



2024:DHC:10177



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 05th December, 2024

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MAC.APP. 236/2020 & CM APPL. 29308/2020**Oriental Insurance Company Limited**

.....Appellant

Through: Mr. Abhishek Gola and Mr. Anshul Mehral, Advocate.

versus

1. **DEEPSHIKHA YADAV**
W/o Late Sh. Manish Kumar Wife ... Respondent No. 1
2. **YUVRAJ SINGH YADAV** (Minor son)
S/o Late Sh. Manish Kumar ... Respondent No. 2
3. **HARSH KUMAR** (Minor son)
S/o Late Sh. Manish Kumar ... Respondent No. 3
4. **SH. KAPTAN SINGH** (Father)
S/o Sh. Anar Singh Yadav ... Respondent No. 4
5. **BIMLA DEVI**
W/o Sh. Kaptan Singh mother ... Respondent No. 5
All R/o H.No. 6/190 Dakshinpuri
Ambedkar Nagar, New Delhi
6. **MUBARIK KHAN** (Driver)
S/o Sh. Jamil Khan
R/o H.No. 146, Mohalla Kallu,
Patala Village, Chandan Hola,
New Delhi Respondent No. 6
7. **MOBIN MOHAMMAD** (Owner)
S/o Ali Mohammad
R/o Village Shikohpur,
Gurgaon, Haryana ... Respondent No. 7

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

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By: VIKAS AKORA
Signing Date: 15.01.2025
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MAC.APP. 236/2020



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1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of the Insurance Company against the Award dated 30.07.2020 *vide* which the compensation in the sum of Rs.58,38,000/- along with interest @ 9% per annum has been granted on account of demise of Sh. Manish Kumar, aged 26 years, in a road accident on 08.01.2018.
2. The *grounds of challenge* are:
 - (i) that the income of the deceased has been wrongly taken as Rs.25,000/- p.m.; and
 - (ii) That compensation has been granted both under *Loss of Consortium* as well as *Love and Affection*, which is duplication and needs to be revised.
3. *Learned counsel for the Claimants* submits that the compensation has been calculated after due consideration of the evidence and the documents and it does not call for any interference. Though, double compensation granted under the head *Love and Affection* may be modified.
4. **Submissions Heard.**
5. *Briefly stated* on 08.01.2018 at about 11:15 PM, in front of the CNG/Petrol Pump, Lado Sarai, the driver/Mubarik Khan while driving the water tanker bearing No. HR-55-P-0326, in a rash and negligent manner, hit the motorcyclist/deceased while turning towards Badarpur side. The motorcyclist fell and was run over by the water tanker and died.
6. The *first ground of challenge* is that the salary of the deceased



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has been wrongly assessed as Rs. 25,000/- p.m.

7. The Claimant/father, Sh. Kaptan Singh, deposed as PW-1 that his son Manish Kumar who died in the accident on 08.01.2018 was doing a permanent job as an Operation Executive in Frequent Logistic Services at Cargo Terminal, IGI Airport, New Delhi and drawing a salary of Rs.28,500/- per month and was entitled to increments and promotions. His salary was getting enhanced regularly.

8. To corroborate the income of the deceased the claimants examined PW-2, Sh. Sanoj Kumar, Director of Frequent Logistics Services Pvt Ltd who deposed that Manish Kumar was working in their company as an Operation Executive since May, 2016. He was initially given a salary of Rs.17,000/- per month which after expiry of three months was increased to Rs.28,500/- per month inclusive of Rs.3500/- as conveyance and phone charges. He further deposed that he was entitled to annual increments as per the company policy.

9. Ld. Counsel on behalf of the Insurance Company has referred to the Salary Certificate Ex. PW-1/12; I.D Card, Ex.PW-1/13 and the Appointment Letter Ex. PW-2/2, to ascertain that the contents of these three documents are self contradictory.

10. The *Appointment Letter* Ex. PW2/2 pertinently though dated 04.05.2016, states in its last paragraph that the initial Appointment of the deceased is for Rs.17,000/- per month, but after three months he has been appointed as permanent on the post of Executive and is *now* getting a salary of Rs.25,000/- per month; and Conveyance and Phone Charges of Rs.3500/- per month; and the total salary is



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approximately Rs.28,500/- per month.

11. Learned counsel for the Insurance Company has argued that this Appointment Letter is dated 04.05.2016 according to which after three months of appointment the salary was to get enhanced to Rs.25,000/-; but from the language of the Appointment Letter which records that *now the salary is Rs.25,000/- per month*. This enhancement of Salary was to take place after three months i.e. from August, 2016 and could not have been stated in this letter dated 04.05.2016 that “*now the salary is Rs.25,000/- per month*”. It leads to only one conclusion the Appointment Letter 04.05.2016 dated Ex. PW2/2 is a procured document.

12. Moreover, PW-2, Sh. Sanoj Kumar, has been examined from *Frequent Logistics Services Pvt. Ltd.* where the deceased was allegedly appointed, but he in his cross examination has deposed that the employees of the company were being paid salary in cash. No *Voucher* was being signed by any of the employees. The Register of salary of the employees was being maintained but not brought in the Court.

13. It was thus, argued on behalf of Insurance Company that from the evidence and the documents, it is not proved that the deceased was getting a consolidated salary of Rs.25,000/-; therefore, the learned Tribunal fell in error in taking the salary as Rs.25,000/- per month.

14. *First and foremost* there is no evidence led to show that the deceased was not appointed with *Frequent Logistics Services Pvt Ltd.* which is fully corroborated by the I.D. Card Ex. PW-1/13 which has



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been duly proved.

15. Also, PW-2 Sh. Sanoj Kumar, the employee of the Company has produced the Appointment Letter dated 04.05.2016, Ex.PW-2/2 of the deceased which also confirms that the deceased was employed as an Operation Executive in the said company.

16. The second aspect is the salary of the deceased. In this regard while it is correct that PW-2 stated that they were having a salary register which is not being produced on record but the fact remains that he has also deposed that the attendance of Manish Kumar was being maintained by GMR Office at IGI Airport Courier Terminal as he was posted there. These facts have not been controverted. This Appointment Letter Ex. PW-2/2 may have been produced subsequently but the I.D Card and the Certificate do not in any way create a doubt about the deposition in regard to the consolidated salary of the deceased.

17. Pertinently, in this case DAR was filed on behalf of the Insurance Company and that they are under an obligation to verify the salary documents. No counter evidence has been produced on behalf of the Insurance Company. ***The learned Tribunal has rightly calculated the income of the deceased as Rs.25,000/-. No interference is warranted on this ground.***

Compensation under Non-Pecuniary Heads:

18. In so far as the compensation granted on account of *Love and Affection* is concerned, the Award shows that Rs.2,00,000/- has been awarded for *Loss of Consortium, therefore, a sum of Rs.2,50,000/-*



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awarded for Love and Affection needs to be recalled.

Relief: -

19. Thus, the total compensation granted to the Claimants is re-calculated as **Rs. 55,82,000/- (Rs.58,38,000 – Rs.2,50,000)** along with interest @9% per annum from the date of Claim till the disbursal of the amount, in terms of the Impugned Award dated 30.07.2020 of the learned Tribunal. The excess amount, if any be returned to the Insurance Company, along with the Statutory Deposit.

20. The Appeal allowed accordingly.

21. The Appeal stands disposed of along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 5, 2024

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