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

% *Date of decision: 18th December, 2024*

\+ **MAC.APP. 638/2019**

1. **MAHENDER KUMAR**
S/o Sh. Veer Singh
R/o: F-49/5, F-Block,
West Vinod Nagar,
New Delhi-110092.

2. **HIMANSHU**
S/o Sh. Mahender Kumar
R/o: F-49/5, F-Block,
West Vinod Nagar,
New Delhi-110092.

.....Appellants

Through: Ms. Harsh Lata, Advocate.

Versus

1. **THE ORIENTAL INSURANCE CO LTD.**
Regional Office No.1 (Legal Deptt.)
TP HUB, United India Life Building
3rd Floor, F-14, Cannaught Place,
New Delhi-110001.

2. **DINESH KUMAR** (Driver)
S/o Sh. Surya Narayan
R/o H.No.112, Dharampura, G.T. Road,
P.S. Kotwall, Ghaziabad, U.P.
Also R/o Village Madhopur Pathak,
P.S. Salon Distt. Raibareilly, U.P.
Also at: Shree Balaji Trailer Service,
215, Sambhu Compound,
Delhi U.P Border, P.S. Sahibabad,
Distt. Ghaziabad, U.P.

3. **SUDHIR KUMAR MISHRA** (Owner)
S/o Sh. M.C. Mishra
R/o H.No.44, Sector 16A,
Faridabad, Haryana.
Also at: 12/6, Mathura Road,
Faridabad-121001.
Also at: 17/6, Mathura Road,
Faridabad-121001.
Also R/o K.F.64, Kavi Nagar,
P.S. Kavi Nagar, Distt. Ghaziabad, U.P.

4. **SMT. SHEELA**
Estranged W/o Sh. Mahender Kumar
R/o 20, Gali No.1,
West Guru Angad Nagar,
Laxmi Nagar, Delhi-92.

.....Respondents

Through: Counsel for R1/Insurance Company (appearance not given).

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\+ **MAC.APP. 620/2017, CM APPL. 25503/2017**

THE ORIENTAL INSURANCE CO LTD.
Regional Office No.1 (Legal Deptt.)
TP HUB, United India Life Building
3rd Floor, F-14, Cannaught Place,
New Delhi-110001.

.....Appellant

Through: Counsel for Appellant (appearance not given).

Versus

1. **MAHENDER KUMAR**

S/o Sh. Veer Singh

2. **HIMANSHU**
S/o Sh. Mahender Kumar
Both R/o: F-49/5, F-Block,
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Laxmi Nagar, Delhi-92.

.....Respondents

Through: Ms. Harsh Lata, Advocate for R1 &

R2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. *The aforesaid Appeal and cross-Objections are being tried together as they arise from the same Award.*

2. ***The Appeal bearing MAC.APP. 620/2017*** under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act' *hereinafter*) has been filed on behalf of the *Appellants/Insurance Company* against the Impugned Award dated 20.04.2017, *vide* which the compensation in the sum of Rs.6,03,764/- along with the interest @10% p.a. has been granted, on account of demise of Mr. Avinash @ Lavi, in a road accident on 24.03.2013.

3. ***Briefly stated,*** on 24.03.2013 at about 06:00 A.M, deceased Avinash @ Lavi along with Neeraj Dangi and Piyush, was going on their motor cycle bearing No. DL07 SAY 3901, when the Offending Tractor-Trolla *bearing registered No. HR38F 5523* driven by Dinesh Kumar in a rash and negligent manner, collided with the motor-cycle, consequent to which all the three occupants of the motor cycle suffered fatal injuries.

4. *FIR No.251/2013* under section 279/304-A/427/34 IPC, 1860 was registered at Police Station Sihani Gate, Ghaziabad, U.P against the Driver/Dinesh Kumar.

5. The Chargesheet was filed in the Court and the Claim Petition under Section 166 Motor Vehicle Act was filed by the legal heirs of the deceased Avinash @ Lavi aged 21 years.

6. *Vide* the Impugned Award dated 20.04.2017, the learned Tribunal

granted compensation in the sum of Rs. 6,03,764/- along with interest @ 10% per annum.

7. ***The Appellant/Insurance Company*** has challenged the Award on the sole ground that that cogent evidence has been led to prove that the driving license of the driver was not genuine and Insurance Company is thus, .

8. ***Cross Objections vide Appeal bearing MAC.APP 638/2019*** have been filed the Claimants. The grounds for seeking enhancement are as under:-

(i) That the deceased was working as a Law Clerk with Supreme Court Advocate and his Salary Certificate proves his salary as Rs.12,000/- but it has been taken as per the Minimum Wages in the sum of Rs.7254/- per month;

(ii) that the Future Prospects @40% be granted in terms of the Judgment of *National Insurance Company Ltd. vs. Pranay Sethi,* AIR 2017 SCC 5157;

(iii) that the deduction towards personal expenses should have been 1/3rd in the light of the Judgment of *Pranay Sethi* (supra), as father/Appellant has not been considered as a dependent even though was not having any independent income;

(iv) that the deceased was 21 years old and the right multiplier was 18 and not 11 as applied by the Learned Tribunal;

(v) that 20% compensation amount has been granted to the mother even though she has not been living with the family and is untraceable for the last more than 18 years;

(vi) that no amount towards loss of consortium has been granted; and

(vii) that the rate of interest @ 10% p.a.is on the lower side.

9. *Learned counsel on behalf of the Insurance Company,* has argued that there is no evidence whatsoever to show that the father was dependent and consequently, the compensation has been rightly denied on account of dependency. Furthermore, since the mother is not traceable and not shown to be Respondent, the compensation amount needs to be revised. Also, the rate of interest needs to be reduced as it is on the higher side.

10. Learned counsel on behalf of the Appellant has placed reliance on *Indrawati & Anr. vs. Ranbir Singh & Ors.,* MAC. APP. 623/2019, decided on 08.01.2021, 276 DLT 415 and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & Ors.,* Civil Appeal No. 9581/2018, decided on 18.09.2018, (2018) 18 SCC 130.

11. Court Notice has been issued upon the Respondent No. 4, through counsel *vide* Order dated 22.10.2024, but none has appeared.

12. **Submissions heard and record perused.**

Loss of Dependency: -

Income of the Deceased: -

13. *The first ground of challenge* is that the deceased was working as Law Clerk with an Advocate of Supreme Court and his Salary Certificate Ex.PW1/2 proves that his salary was Rs.12,000/- per month and should not have been calculated on the basis of Minimum Wages of Unskilled Worker as Rs.7254/- per month.

14. *PW-1/Shri Mahender*, father of the deceased, had deposed that the deceased was getting a salary of Rs.12,000/- per month, which is supported

by the *Salary Certificate dated 05.09.2012/*Ex.PW1/2 issued by Shri Rajiv Kumar, Advocate of Supreme Court. He also produced the *Id/Entry Card to the Supreme Court Mark A,* issued in the name of the deceased Avinash. Aside from that he was having an additional income of Rs.2,000/- per month from his part time work of Videography and thus, his total monthly income was Rs.14,000/- per month.

15. *PW-1/Sh, Mahender Kumar,* has admitted in his cross-examination that he does not have any document to show that the deceased was receiving a monthly salary of Rs.12,000/- per month, though he volunteered that he could call the Advocate who had issued the Certificate showing the payment of Rs.12,000/- per month as salary. He also admitted that he did not has any document to show the additional income of Rs.2,000/- per month from part time work.

16. *PW-3/Himanshu*, the elder brother of the deceased, also deposed on similar lines as his father and stated that the deceased was working as a Law Clerk. During the cross-examination, he stated that his father has retired and his younger brother was an earning member of the family.

17. From the testimony of PW-1 and PW-3, it is established that the deceased was working as a Law Clerk with an Advocate in Supreme Court. However, the question still remains as to what was the salary that he was getting. Pertinently, *PW-1 Shri Mahender* the father of the deceased while producing the Salary Certificate, had admitted that there is no document to prove that the deceased was getting Rs.12,000/- as his salary every month. The most relevant document could have been the Passbook or such other document which admittedly has not been produced.

18. Thus, the learned Tribunal has rightly held that the income of the deceased as Rs.12,000/- per month has not been proved. Furthermore, no corroborative evidence has been produced to prove that the deceased was also earning Rs.2,000/- per month from his Videography work.

19. In absence of any evidence to prove the income of the deceased, the Minimum Wages can be adopted for calculating the income of the deceased. However, it has come on record that the deceased was pursuing his under graduate program and PW-3/Himanshu has also produced *the Admit Card of School of Open Learning of Delhi, Ex.PW3/2* which reflects that the deceased was pursuing the program of B.A (Pass) and was in his Second Year.

20. From this document it is established that the deceased was a matriculate who was pursuing under graduate program. Therefore, the income of the deceased is taken as per ***Minimum Wages for a Matriculate*** which is **Rs.9386/- per month**.

Addition towards Future Prospects: -

21. The next ground for seeking enhancement of compensation is that the future prospects @ 40% has not been granted while calculating the Loss of Dependency. Since the deceased was below 40 years of age at the time of the accident, the **Claimants are entitled to Future Prospects @ 40%** in terms of the judgment of *Pranay Sethi (Supra)*.

Deductions towards personal and living expenses:-

22. The other ground on which the enhancement of compensation has been sought by the legal heirs of the deceased *Avinash @ Lavi* is that the

father has not been taken as a dependent but he was not having any independent income and should have been considered as a dependent on the deceased and the deduction should have been made of 1/3rd towards the personal expenses of the deceased and not 50%.

23. Pertinently, the Claim Petition was been filed by the father Shri Mahender Kumar and elder brother Shri Himanshu to claim Compensation.

24. PW-1/Shri Mahender Kumar the father deposed in his testimony that he is aged about 61 years. He further deposed that his family comprises of three members namely himself, his elder son and one daughter. The deceased was the earning member of his family and had responsibility of the deponent. He further deposed that his estranged wife Smt. Sheela had deserted him in the year 1985, since when she has been living separately and has no concern either with the Claimants or with the deceased son. She did not participate in the last rites of the deceased son and her whereabouts are also not known, but had been impleaded as Respondent No. 4 as proforma party only to avoid any legal objection.

25. He has further explained in his cross-examination that he was earlier married to one Smt. Meenakshi (Sujata) in the year 1981 who died in the year 1983 and left one daughter Vatsala. Thereafter, he got married to Smt. Sheela, respondent No.4 in the year 1984 and from their wedlock two sons namely Himanshu and Avinash, were born in the year 1988 and 1992 respectively. He also deposed that he had come under mental tension on account of demise of his son and is not in a position to maintain himself as he has no source of income or work to sustain himself as he has retired from the private job about 5-6 years back. Further, his elder son/ Himanshu has

completed his B.Com (Pass) and is pursuing his further studies. He further deposed that Sh. Himanshu was not entirely dependent upon him since he is doing C.A and also takes tuitions. Further, his unmarried daughter is working as LDC in Supreme Court of India, New Delhi.

26. From the testimony of PW-1 Shri Mahender, the father of the deceased, it is evident that only the father was financially dependent upon the deceased. The elder brother of the deceased was doing his C.A. and also supporting himself by taking tuitions and cannot be considered as a dependent. Furthermore, the mother was not traceable since 1995 and was not living with the Claimants since long and thus, can also not be considered as a dependent.

27. Therefore, it is established that the deceased was having only his father who was financially dependent upon him. ***Therefore, the learned Tribunal has rightly deducted 50% towards the personal expenses of the deceased.***

Multiplier: -

28. It has also been challenged that the multiplier has been taken as 11 on the basis of age of the mother which has been taken as about 54 years on the date of accident. However, as already discussed above, the mother was estranged and deserted the family in the year 1995. Her age could not have been taken as a reference for calculating the multiplier.

29. In the case of *Sarla Verma vs. DTC* 2009 ACJ 1298, the appropriate multiplier is '18' for a person who is 21 years of age at the time of his demise in the accident. The multiplier also, therefore, needs to be corrected to 18.

30. **Thus, the Loss of Dependency is recalculated as under: -**

i. Rs.9386 + 40% (towards future prospects) = Rs. 13,140.4/-

ii. 13140.4 – 50% (towards personal expenses) = Rs. 6570.2/-

iii. Rs. 6570.2 x 12 x 18 = **Rs. 14,19,163.2/-**

31. ***Hence the Total Loss of Dependency is recalculated as Rs.14,19,200/- (rounded off).***

32. It is further contended that 20% compensation has been granted to the mother, even though she was not living with the family. This contention again has merit and, therefore, ***the compensation amount of 20% which has been awarded to the mother Smt. Sheela, be granted to the father Shri Mahender Singh***.

Non-Pecuniary Heads: -

33. A plea has been taken that each Claimant was entitled to Rs. 40,000/- towards loss of Consortium.

34. In the present case, the learned Tribunal has granted Rs. 50,000/- towards loss of love and affection.

35. In the case of *United India Insurance Co. Ltd. vs. Satinder Kaur,* 2020 SCC OnLine SC 410, it was observed that the judgment of *Pranay Sethi* (Supra), has recognized only three conventional heads under which compensation can be awarded *viz.* loss of estate, loss of consortium and funeral expenses. Thus, the Apex Court after taking note of the fact that several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection, directed the Tribunals and High Courts to award compensation only for loss of consortium, which

is a legitimate conventional head.

36. Thus, it is evident that loss of love and affection is encompassed in loss of consortium.

37. In the present case, there are two Claimants, namely Father and brother, who are held entitled to ***Rs. 80,000/-*** i.e. Rs. 40,000/- x 2, towards compensation of Loss of Consortium/Love and Affection.

38. No challenge has been made to the amounts granted under the other non-pecuniary heads.

Rate of Interest: -

39. The last ground of challenge relates to the interest awarded by the ld. Tribunal which is claimed to be on the lower side by the Claimants and on a higher side by the Insurance Company.

40. The ld. Tribunal has awarded 10% interest rate on the compensation.

41. While relying upon the judgment of the Apex Court in *Erudhaya Priya v. State Express Transport Corporation Ltd.,* 2020 SCC OnLine SC wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in *Reena Raghav* (Supra) refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal in the Impugned Award and also observed that the Appellant/Insurance Company had only orally made a submission claiming the prevalent rate of interest to be 7.5% p.a. that too, on the basis of Google search while no document had been placed to support the plea of interest being too high.

42. None of the parties in the present case have produced any document

to show the rate of interest that was prevailing in the year 2013-14. In the absence of any evidence there is no reason to interfere with the rate of interest awarded, @10% p.a. by the learned Tribunal.

Liability/Recovery Rights: -

43. The Appellant/Insurance Company has contended that it is entitled to recovery rights from the driver/owner of the offending vehicle, since the Driving License of Dinesh Kumar, driver of offending vehicle, was fake.

44. *R1W1/Dinesh Kumar* in his testimony has stated that he was having valid driving license bearing No. DL-711/T/GZB/1997 dated 25.05.1987 issued by the Licensing Authority, Bulandshahar, U.P which was renewed from 17.07.2010 till 16.07.2013. In his cross examination by the Claimants, he admitted that he was driving the offending vehicle.

45. *R1W1/Sh. Dinesh Kumar* has also placed on record a Reply received from Information Officer, Assistant Transport Officer (Administration), Ghaziabad dated 09.12.2014 received by him in response to his RTI Application wherein it is mentioned that the license No.DL-711/T/GZB/1997 dated 25.05.1987 had been issued on which endorsement for Heavy Vehicle was made on 29.06.1989. The license was valid from 17.07.2007 till 16.07.2010 and thereafter from 17.07.2010 till 16.07.2013.

46. Pertinently, there was no cross examination done by the Insurance Company nor was any suggestion given that the driving license was fake. There was no evidence led by the Insurance Company either to challenge the testimony of the driver or to produce any cogent evidence to show that the driving license of Dinesh Kumar was a fake license.

47. The Insurance Company has relied upon the evidence led in the case

of <u>*Neelam Gupta and Ors vs. Dinesh Kumar,*</u> arising from the same incident which was decided by the PO, MACT, East. In the said case, *R3W3, Sh. Narender Singh, Clerk, Office of RTO, Agra* deposed that license bearing No.1575/AG/87 dated 25.05.1987 had not been issued in favour of Dinesh Kumar. Further, the license No.D-711/T/97 has been issued to Dinesh Kumar on the basis of original license No.D-1575/Agra/87, which has been found to be fake. Thus, the renewal of the license would not validate a fake license.

48. Pertinently, the Insurance Company has relied upon the statements of R3W1 as well as R3W3 as recorded in another MACT case, to claim that there is evidence on record to show that the driving license of the driver was a fake driving license.

49. The *first aspect* which emerges is that the driving license, which Dinesh Kumar was found in possession, had been validly issued by the Transport Authority, Ghaziabad and has been endorsed for Heavy Vehicle on 29.06.1989. The license was valid from 17.07.2007 till 16.07.2010 and thereafter was renewed from 17.07.2010 till 16.07.2013. The driving license which the driver was carrying was, therefore, genuine.

50. The only basis which is now being agitated, is that the earlier/original driving license on which the Driving License in question was never issued by the Transport Authority, Agra and was fake. However, no cogent evidence has been led in support of the assertion. Neither has any witness been examined by the Insurance Company, nor any particular witness was even mentioned in the List of Witnesses.

51. Thus, the learned Tribunal, was right in concluding that no evidence

has been led on behalf of the Insurance Company to prove that original driving license issued by the Licensing Authority, Agra was fake.

52. Even if it is accepted that the earlier Licence issued by Agra Authority was fake, there is no evidence adduced to show the basis on which the license was issued or that it was renewed by Transport Authority, Ghaziabad without any verification.

53. Even otherwise, it has been held in the case of *United India Insurance Co. Ltd. vs. Anil Kumar and Ors.*, 2019 SCC OnLine Del 12181, if a vehicle owner finds the driving license valid on face value and has satisfactorily tested the driver's skills before employment, they would be covered for liability against Claims.

54. Admittedly, the current license which Dinesh Kumar had produced was a genuine license. Pertinently, no evidence has been led to prove that the Driver was lacking any skill to driver the Offending Vehicle.

55. In the Written Statement filed on behalf of *Respondent Nos. 1 & 2,* it had been clearly indicated that the owner Sudhir Kumar Mishra had looked at the driving license of the driver at the time of employment, which was a valid license.

56. When the owner hires a driver, he has to check whether the driver has a valid driving licence and has to satisfy that the driver is competent. I f the owner is satisfied then it can be said that the owner had taken reasonable care in employing a person who is qualified as well as competent to drive the vehicle. However, the owner cannot be expected to confirm the validity of the driving license not only from the Transport Authority which has issued the driving license, but also to verify the antecedents from the

previous Transport Authority, as held in the case of *<u>Pepsu Road Transport Corporation Vs. National Insurance Company</u>,*(2013) 10 SCC 217.

57. In the present case, the owner has acted with due care and caution and the driving license as produced by the driver was also genuine.

58. *Therefore, it has been rightly concluded that the Insurance Company has failed to prove the violation of any of the terms and conditions of the Insurance Policy* ***and has rightly denied the recovery rights to the Insurance Company.***

<u>Relief:</u> -

59. The Claimants are, therefore, entitled to enhanced compensation as under:

Sr. No.	Name of Heads	Amount of Compensation awarded by the Tribunal	Amount of Compensation awarded/modified by this Court
1.	**Loss of Dependency**	Rs.4,78,764/-	**Rs.14,19,200**
2.	Loss of Love & Affection/ Consortium	Rs.50,000/-	**Rs. 80,000/-**
3.	Loss of Estate	Rs.50,000/-	Rs.50,000/-
4.	Funeral and Transportation Expenses	Rs.25,000/-	Rs.25,000/-
	TOTAL COMPENSATION	Rs.6,03,764/-	**Rs.15,74,200/-**

60. Thus, the total compensation granted to the Claimants is revised as Rs. 15,74,200/- along with interest @10% per annum from the date of the Claim till deposit of the amount, in terms of the Award dated 20.04.2017 passed by the learned Tribunal.

61. The excess amount be deposited within three weeks and the statutory deposit be returned to the Insurance Company in accordance with Law.

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

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 18, 2024
RS/VA/RK