident Report ('DAR' *hereinafter*) was filed before the Ld. Tribunal. The Petition under Section 166 and 140 of the M.V. Act was also filed for *grant of compensation*.

7. The *main ground* of challenge is that reduction should have been 1/4th instead of 1/3rd as there are five Claimants.

8. In the impugned Award, the Ld. Tribunal has held that Appellant No. 4 and 5, the parents of the Deceased, did not qualify as dependent as they were not financially dependent on the deceased. In *Sarla Verma v. DTC,* (2009) 6 SCC 121 the Apex Court has held that subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. Therefore, the Ld. Tribunal erred in not taking Appellant No. 4/mother of the deceased as the dependent.

9. In the present case, the deceased was aged 26 years and is survived by the Appellants i.e. his Wife, two sons, his mother and father, the five Claimants. The Wife, two minor children and the mother are the dependants on the deceased. Even if the father is not shown to be dependant, then too there are four dependants and the deduction towards personal and living expenses of the deceased, should have been one-fourth (1/4th). **Therefore,** deduction on account of personal and living expenses is modified to 1/4th.

10. The Awarded amount is accordingly modified as follows:

a. Rs. 13,000/- (monthly income) + Rs. 5,200/- (i.e. 40% future prospects) = 18,200/-p.m.;

b. 1/4th deduction towards personal and living expenses = ¼ x 18,200 = Rs. 4,550/-p.m.

c. **Therefore, the total loss of dependency is calculated as =**

(18,200 - 4,550) x 12 x 17 (multiplier) = Rs. 27,84,600/-

Contributory Negligence:

11. The *Second Ground* agitated for enhancement is that contributory negligence of 50% has been wrongly attributed to the Deceased despite the consistent testimony of PW-2, Shri Ankush, pillion rider and eyewitness who deposed that that the accident was caused due to rash and negligent driving of the Car No.DL-1VB-8475, by its driver.

12. PW2/Ankush in his cross-examination stated that they were going to Gurudwara Bangla Sahib at 1:00 AM and the accident had taken place on the Road from Shadipur to Patel Nagar. He deposed that their Scooter was coming from the inner road to the road which leads from Shadipur from where they took a U-turn. The offending car was coming from Karol Bagh side and going towards Shadipur, where there was a red light. Before joining the road Suraj/Deceased had stopped the scooter and as soon as they stopped, the car hit their scooter. **In light of testimony of PW2, the Ld. Tribunal concluded that the contributory negligence of the Deceased/Driver to be 50%.**

13. From the Site Plan, it is evident that the situs of accident was a 4-way road crossing and it was the primary responsibility of the Innova driver to take due care and caution to ensure that there was no vehicle coming from the connecting road to the main road. At the same tie it cannot be overlooked that the vehicle wile joining the four crossing must also take due caution about the traffic coming on the straight road. Accidents happen in a split second where vehicles are travelling at a high speed, there cannot be any exact and minute assessment of the same. ***Given the facts and circumstances of the present case where accident has occurred on afour***

crossing and both were expected to exercise care and caution, the contributory negligence of the deceased driver of the motorcycle is hereby reduced from 50% to 25%.

***Relief*:-**

14. In view of the above observations, the modified amount of compensation is encapsulated in the Tabular Chart as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	Rs. 13,000/-	Rs. 13,000/-
2.	Add-Future Prospects (B)	40%	40%
3.	Less-Personal Expenses of Deceased (C)	1/3	**1/4**
4.	Monthly loss of Dependency [(A+B)-C=D]	12,134/-	**18,200/-**
5.	Annual loss of Dependency (Dx12)	1,45,608	**2,18,400/-**
6.	Multiplier (E)	17	17
7.	Total loss of Dependency	24,75,336/-	**27,84,600/-**
9.	Compensation for loss of Consortium (H)	1,20,000/- (40,000 x 3)	1,20,000/-
	Loss of Love and Affection	1,50,000/-	1,50,000/-
10.	Compensation for loss of Estate (I)	15,000/-	15,000/-
11.	Compensation towards funeral expenses (J)	15,000/-	15,000/-
12.	Total Compensation (F+G+H+I+J=K)	27,75,336/-	**30,84,600**
13.	Rate of Interest Awarded	9	**9**
14.	Compensation Less Contributory Negligence	13,87,668/- (50%)	**23,13,450/- (3084600-7,71,150) (25%)**

15. In view of the above the total amount of Compensation awarded is

thus modified to **Rs. 23,13,450/-** along with interest @ 9% per annum, as per the terms of the Award dated 15.05.2019 passed by the Ld. Tribunal.

16. The Appeal stands disposed of accordingly.

NEENA BANSAL KRISHNA

(JUDGE)

DECEMBER 2, 2024/RS