



2024:DHC:10050



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 23rd December, 2024+ MAC.APP. 335/2023, CM APPL. 33438/2023 (stay)

RELIANCE GENERAL INSURANCE CO. LTDAppellant

Through: Ms. Suman Bagga with Ms. Jyoti,
Advocates.

versus

1. SATBIR SINGH
S/o Sh. Ratan SinghRespondent No.12. SUMAN LATA
W/o Shri Satbir SinghRespondent No. 23. ROHIT
S/o Sh. RamniwashRespondent No.34. DHARAMBIR
S/o Shri SatbirRespondent No. 4Through: Mr. S.N. Parashar, Advocate for
R1 & R2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)MAC.APP. 335/2023

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1973* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant against the Award dated 01.05.2023 *vide* which the compensation in the sum of Rs.19,10,696/- along with the interest @7.5% has been granted, on



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account of demise of Mr. Sumit Mehra, aged about 17 years, in a road accident on 25.12.2016.

2. The *sole ground of challenge* is that the deceased was a 17 year old boy, who was neither having any driving license nor was he wearing any helmet. Moreover, the accident occurred as he was driving the Motorcycle bearing Registration No. DL 4S BT 3690 on the wrong side of the road resulting in a head-on collision with the Tractor (the offending vehicle) bearing No. HR 13J 9960. It is, therefore, submitted that it is a case of contributory negligence and the compensation amount is consequently required to be proportionately reduced.

3. Reliance has been placed on the Case of Rehmani Begum & Ors. Vs. Krishan Pal & Ors., MAC. APP. 954/2017, decided on 18.01.2019, which has been upheld by the Hon'ble Supreme Court of India in SLP (C) No. 10293/2019, decided on 01.05.2019.

4. *Learned counsel on behalf of the Claimants/Respondents*, has submitted that the learned Tribunal has rightly appreciated the testimony of the eye-witness, PW-2, Mr. Rohit Yadav and has held the driver of the offending vehicle to be negligent in causing the accident. Pertinently, the driver of the offending vehicle has not contested the Petition and had not step into the witness-box in his defence and there is no merit in the present Appeal, which is liable to be dismissed.

5. **Submissions heard and the record perused.**

6. Briefly stated, on 25.12.2016 at about 09:125 a.m, Mr. Sumit Mehra and his friend, Mr. Rohit Yadav, had gone to take tuition from Dot Coaching Centre, Thana Road, Najafgarh, New Delhi, on a Motorcycle bearing No. DL 4S BT 3690. Mr. Sumit Mehra was driving



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the Motorcycle and they went to Petrol Pump, Thana Road, Najafgarh to fill petrol in the Motorcycle. When they were returning after filling the petrol and reached near Vivo Showroom, Thana Road, Najafgarh, all of a sudden a Tractor bearing No. HR 13J 9960 came in a very high speed being driven by its driver in a rash and negligent manner and hit the Motorcycle resulting the deceased came under the backside wheel of the Tractor. Thereafter, Mr. Sumit Mehra was taken to Vikas Hospital, Thana Road, where he expired during the treatment.

7. FIR No. 492/2016 under Section 279/304A of the *Indian Penal Code, 1860* was registered at Police Station, Najafgarh, Delhi. Consequent to which, the Charge-Sheet has been filed against the driver of the offending vehicle.

8. The Claim Petition under Section 166 and 140 of the M.V. Act, has been filed and compensation in the sum of Rs. 19,10.696/- along with the interest @7.5%, has been granted.

9. The *sole question* for considering in the present Appeal is whether there was any contributory negligence on the part of the deceased. The most material witness in this regard is PW-2, Mr. Rohit Yadav, who while in his examination-in-chief deposed about the manner of accident as narrated above admitted that the accident took place at the moment when they moved out from the Petrol Pump. The accident took place near Vivo Showroom, Thana Road, Najafgarh, which is near the Petrol Pump. The Site Plan, Ex.PW-1/6 was prepared at his instance. He further admitted that the offending vehicle was coming from the side of Chawla Stand and going towards the Dhasa Stand. The testimony of PW-2, Mr. Rohit Yadav, needs to be appreciated in the light of the Site Plan, which



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clearly shows that the Motorcycle which came out of the Petrol Pump, was on the wrong side of the road and there was a head on collision with the offending vehicle. Even if it is accepted that not having a driving license being a minor or not wearing a helmet, may not be considered as a contributory factum but clearly the fact that the Motorcycle came from the wrong side and head on collision with the offending vehicle clearly it is a case of contributory negligence on the part of the deceased.

10. Considering the totality of the circumstances, it is held that 25% of contributory negligence is attributed to the deceased.

11. The compensation amount is accordingly reduced as under:-

S.No.	Heads	Amount granted by the Tribunal	Amount granted by this Court
1.	Income of the deceased (A)	Rs.11,830/- p.m.	Rs.11,830/- p.m.
2.	Add Future Prospects (B)	Rs. (40%)	Rs. (40%)
3.	Less Personal expenses of the deceased (C)	Rs.8,281/- as deceased was bachelor at the time of accident	Rs.8,281/- as deceased was bachelor at the time of accident
4.	Monthly loss of dependency { (A+B) – C = D }	(Rs.11,830/- + 4,732/- = Rs.8,281/-) per month	(Rs.11,830/- + 4,732/- = Rs.8,281/-) per month
5.	Annual loss of dependency (Dx 12)	Rs.99,372/-	Rs.99,372/-
6.	Multiplier (E)	18	18
7.	Total loss of dependency (Dx12xE =F)	Rs.17,88,696/-	Rs.17,88,696/-

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8.	Medical Expenses (G)	Nil	Nil
9.	Compensation for loss of love and affection (H)	Nil	Nil
10.	Compensation for loss of consortium (I)	Rs.44,000/- to each of the petitioner i.e. Rs.88,000/-	Rs.44,000/- to each of the petitioner i.e. Rs.88,000/-
11.	Compensation for loss of estate (J)	Rs.17,000/-	Rs.17,000/-
12.	Compensation towards funeral expenses (K)	Rs.17,000/-	Rs.17,000/-
13.	TOTAL COMPENSATION (F+G+H+I+J+K =L)	Rs.19,10,696/-	Rs.19,10,696/-
14.	Less Contributory Negligence of 25 %		Rs. 14,33,022/- (Rs. 19,10,696 – Rs. 4,77,674/-)

12. The modified amount of Rs. **Rs. 14,33,022/** be disbursed to the Claimant, in terms of the Award dated 01.05.2023.

13. The statutory amount be refunded to the Insurance Company,

14. The Appeal is accordingly disposed of along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 23, 2024/RS