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

% *Date of Decision: 09th December, 2024*

+ **MAC.APP. 542/2017**

UNITED INDIA INSURANCE CO. LTD.Appellant

Through: Mr. Pradeep Gaur, Mr. Amit Gaur
and Ms. Mansi, Advocates.

versus

1. **TRIPTA KHANNA**
W/o Late Sh. Tilak Raj KhannaRespondent No.1

2. **Ms. NIRMAL**
D/o Late Sh. Tilak Raj KhannaRespondent No. 2

3. **Ram Pal Jat**
S/o Sh. Mohan Lal Jat ...Respondent No. 3

4. **LALIT SINGH JADEJA**
S/o Sh. Thakat Singh ...Respondent No. 4

5. **NANGU**
S/o Najmi Hasan QueresiRespondent No. 5

6. **M/s ARTEE ROADWAY PVT. LTD.**
Through its Director ...Respondent No. 6
Through: Mr. Vipul Ganda, Mr. Santosh Kumar
Giri, Ms. Sakshi Rastogi and Mr.
Sugyan Kumar Singh, Advocates.

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+ **MAC.APP. 117/2020**

1. **TRIPTA KHANNA** ..Appellant No.1



2. NIRMAL

...Appellant No. 2

Through: Mr. Vipul Ganda, Mr. Santosh Kumar Giri, Ms. Sakshi Rastogi and Mr. Sugyan Kumar Singh, Advocates.

versus

1. UNITED INDIA INSURANCE COMPANY LIMITED

....Respondent No. 1

2. RAM PAL JAT

....Respondent No. 2

3. LALIT SINGH JADEJA

...Respondent No. 3

4. NANGU

....Respondent No. 4

5. M/s ARTEE ROADWAY PVT. LTD.

Through its Director

....Respondent No. 5

Through: Mr. Pradeep Gaur, Mr. Amit Gaur and Ms. Mansi, Advocate for R1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

MAC.APP. 542/2017

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act' *hereinafter*), has been preferred on behalf of the *Appellant/United India Insurance Company Limited*, against the impugned Award dated 30.03.2017 granting compensation in the sum of Rs. 7,48,600/- , along with interest @ 9% per annum **to the Claimants of the Deceased** who was sitting in the front seat of the Innova car (*hereinafter* "*Offending vehicle*") involved in the accident which took place on 21.06.2012.



2. *Briefly stated*, on 21.06.2012 deceased Sanjeev Kumar Khanna was going to Chittorgarh from Jaipur for his job work, in hired Innova Car bearing no. RJ-14TB-1406 (offending vehicle No. 1). At about 10.00 a.m. when he reached opposite to Sher-e-Punjab Hotel on Highway, Hamirgarh, Rajasthan, suddenly the driver-Ram Pal (Respondent no. 3) of the Innova Car tried to overtake the truck no. GJ-23V-7009 (Offending vehicle No. 2) and hit into a truck standing in the middle of the road. The deceased-Sanjeev Kumar, who was in the Innova Car received multiple *head crush injuries and fracture in skull bone and died on the spot*. Respondent No. 3-Ram Pal, driver of Innova made a call to Police which reached at the spot and took Sh. Sanjeev Kumar to hospital where he was declared *Brought Dead*.
3. ***FIR No. 105/2012*** Sections 279/304-A of *Indian Penal Code, 1860* at P.S. Hamirgarh, Distt. Bhilwara, Rajasthan, was registered. The Chargesheet was filed against the driver of the offending Truck.
4. Petition under *Sections 166 & 140 of the M.V. Act, 1988* was filed by Smt. Tripta Khanna, Mother, aged about 68 years and Ms. Nirmal unmarried Sister, aged about 55 years, for seeking compensation.
5. The ***Insurance Company has challenged the impugned Award, on the following grounds: -***
 - (i) that *the income of the deceased* has been taken as Rs.10,900/- per month without any documentary evidence and should have been calculated as per the Minimum Wages for Non-Matriculate;
 - (ii) that it was the truck which was solely negligent and no composite negligence has been imputed to Innova Car in the



ratio of 80%; and in any case, it cannot be attributed to be more than 20%.

MAC.APP. 117/2020:-

6. Cross-objections under Order XLI Rule 22 of the Code of Civil Procedure, 1908 ('CPC' hereinafter) read with Section 173 of M.V. Act have been filed on behalf of the Appellant/Claimants, to seek **enhancement of compensation** essentially on the ground that *the Future Prospects has not been considered while granting compensation. Further, the multiplier as per the Judgment of Sarla Verma v. DTC, (2009) 6 SCC 121 should have been 15, but it has been taken as 9.*

7. It is further submitted that the negligence has been rightly adjudicated by the Tribunal and does not merit any interference.

8. **Submissions heard and Record Perused.**

Contributory Negligence/ Composite Negligence:

9. An objection has been taken on behalf of the United India Insurance Company Limited that the accident occurred due to sole negligence of the Truck and no contributory negligence can be fixed on the Innova Car which is insured with the United India Insurance Company Limited/Appellant and if at all there is any negligence attributable to Innova Car's driver, it cannot be more than 20%.

10. It is argued on behalf of the Appellant that merely because the Insurance Policy of the offending Truck was found to be fake, higher liability to the extent of 80% cannot be fixed on the Innova Car.

11. For the correct appreciation of this aspect, the distinction between



composite negligence and **contributory negligence** needs to be considered.

12. In Municipal Corporation of Greater Bombay v. Laxman Iyer & Anr. (2003) 8 SCC 731, the Supreme Court explained what amounts to Negligence. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions for which the attending and surrounding facts and circumstances have to be taken into account. If the answer is in the affirmative, it is a negligent act.

13. In Laxman Iyer & Anr. (*Supra*) thereafter gave a detailed distinction between *composite negligence* and *contributory negligence*. The two concepts were explained as under:

“6. Though there is no statutory definition, in common parlance 'negligence' is categorised *as either composite or contributory..... Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed.* In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. ... *Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or*



*omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. **But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence.** (See Pollock on Torts, 15th Edn. P.361).*

14. The Supreme Court, in the landmark judgment of T.O. Anthony v. Karvarnan & Ors. (2008) 3 SCC 748 emphasized that *contributory negligence* applies when the injured party is also at fault, which would proportionally reduce their compensation. *Per contra, in the case of composite negligence, the entire liability falls on the negligent parties without affecting the victim's right to full compensation.* This ruling underscored the fundamental difference between the two forms of negligence and their impact on compensation Claims as under: -

“ 6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of



proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

15.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

15. This view taken in the case of T.O. Anthony (Supra) has also been adopted in the ruling of Andhra Pradesh State Road Transport Corpn.



&Anr. v. K Hemlatha & Ors. [2008 (6) SCC 767].

16. In cases of Composite Negligence, the liability of all the tortfeasors is joint and several, has also been reaffirmed by a Full Bench of the High Court of Karnataka at Bangalore in the case of Karnataka State Road Transport Corporation, Bangalore and etc. v. Arun alias Aravind and etc. [AIR 2004 Kar. 149]. It was further settled that the claimant is entitled to full compensation, even if one tortfeasor is not impleaded and the claimant has the choice to sue either or both tortfeasors, and failure to implead one does not affect the compensation. The impleaded tortfeasor can seek contribution from others later. The compensation cannot be reduced due to non-impleadment of a tortfeasor.

17. Similar are the observations in the judgment of National Insurance Co. Ltd. v. P.A. Vergis & Ors. [1991 (1) ACC 226] wherein it was observed that it would be a case of **composite negligence** if the accident occurs **without any negligence on the part of the claimant/victim**, but due to the negligence of two or more other parties.

18. In United India Fire & Genl. Ins. Co. Ltd. v. Varghese & Ors. [1989 2 ACC 483] a victim-centric approach was taken and it was observed that if a case of composite negligence is made out where the injured/victim has suffered because of the negligence of two or more persons, the injured party has the **option to proceed against one or all of the tortfeasors**. An insurer cannot argue that the Claim is unsustainable because **other negligent parties have not been impleaded**.

19. A similar stance was taken in United India Fire & General Insurance Co. Ltd. v. U.E. Prasad & Ors. [AIR 1985 Kar. 160], where the Karnataka



High Court reaffirmed that in case of composite negligence, each negligent party can be held fully liable. Similarly, in Andhra Marine Exports (P) Ltd. & Anr. v. P. Radhakrishnan & Ors. [AIR 1984 Mad. 358], the Madras High Court ruled that in cases of composite negligence, every wrongdoer is liable for the entire damages, provided negligence is established.

20. While discussing the aspect of *apportionment of liability of tortfeasors*, the Full Bench of Madhya Pradesh High Court in Smt. Sushila Bhadoriya & Ors. v. M.P. State Road Transport Corpn. & Anr. [2005 (1) MPLJ 372] has opined that in cases of composite negligence, there is no necessity to apportion the inter se liability of joint tort-feasors. However, in case both the joint tort-feasors are impleaded as party and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal.

21. After referring to above judgments, the Supreme Court in the benchmark ruling of Khenyei v. New India Assurance Co. Ltd. (2015) 9 SCC 273 reiterated that the key difference between a case of contributory negligence and composite negligence is that, in the first category, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; however, in the second category, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. Thus, the principles governing the cases of composite negligence were summed up as under: -

“ (i) *In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and*



to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

22. From the aforesaid Judgements, it can be concluded that it is well established that if the accident involves two or more vehicles and the victim had no contribution in the accident, he is entitled to entire compensation from the two vehicles, for which neither the apportionment is necessary nor impleadment of owner/ Insurer of both the offending vehicles is mandated. Once it is proved to be a case of Composite Negligence, the liability of the two vehicles is joint and several and both are equally responsible. The



victim is not required to establish or prove the ratio of liability amongst the wrongdoers. Instead, the responsibility for apportioning liability lies with the wrongdoers themselves. This ensures that that the innocent claimant/victim is not burdened with proving the degree of negligence of each tortfeasor and further allows the Claimants to recover damages without complex apportionment issues.

23. *In the light of the aforesaid principles, the facts of present case, may now be considered.*

24. To appreciate the contentions of the United India Insurance Company Limited/Appellant, in regard to the negligence of the Truck, it would be pertinent to refer to the Chargesheet. The manner in which the accident had been deposed by PW1/Tripta Khanna, the mother of the deceased and PW2/Nirmal, sister of the deceased, but admittedly both were not the eyewitness to the accident.

25. Admittedly, the Chargesheet has been filed after due investigations in FIR No. 105/2012 against PW-5/Nangu, the driver of the offending Truck.

26. What now needs to be considered is whether there is any negligence proved on behalf of the Innova Car or the Truck and if so, to the extent to which each vehicle had contributed to the accident.

27. Though no eyewitness has been examined by any of the parties, but it cannot be overlooked that in the compensation cases, *fair and just compensation* has to be ascertained in an Enquiry to determine the disputed facts in the totality of circumstances, which is in contradistinction to a criminal trial to ascertain the facts beyond reasonable doubt.

28. Pertinently, the FIR was registered on the statement of Ram Pal who



was driving the Innova Car, who narrated that on 21.06.2012, he was driving the Innova Car cautiously in a controlled manner, to go to Chittorgarh. When they reached in front of Sher-e-Punjab Hotel on Highway, Hamirgarh, Rajasthan at about 10:00 A.M., he overtook one Truck and hit into a Truck bearing No. GJ 23V 7009 which was parked on the road. The Innova Car banged into the stationary Truck on account of which Shri Sanjeev Kumar Khanna who was sitting adjoining to him died on the spot. He suffered head injury, while Prashant Deshmukh and Vivek Srivastava who were also travelling in the Innova Car, suffered grievous injuries. He went to the Police Station and gave information about the accident. He further stated that the accident occurred due to the wrong parking of the Truck by its Driver on the road.

29. On his statement, the present FIR was registered under Sections 279/337/304A of IPC, 1860 at Police Station Hamirgarh District Bhilwara, Rajasthan. During the investigations, the Investigating Officer recorded the statement of the other two eyewitnesses, Shri Ram Pal and Shri Prashant Deshmukh (the other injured persons) who corroborated the manner of the accident as narrated by Shri Ram Pal, Complainant.

30. Further, during the investigations the Seizure Memo of the Innova Car was prepared in which its *Huliya*/description was mentioned. It was stated that the Innova Car was completely damaged, its roof had been pushed and the driver side of the vehicle had been crushed inside and both the doors had broken. The driver side tyre had come out and the Stepney had also got crushed. The vehicle was taken to the Police Station by a crane.

31. From the statement of Shri Ram Pal and the other two eyewitnesses



whose statements were recorded during the investigations, it is established that the Innova Car was being driven by Ram Pal in which deceased was travelling along with two other persons, Vivek Srivastava and Prashant Deshmukh. The Driver of the Innova Car while overtaking the Truck was unable to see the offending Truck which was parked on the roadside and banged into the stationary Truck, as is evident from the site plan.

32. From the manner in which the accident has taken place, it is evident that it is a case of composite negligence wherein the Driver of the Truck had parked the vehicle on the roadside and the Innova Car also had not exercised due caution and care while overtaking the Truck to ensure that there was a clear passage for overtaking.

33. ***It is evident from the evidence as discussed above that it is not a case of contributory negligence, but of composite negligence of the Innova Car Driver and the Truck Driver.***

34. Pertinently, both, the Truck as well as the Innova Car, the two vehicles involved in the accident were both insured with the United India Insurance Company Limited, though with different Branches.

35. The learned Claim Tribunal had considered the testimony of R-6W1/Sandeep Mann, Administrative Officer, United India Insurance Company Limited, Divisional Office Godhra, Kalandi Building, Mahavir Jain Society, Panch Mahal District, Godhra, Gujarat, to conclude that the Insurance Policy in respect of offending Truck bearing No. GJ 23 V 7009 was a fake Policy.

36. However, the learned Claim Tribunal observed that from the extensive damage to the Innova Car from the accident, an inference can be



drawn of the Innova Car being more rash and negligent. Consequently, the contributory negligence to the extent of 80% was attributed to Innova Car and 20% to the Truck. However, it was further directed that initially entire liability under the award would be discharged by Appellant/Insurance Company, which shall have recovery rights against Nangu/Driver of Truck and M/s Artee Roadways Pvt. Ltd./ Owner of truck, joint and severally, to the extent of 20%.

37. Since, as has been discussed above, it being a case of composite negligence, both the vehicles were responsible with no contributory negligence on the part of the deceased and the liability to pay the compensation by the Insurance Company of both the vehicles was joint and several.

38. In the present case, no apportionment of Compensation is mandated by law and the Claimants had the right to seek recovery of compensation from either the Insurance Company of the Innova Car or the Driver and Owner of the Offending Truck, with either seeking apportionment of their individual liability, in appropriate proceedings.

39. It is, therefore, held that it is a case of composite negligence of both the vehicles and the Appellant/Insurance Company is liable to pay the entire compensation, with the right to seek proportionate recovery from the Driver/Nangu (*Respondent No. 5*) and Owner of the Truck/ M/s Artee Roadways Pvt. Ltd./ Owner of truck (*Respondent No. 6*).

Loss of Dependency:-

Income of Deceased:



40. The *Insurance Company* has next contended that *the income of the deceased* has been taken as Rs.10,900/- per month though there was no documentary evidence in support thereof and it should have been calculated as per the Minimum Wages for Non-Matriculate.

41. PW1/Tripta Khanna had deposed that the deceased was doing private job as *Camera Operator* with A.R. Vision, at 1701, Sector-16, Faridabad, Haryana and his last drawn salary was Rs. 10,900/- plus T.A. In her cross-examination, there was nothing proved to the contrary.

42. To corroborate her testimony, PW-2 Smt. Nirmal/Sister of the deceased, was examined who has proved the Certificate Ex.PW-2/2, which reflects that the Deceased had completed a Course in Trade of Motor Mechanic and qualified the Trade Test held on 16.05.1994. He also produced Salary Certificate Mark – K wherein the consolidated salary of deceased is mentioned as Rs. 10,900/- plus TA per month. His last salary of Rs.10,900/- was paid on 31.05.2012 by Cheque no.716366 drawn on ICICI Bank, as mentioned in Mark - K.

43. The testimony of PW-1 which is corroborated by PW-2 establishes that the income of the deceased was Rs. 10,900/- per month as on the date of accident. ***Therefore, the Ld. Tribunal has rightly taken Rs. 10,900/-p.m. as income of the deceased.***

44. ***There is no interference warranted with the impugned Award, on this ground.***

Grant of Future Prospects: -

45. The Appellant/Claimants have sought enhancement of the



compensation *on the ground that no Future Prospects have been granted for compensation.*

46. As observed above, the consolidated salary of deceased has been proved to be Rs. 10,900/- plus TA per month. As per National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 the addition towards **Future Prospects**, should be 30%, if the age of the deceased was between the age of 40 to 50 years.

47. ***Therefore, 30% towards future prospects are hereby, granted.***

Deduction towards Personal Expenses: -

48. Since the deceased was unmarried, 50% is liable to be deducted towards personal and living expenses, in view of Sarla Verma (Supra), as has been done by the Ld. Tribunal, which has not been challenged by the Claimants.

Ascertaining the Multiplier: -

49. The Claimants have contended that the Multiplier as per the Judgment of Sarla Verma (Supra) should have been 15, but it has been taken as 9 by erroneously taking an average of the Age of the Claimants.

50. As per Sarla Verma (Supra) the multiplier should be **M-15 for 36 to 40 years and M-9 for 56 to 60**. As per the Ration Card Ex. PW1/F, School Leaving Certificate and Election Card the Deceased was born in 1997 and was 40 years old as on the date of accident.

51. Therefore, the **Multiplier of 15** has to be taken to calculate the Loss of Dependency.

52. The **Total Loss of Dependency** is thus, calculated as under:-



- i. Rs. 10,900 p.m. + 30% (future prospects) = Rs. 14,170/-;
- ii. Rs. 14,170 - 50% (personal expenses) = Rs. 7,085/-;
- iii. Rs. 7085/- x 12 x 15 = **Rs. 12,75,300/-**.

53. *Thus, the total loss of dependency is recalculated as Rs. 12,75,300/-.*

Relief:-

54. The Compensation is re-calculated as under:-

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	Rs. 10,900/-	Rs. 10,900/-
2.	Add-Future Prospects (B) assuming 40%	Nil	30% (3,270)
3.	Less-Personal Expenses of Deceased (C) [1/4th of A+B]	50%	50% (7085)
4.	Monthly loss of Dependency [(A+B)-C=D]	Rs. 5,450/-	Rs. 7,085/-
5.	Annual loss of Dependency (Dx12)	Rs. 65,400/-	Rs. 85,020/-
6.	Multiplier (E)	9	15
7.	Total loss of Dependency	Rs. 5,88,600/-	Rs. 12,75,300/-
8.	Medical Expenses	Nil	Nil
9.	Compensation for loss of Consortium (H)	Nil	Rs. 1,00,000/-
	Compensation for Love and Affection	Rs. 1,00,000/-	
10.	Compensation for loss of Estate (I)	Rs. 10,000/-	Rs. 10,000/-
11.	Compensation towards funeral expenses (J)	Rs. 50,000/-	Rs. 50,000/-
12.	Total Compensation (F+G+H+I+J=K)	Rs. 7,48,600/-	Rs. 14,35,300/-
13.	Rate of Interest Awarded	9%	9%



55. Thus, the total compensation granted to the Claimants is re-calculated as Rs. **14,35,300/-** along with interest @9% per annum from the date of the Claim till the date of deposit, to be disbursed in terms of the Impugned Award dated 30.03.2017, to be paid by the Appellant/ Insurance Company with the right to seek proportionate recovery from the Driver/Nangu (*Respondent No. 5*) and Owner of the Truck/ M/s Artee Roadways Pvt. Ltd./ Owner of truck (*Respondent No. 6*).

56. The Statutory deposit be returned to the Insurance Company, as per Rules.

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

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 9, 2024/RS