



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% **Judgment reserved on : 23 April 2024**
Judgment pronounced on : 25 April 2024
+ MAC.APP. 209/2024 & CM APPL. 23068/2024 (Stay)
THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Himanshu Bhushan, Ms.
Shagun Srivastava and Mr.
Maha Singh, Advs.

versus

SHUBHANK SINGH BHADAURIA & ORS. Respondents
Through: Ms. Priyanka Sethia and Mr.
Sachin Batra, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹ as amended up to date, assailing the impugned judgment-cum-award dated 10.11.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Central District, Tis Hazari Courts, Delhi², whereby the claim petition filed by the respondents No. 1 and 2 i.e., the claimants-parents of the deceased boy, namely Sushil Kumar Dubey, aged 22 years, was allowed and a total compensation of Rs. 26,17,962/- has been awarded along with interest @ 8% per annum from the date of filing of DAR³ i.e. 11.05.2018 till realization in MACT No. 399/2018

¹ MV Act

² Tribunal

³ Detailed Accident Report



titled as ‘Jai Prakash Dubey & Anr. v. Shubhank Singh Bhadauria & Anr.’

2. At the outset, the real contest in the present appeal is between the appellant/insurance company and the claimants-parents of the deceased. There is no dispute as regards the findings given by the learned Tribunal on the issue of the driver of the offending vehicle bearing registration No. DL8CA-7215 driving the same in a rash and negligent manner on 10.11.2017 at about 08.00 p.m. and thereby causing fatal injuries to the deceased boy.

3. Learned counsel for the appellant/insurance company has however urged that the learned Tribunal has wrongly assumed the notional income of the deceased by adopting minimum wages applicable in Delhi for a Matriculate person @ 16468/- per month in the teeth of substantive evidence led by PW-1/father of the deceased that his son was employed in a private job, earning a sum of Rs. 9825/- per month. It is further urged that the learned Tribunal has wrongly awarded a sum of Rs. 20,000/- each under the heads of ‘loss of estate’ and ‘funeral expenses’ contrary to the decision in the case of **National Insurance Co. Ltd. V. Pranay Sethi**⁴. Lastly, it is urged that interest @ 8% per annum is exorbitant and it should have been pegged @ 6.5% per annum as per the prevalent banking rates.

4. Learned counsel for the appellant/insurance company has relied on decisions in **Chandra v. Mukesh Kumar Yadav**⁵, **Vezic D’Costa**

⁴ (2017) 16 SCC 680

⁵ (2022) 1 SCC 198



v. Manuelino Fernandes Sales⁶ and United India Insurance Company Limited v. B. Padmavathy⁷.

5. *Per contra*, learned counsel for the claimants-parents alluded to the testimony of PW-1/Mr. Jai Prakash Dubey i.e. the father of the deceased, who, in his affidavit filed in evidence, categorically deposed that although his son was earning Rs. 9825/- per month employed with Chorus Technologies Private Limited, Gurgaon, Haryana, at the same time he was also imparting home tuitions at night and earning Rs. 5,000/- to Rs. 8,000/- per month in addition thereof. It was pointed out that such deposition was not challenged and not even a bare suggestion was given that the deceased was not imparting home tuitions and/or not earning any amount there from and reliance was placed on the decision in *Chandra (supra)*.

ANALYSIS & DECISION:

6. Having heard the learned counsels for the rival parties and on perusal of the record, unhesitatingly, this Court finds that the impugned judgment-cum-award as it stands cannot be sustained in law and requires some modifications. It would be apposite to reproduce the reasons that prevailed in the mind of the learned Tribunal while assessing the compensation towards loss of financial dependency, which read as under:-

“18. In this regard, the petitioners have examined petitioner no. 1 as PW1 who was the father of deceased. PW-1 deposed that at the relevant time, the deceased was 22 years old and was doing a private job and was earning a sum of Rs.9,825/- per month. However, there is no material available on record which could

⁶ MANU/MH/2741/2014

⁷ MANU/TN/0091/2012



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corroborate the claim of PW-1 as to the monthly earnings of the deceased. In the facts and circumstances, it would be appropriate to assess the monthly income of the deceased as per the minimum wages payable to a Matriculate Person in Delhi at the time of accident i.e. 10.11.2017 were Rs. 16,468/- per month.

19. Petitioners have claimed that the deceased was aged about 22 years at the time of his death. They have also placed on record a copy of Second School Examination of the deceased as Ex. PW1/2 (Colly), as per which the date of birth of deceased was 01.08.1996. The date of accident is 10.11.2017. Going by the driving licence of the deceased, the age of deceased would be around 21 years as on the date of accident. Hence, in view of the law laid down by the Hon'ble Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which has also been upheld by the Constitutional Bench of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. SLP (Civil) No. 25590 of 2014, decided on 31.10.2017, the multiplier of '18' is held applicable for calculating the loss of dependency caused to the petitioners on account of death of the deceased.

20. Coming to the dependency of deceased at the time of accident, it may be observed that the deceased is survived by his parents.

21. Irrespective of this, one half of the earnings of deceased shall be deducted towards his personal and living expenses in view of the law already discussed above. Further, since this Tribunal has assumed that the age of deceased was 21 years at the time of accident, in view of the law laid down in the case of Pranay Sethi & Ors. (Supra), the petitioners are also held entitled to an addition of 40% of the above amount of his earnings towards future prospects.

22. Thus, the loss of dependency qua the deceased in the present case comes to Rs. 24,89,962/- (rounded off) (Rs. 16,468/- X $140/100 \times 1/2 \times 12 \times 18$). This amount is awarded to the petitioners under this head."

7. *Ex facie*, although learned Tribunal was partly correct to the effect that there was no evidence worth its salt on the record that the deceased was imparting home tuition and earning Rs. 5,000/- to Rs. 8,000/- per month, in the face of positive evidence led by PW-1/father of the deceased that his son was employed with Chorus Technologies Private Limited as Scanning Operator and deriving salary of Rs.



9825/-, learned Tribunal caught itself on the wrong foot by discarding the said piece of substantive evidence and instead reckoning notional income as per scales of the minimum wages applicable in Delhi in the year 2017.

8. Learned Tribunal also went against the decision in the case of ***Pranay Sethi (supra)*** in awarding compensation under the conventional heads viz., 'loss of estate', 'loss of consortium' and 'funeral expenses', which ordinarily are Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively, which amount is liable to be enhanced @ 10% every three years. The decision in the ***Pranay Sethi*** was rendered on October 31, 2017 and the accident in question had occasioned on 10.11.2017, but the amount of compensation towards 'loss of consortium' is being assessed as on today. Therefore, the impugned judgment-cum-award requires interference by this Court and the compensation is re-assessed as under:

“Rs.9825x12= Rs. 1,17,900/-, and in addition 40% of the annual income is to be reckoned towards increase in the future prospects, which comes to Rs. 47,160/- and the total comes to Rs. 1,65,060/-. ½ is required to be deducted towards personal use and living expenses of the deceased and the amount would come to Rs. 82,530/- which would be the annual loss of financial dependency to the claimants-parents.”

9. As there is no dispute that the date of birth of deceased was 01.08.1996 and he was 21 years of age at the time of his death, multiplier of '18' has to be applied and accordingly the compensation works out to be Rs. 14,85,540/-. Further, Rs. 18,000/- towards 'funeral expenses', Rs. 18,000/- towards 'loss of estate' and Rs. 48,000/- each



to the parents is to be awarded towards 'loss of consortium' and the total compensation would come to Rs. 16,09,540/-.

10. I am afraid that reliance on *Chandra (supra)* is misplaced, since it was a case where the deceased was employed as a driver on a Truck and although it was the case of the claimants that he was earning Rs. 15,000/-, in the absence of any proof, learned Trial Court assumed minimum wages notified for the skilled workmen in the year 2016. It was in the aforesaid backdrop that it was held that merely because claimants were unable to prove documentary evidence to show monthly income, the same did not justify the adoption of least tier of minimum wage while computing income. Said issue does not arise in the instant case.

11. As regards the plea of the learned counsel for the appellant/insurance company with regard to interest having been awarded @ 8% per annum, considering that a young life was lost and it must have been a painful life experience for the parents to have lost their son and the fact that the disposal of the claim petition was delayed on account of COVID-19 pandemic, there are justifiable grounds to retain the grant of interest @ 8% by the learned Tribunal.

12. In view of the foregoing discussions, the present appeal is allowed and the impugned judgment-cum-award is hereby set aside and the claimants-parents are instead awarded a total amount of Rs. 16,09,540/- with interest @ 8% per annum from the date of filing of the DAR i.e. 11.05.2018 till realization.

13. The amount of compensation shall be deposited with the learned Tribunal within four weeks from today, failing which the



appellant/insurance company shall be liable to pay penal interest @ 12% from the date of this judgment till realization. The amount of compensation be released to the claimants-parents as per directions of the learned Tribunal, except that instead of depositing the amount of Rs. 15,00,000/- to be invested in the form of 115 monthly Fixed Deposit Receipts [“FDRs”] payable in equal amounts for a period of 1 to 115 months in succession, a sum of Rs.10,00,000/- shall be invested in the form of 100 monthly FDRs and the remaining amount shall be released to the claimants-parents. The amount of Rs. 25,000/- towards statutory deposit for filing this appeal be released to the appellant/ insurance company.

14. The present appeal along with the pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 25, 2024

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