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

% ***Date of Decision: 11th December 2024***

\+ **MAC.APP. 173/2020, CM APPL. 18008/2020 (stay), CM APPL. 22023/2020 (for release of the awarded amount)**

RELIANCE GENERAL INSURANCE COMPANY LTD....Appellant

Through: Ms. Prerna Mehta, Advocate.

versus

1. POONAM
W/o Late Sh. Pradeep Saini .....Respondent No.1

2. JAGRIT SAINI
S/o Late Sh. Pradeep Saini ...Respondent No. 2

3. HARSHIKA
D/o Late Sh. Pradeep Saini ....Respondent No. 3

4. SHANTI DEVI
W/o Late Sh. Ashok Saini ...Respondent No. 4

5. VERAJ NEB (Driver)
S/o Sh. Vinod Neb ....Respondent No. 5

6. KANCHAN NEB (Owner)
W/o Sh. Veraj Neb ....Respondent No. 6

Through: Counsel for Respondents (appearance not given)

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\+ **MAC.APP. 204/2020**

1. POONAM
W/o Late Sh. Pradeep Saini .....Appellant No. 1

2. JAGRIT SAINI
S/o Late Sh. Pradeep Saini ...Appellant No. 2

3. HARSHIKA
D/o Late Sh. Pradeep Saini ....Appellant No. 3

4. SHANTI DEVI
W/o Late Sh. Ashok Saini ...Appellant No. 4
Through: Counsel for Appellant (appearance not given).

versus

1. RELIANCE GENERAL INSURANCE COMPANY LTD.
.....Respondent No.1

2. VERAJ NEB
S/o Sh. Vinod Neb ...Respondent No. 2

3. KANCHAN NEB
W/o Sh.Veraj Neb ...Respondent No. 3

Through: Ms. Prerna Mehta, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

MAC.APP. 173/2020

1. The Appeal bearing MAC.APP. 173/2020 under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act' *hereinafter*) has been filed on behalf of the Appellant/Reliance General Insurance Company Limited and the *Cross Appeal in MAC.APP. 204/2020,* has been filed on behalf of Mrs. Poonam, Respondent No.1 against the impugned Award dated 27.02.2020 *vide* which the compensation in the sum of Rs.53,83,050/- along with the

interest 6% p.a. has been granted, on account of death of Mr. Pradeep Saini, in a road accident on 30.07.2018.

2. The ***Appellant Insurance Company*** has challenged the Award, on the following *grounds*:

(i) that *no negligence* has been proved on the part of the driver of the offending vehicle;

(ii) that the last income proved of the deceased was in the sum of Rs.26,000/- and *no proof of the income* of the subsequent job was proved and the *income* has been incorrectly taken as Rs.28,000/- without making deduction of Income-Tax @ 5%; and

(iii) that the *Loss of Love and Affection* has been incorrectly granted once the Loss of Consortium had been granted.

MAC.APP. 204/2020

3. The **Claimants** in their Cross Appeal have sought ***enhancement of the compensation***, on the following *grounds*:-

(i) that 15% of negligence has been **contributory negligence**, has been wrongly attributed to the deceased;

(ii) that the Loss of Consortium should be in accordance with *Pranay Sethi* (supra); and

(iii) that the interest @6% on the lower side, which needs to be enhanced.

4. **Submissions heard and record Perused.**

5. Briefly stated the case of the Claimants is that on 30.07.2018 at about 11:30 A.M., Shri Pradeep Saini was riding his motorcycle bearing Registration No. DL 1ST 3456 from Golf Course Road to Galleria Market

side. When he reached near Galleria Market, Gurgaon, Haryana, he tried to overtake the offending vehicle bearing Registration No. HR 26 DB 9935 from the right side and in this process, the driver of the offending vehicle turned his vehicle on his driver side and hit Shri Pradeep Saini. The Motorcyclist fell and came under the wheel of the offending vehicle and thus, received injuries which proved to be fatal.

6. FIR bearing No. 565/2018, under Sections 279/304A of the *Indian Penal Code, 1860* ('IPC') was registered at PS DLF, Gurugram. Further, Chargesheet Ex.PW1/1 was filed against the driver of the Offending Vehicle.

7. The ***Petition under Section 166 & 140 of the M.V. Act*** was filed for seeking compensation on account of death of deceased in the accident which happened on 30.07.2018.

Negligence of Driver of Offending Vehicle /Contributory Negligence of 15% of the deceased:

8. The *first ground* of challenge against the impugned Award by the Appellant/Insurance Company is that *no negligence* has been proved on the part of the driver of the offending vehicle.

9. On the other hand, the Claimants have asserted that 15% contributory negligence has been wrongly attributed to the deceased.

10. To appreciate the rival contentions, it would be pertinent to refer to the testimony of PW3/Sanjeev Kumar who was an eyewitness and on whose statement, the FIR was registered. He had deposed that on 30.07.2018 at about 11:30 A.M., he was going in his Santro Car from Golf Course Road to Galleria Market, Gurgaon, Haryana, a Ford Endeavour Car was going ahead

of him. A Motorcyclist (deceased Shri Pradeep Saini) who was riding his motorcycle on the right side of the offending Ford Car, tried to cross the car. Since the space was less between the car and the divider on the other side, in this process of trying to overtake the Endeavour Car, *hit the rear right side of SUV and fell and sustained injuries.* PW3/Sanjeev Kumar along with SUV Driver took the deceased to Max Hospital.

11. PW3/Sanjeev Kumar in his cross-examination had clarified that his car was behind the Endeavour Car with a space of 2-3 cars, though there was no vehicle between his car and the offending Endeavour Car. He was driving towards the left side of the lane and towards the left side of the Endeavour Car. The road was one way for a limited period every day which covered the time of accident. There was no divider on the road which had six lanes. There was a dividing line and on each side of this dividing lane, there were three lanes. He was on the second lane of the road on left side, while the Endeavour Car was on the third lane on his right side. The Motorcycle was just behind the Endeavour Car. He further explained that the deceased on his motorcycle had tried to overtake from the right side of the Endeavour Car as there was some gap between the Endeavour Car and the footpath. He volunteered that there was enough space between the footpath and the Endeavour Car for the deceased to overtake his motorcycle.

12. A suggestion was given to the witness in the cross-examination that in his statement to the Police on which the FIR was registered, he had stated that the driver of the Endeavour Car had suddenly come towards the extreme right side of the lane and hit into the motorcycle, consequent to which the rear right of the Endeavour Car ran over the deceased. He further explained

that there was no contradiction in his statement made to the Police and his statement made in the Court.

13. The first document of consequence is the Mechanical Inspection Report of the motor cycle of the deceased which shows that the rear lever paddle was bent. The left corner of the left handle was bent. The visor of the motorcycle was broken. The gear lever was bent and there were scratch marks on the silencer.

14. Likewise, the Mechanical Inspection Report of the Endeavour Car reflects that there was no damage on any part of the vehicle.

15. The next significant document is the Post Mortem Report, wherein the case of death has been opined to be on account head injury, following the Ante Mortem Report, blunt force impact consistent with the manner as alleged.

16. Reading the Mechanical Inspection Report and the Post Mortem Report in conjunction with the testimony of PW3/Sanjeev Kumar, it emerges that though it was the Motorcyclist who was trying to overtake the Endeavour Car from the extreme right side for which there was enough space, but it is the driver of the Endeavour Car who moved towards the right side resulting in the collision with the motorcycle because of which, he fell and suffered injuries which consequently proved to be fatal.

17. The learned Claim Tribunal has, therefore, rightly held that there was rashness and negligence on the part of the driver of the Endeavour Car.

18. However, it cannot be overlooked that it is the motorcyclist who was trying to overtake the Endeavour Car though correctly, from the right side but was unable to gauge that the space was not enough for him to be able to

overtake. The learned Claim Tribunal has rightly attributed 15% contributory negligence to the deceased.

19. The Insurance Company has relied upon the Motor Accident Reconstruction Report of ICS Assure Services Pvt. Ltd., wherein the Expert had opined that the deceased was not wearing the protective helmet, the injuries were suffered by him on his forehead which could have been caused due to his falling from the motorcycle and his head striking against the ground. It had been observed that had he been wearing a protective helmet, he would not have received injuries and consequently not died.

20. First and foremost, there is no cogent evidence that the deceased was not wearing a helmet. Even it is assumed that he was not wearing the helmet, then too from the aforesaid discussion about the manner in which the accident took place, wearing of a helmet would also not have prevented the accident.

21. In *Sadat Ali Khan AND Noor Ahmed Sayyed & Anr* 2024:KHC:28807-DB the Karnataka High Court has observed that under Section 129(a), the offense of not wearing protective headgear attracts a fine of Rs.1,000/- or suspension of the driving license for three months. Given this relatively minor penalty, reducing the insurance claim amount by 10% to 15% due to the not wearing of protective headgear is unjust as the principle of just compensation necessitates that courts award damages that are fair and equitable, considering all circumstances without unduly penalising the claimant for not wearing a helmet.

22. It is, therefore, concluded that the contributory negligence is proved in the manner in which deceased was driving his Motor cycle and not because

of not wearing the Helmet. There is no ground for interference in the findings of the Claim Tribunal on this aspect.

Assessment of the Income of the Deceased:

23. The *Second ground* agitated before this Court by the Appellant/Insurance Company is that the Ld. Tribunal has erred in taking the income of the deceased at Rs. 28,000/- per month without deduction of Income Tax @ 5% whereas income of the deceased should have been taken as Rs. 26,000/-.

24. PW2/Pankaj Saini, Proprietor of *M/s Nelam Elevator Care* proved the Salary Certificate Ex. PW2/A dated 15.05.2019 of the deceased reflecting that the Deceased was working as a Supervisor upto February 2018 and drawing salary in the sum of Rs. 26,000/- per month.

25. PW1/Poonam, wife of the deceased, had deposed that at the time of the accident, her husband was working with *Balaji Gadget as Sales Executive and was earning Rs. 28,000/- per month.*

26. To corroborate the salary of the deceased, she examined PW2/Pankaj Saini, the Proprietor of *M/s Nelam Elevator Care* who proved the Salary Certificate of the deceased as Ex.PW2/A, wherein it is certified that Shri Pradeep Saini (deceased) was working with him till February, 2018 and was getting a salary of Rs. 26,000/- per month.

27. The testimony of PW2/Pankaj Saini is further supported by his own Bank Statement of Canara Bank, Ex.PW2/C which reflects that till February, 2018, there was a monthly debit of Rs. 26,000/- in the account of the deceased. The last entry is of 15.03.2018 thereby reflecting that the deceased had worked with *M/s Nelam Elevator Care* till February, 2018 as stated in

the Salary Certificate. This is also corroborated by the Bank Statement of the deceased maintained with Punjab National Bank, Ex.PW1/3 which also shows that the last entry from *M/s Nelam Elevator Care is* of 15.03.2018, in the sum of Rs. 26,000/- per month.

28. Therefore, from the testimony of PW1/Poonam read in conjunction with of PW2/Pankaj Saini, it emerges that till February, 2018, the deceased was working with *M/s Nelam Elevator Care* and getting a salary of Rs. 26,000/-.

29. Thereafter, the Claimants have examined PW4/Purushotam Lal from - *Balaji Gadget* who deposed that the deceased was in his employment as Sales Executive for the period from April, 2018 to July, 2018 on a monthly salary of Rs. 28,000/-. The Salary Certificate is Ex. PW4/A and the Salary Slips for the month of April till June, 2018 are Ex. PW1/2 collectively.

30. However, PW4/Purushotam Lal in his cross-examination was asked to produce his book of salary record, attendance register, ownership documents and acknowledgement of returns for the relevant three years. The cross-examination of PW4/Purushotam Lal was deferred, and he failed to appear thereafter.

31. Pertinently, the Bank Statement of the deceased also do not reflect a regular credit of Rs. 28,000/- per month in his Bank Account for the months of April till June, 2018. Therefore, not much significance can be attached to the testimony of PW4/Purushotam Lal and it has to be held that the deceased was working with *M/s Nelam Elevator Care* and was getting a salary of Rs. 26,000/- per month.

32. The salary of the deceased is thus, assessed as Rs. 26,000/- per month.

This is not taxable income and thus, no tax is liable to be deducted on this amount.

33. Having so held that the income of the deceased was Rs. 26,000/- per month, the Loss of Dependency is hereby calculated as under: -

Monthly income of deceased Rs. 26,000/- per month;

Add future prospect @ 50% = Rs. 13,000/-;

(Less) 1/4th deduction towards personal and living expenses of deceased = Rs. 9750/-;

Rs. (26,000 + 13,000) – 9,750 = 29,250/-;

Therefore, the total Loss of dependency is 29250 x 12 x 16 (multiplier) = Rs. 56,16,000/-.

Loss of Love and Affection:

34. The *third ground* of challenge is that Loss of Love and Affection has been incorrectly granted after granting Loss of Consortium. Evidently, Ld. Tribunal has awarded Loss of Affection in the sum of Rs. 2,00,000/- and Loss of Consortium in the sum of Rs. 50,000/-.

35. The term '*Consortium*' is defined in Merriam-Webster Dictionary as a legal right of ones spouse to the company and affection and existence of other.

36. In the case of *United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur,* AIR 2020 SC 3076, the Apex Court categorically observed that there is no justification to award compensation towards love and affection as a separate head.

37. The Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu*

Ram, (2018) 18 SCC 130, had observed that the *"Consortium"* is a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium (parental consortium). The right to consortium would include company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to the family.

38. In the case of *Raj Bala v. Rakeja Begum*, 2022 SCC OnLine SC 1453, the Apex Court while considering the question of interference that the compensation granted by the Court under the head *"love and affection"*.

39. Pertinently the Constitution Bench of the Apex Court in *National Insurance Company v. Pranay Sethi* (2017) 16 SCC 680, wherein there was the head recognised for the grant of compensation in case of death, aside from 'Loss of Estate' and 'Funeral Expenses', was held to be the *Loss of Consortium.*

40. It is, therefore, evident that the word *'Loss of Consortium'* includes within it the compensation for '*Loss of Love and Affection'* which could not be given separately.

41. Therefore, the learned Tribunal was not justified to grant compensation separately for Loss of Love and Affection. ***Rs. 2,00,000/- granted for the Loss of Love and Affection is, therefore, held to be not payable.***

42. The Claimants, on the other hand, has sought enhancement under the Head of *Loss of Consortium* on the ground that it should be in accordance with *Pranay Sethi* (supra).

43. The Ld. Tribunal has awarded Loss of Consortium in the sum Rs. 50,000/-. The deceased is survived by his wife, two minor children and

mother and each is entitled to Rs. 40,000/- . ***Therefore, Loss of Consortium is enhanced to Rs. 1,60,000/- (Rs. 40,000 x 4).***

Rate of Interest:

44. The *third ground* on which enhancement is sought is that interest at the rate of 6% has been granted by the Ld. Tribunal which is on the lower side.

45. As per Section 171 of the M.V. Act, the Tribunal has the discretion to decide whether or not to include interest in the final award, and if so, at what rate and from what date, based on the specific circumstances of the case. The Tribunal, in its wisdom has granted the interest @ 6% p.a. In the absence of any cogent reason to enhance the Interest Rate, no interference is warranted in respect of interest rate.

Relief:

46. The Award is modified as follows:

S.No.	**Heads**	**Compensation granted by the Tribunal**	**Compensation granted by this Court**
1.	Income of Deceased Less Income Tax (A)	28,000/per month	**26,000/per month**
2.	Add-Future Prospects (B)	@ 50% = 14,000	**@ 50% = 13,000**
3.	Less-Personal Expenses of Deceased (C)	¼ (10,500/-)	**¼ (9,750)**
4.	Monthly loss of Dependency [(A+B)-C=D]	(28,000/+ 14,000/) – 10,500 = 31,500	**(26,000/+ 13,000/) – 9,750) = 29,250**
5.	Annual loss of Dependency (Dx12)	3,78,000/	**3,51,000/-**
6.	Multiplier (E)	16	16
7.	Total loss of Dependency	60,48,000/	**56,16,000/-**

8.	Medical Expenses	NIL	NIL
9.	Compensation for loss of Consortium	50,000/-	**1,60,000/- (40,000 x 4)**
10.	Compensation for Loss of Love and Affection	2,00,000/-	**Nil**
11.	Compensation for loss of Estate (I)	15,000/-	15,000/-
12.	Compensation towards funeral expenses (J)	20,000/-	20,000/-
13.	Deduction towards Contributory negligence @ 15% (K)	63,33,000 – 9,49,950 = 53,83,050/-	**58,11,000 - 8,71,650= Rs. 49,39,350/-**
13.	Total Compensation (F+G+H+I+J) – (K) =L)	53,83,050/-	**49,39,350/-**
14.	Rate of Interest Awarded	6%	6%

47. Thus, the total compensation granted to the Claimants is re-calculated as Rs.**49,39,350/-** along with interest @6% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 27.02.2020 of the learned Tribunal.

48. The excess amount, if any be returned to the Insurance Company, along with the Statutory deposit.

49. The Appeals accordingly stand disposed of along with the pending application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024/RS