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

% **Date of decision: 03rd December, 2024**

+ **MAC.APP. 248/2022**

- (i) NITU
d/o Late Sh. Ramji Lal
w/o Late Sh. Sohan
- (ii) JATIN s/o Late Sh. Sohan
- (iii) SANJANA d/o Late Sh. Sohan
- (iv) SANDEEP s/o Late Sh. Sohan
All r/o 1/186/24 Qtrs. Sadar Bazar, Delhi Cantt.

.....Appellants

Through: Mr. Jatinder Kamra, Advocate

Versus

- (i) SURESH s/o Sh. Rajender
r/o 17/4, Friends Enclave, Sector 6 (West)
Sultanpuri, Delhi.
- (ii) RISHI PAL s/o Sh. Hukam Chand
r/o H.NO. 1170 Vill and PO Mahipalpur, New Delhi
- (iii) HDFC Ergo General Insurance Co. Ltd.
Through its Manager
21, Amandeep Building. K.G. Marg
New Delhi

....Respondents

Through: Mr. Sameer Nandwani, Ms. Nikita
Sharma & Mr. Robin Singh Pande,
Advocates for respondent No.3

+ **MAC.APP. 272/2022**

- (i) ANIL KUMAR s/o Late Sh. Madan Lal
- (ii) SUNIL KUMAR s/o Sh. Anil Kumar
- (iii) RAJIV s/o Sh. Anil Kumar
- (iv) RAJNI d/o Sh. Anil Kumar
- (v) BARKHA d/o Sh. Anil Kumar

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All r/o 186/22, Sadar Bazar, Delhi Cantt.110010

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 36479/2022in MAC,APP. 248/2022

1. There is delay of 178 days in filing the appeal.
2. For the reasons stated, the application is allowed and delay is condoned.
3. The application is disposed of.

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4. These appeals under *Section 173* of the *Motor Vehicles Act, 1988* arise from the common impugned judgment dated 18.08.2021, passed by

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the Motor Accident Claims Tribunal.

5. In *MAC.APP 248/2022*, the challenge to the impugned Award by *Appellant/Nitu* and others is on the ground that she is the widowed sister of the deceased/*Aniket @Anil*, aged about 25 years, who died in the road accident occurred on 02.11.2015 at about 01:30 PM.

6. It is pleaded that she was dependent upon her unmarried brother, but no compensation on account of dependency has been given. Also, that a low rate of interest @6% has been awarded by the learned Tribunal, which is required to be enhanced.

7. In *MAC.APP.272/2022* the impugned Award has also been challenged by legal heirs of deceased *Smt. Usha* on the ground that 15% compensation has been deducted *on account of contributory negligence*. However, the deceased was a pillion rider and no negligence can be attributed to her. Also, the interest @6% has been awarded by the learned Tribunal, which is required to be enhanced.

8. To the contrary, learned counsel on behalf of the *Insurance Company*, has submitted that there were three persons travelling on the motorcycle and on account of imbalance, the accident occurred and therefore, 15% amount has rightly been deducted on account of contributory negligence.

9. **Submissions heard and record perused.**

10. ***Briefly stated***, on 02.11.2015, at around 01:30 PM, deceased *Aniket @ Anil* and *Usha* was travelling as pillion riders on motor cycle bearing registration No. DL-6SAJ-7247, which was being driven by *Rajiv @ Rajeev*. When they reached near Water Tank, Police Station Delhi Cantt, their motorcycle was hit from behind by a speeding bus bearing



registration No. DL-1PB-1817, which was driven by Suresh. In the accident, Aniket @ Anil and Usha, suffered fatal injuries.

11. FIR No. 607/2015 was registered at Police Station Delhi Cantt, Delhi. Upon completion of investigation, Charge Sheet was filed against Suresh, Driver of the Bus.

12. The legal heirs of deceased Aniket @ Anil (MACP No. 84/2016) as well as deceased Usha (MACP No.85/2016) preferred Claim petitions before the learned Tribunal. The Ld. Tribunal *vide* common impugned judgment dated 18.08.2021, granted compensation in the sum of Rs.22,97,224/- along with interest @12% p.a. to the legal heirs of deceased Usha. The legal heirs of deceased Aniket @ Anil were granted compensation in the sum of Rs.2,09,000/- along with interest @ 12% p.a.

13. The grievance raised by **Appellant/Nitu** is that she is the widow sister of the deceased Aniket @ Anil and she along with her three minor children i.e. appellants No.2 to 4, were financially and emotionally dependent upon her deceased brother. However, the learned Tribunal has failed to grant compensation on account of “Loss of Dependency”.

14. The Appellant/Nitu is admittedly the widow sister of deceased Aniket @ Anil, who was about 25 years of age and unmarried at the time of his demise in the road accident. PW-2/Nitu admitted in her deposition, that she and her children were dependent upon the deceased and were residing together with him.

15. However, the learned Tribunal observed that there was not a single document on record to show that they had been residing with the deceased. Rather, the Claimant/Nitu along with her children, had been residing in her matrimonial home while the deceased was residing at



Mangolpuri, New Delhi, as is evident from the copy of the Bank Passbook. She also admitted in her cross-examination that after demise of her husband, she was residing in her matrimonial home at Delhi Cantt, Sadar Bazar, New Delhi.

16. The learned Tribunal, thus, rightly observed that there was no document to show that deceased was residing with the claimant. Rather, it is established that she along with her children had been residing in the matrimonial home and after the demise of her husband, she had started working as a house maid. There is not an iota of evidence to suggest that she was being supported financially by the deceased brother. Learned Tribunal, therefore, has rightly declined to grant any compensation on the ground of Loss of Income/Dependency to the appellant.

17. *There is no ground for interference in the impugned Award qua appellants in MAC.APP 248/2022 and the appeal is hereby dismissed.*

MAC.APP.272/2022:

18. So far as challenge to the impugned Award by legal heirs of deceased *Smt. Usha is concerned*, it is submitted that 15% contributory negligence has been erroneously attributed to the deceased Usha, who was one of the two pillion riders on the motor cycle which met with an accident. Learned Tribunal observed that because the deceased was triple riding on a motorcycle and she chose to so ride, it amounts to *contributory negligence and therefore, 15% deductions has been made from the awarded compensation.*

19. It is relevant to refer to the testimony of PW-3/Rajiv @ Rajeev, who admitted that on the fateful day i.e. 02.11.2015, the motor cycle was



being driven by Aniket @ Anil, on which Smt. Usha and he were travelling as pillion riders. He stated that deceased Aniket @ Anil was not wearing helmet, however, both of them were wearing helmet. Further, he deposed that their motorcycle was hit from behind by the offending vehicle. From and the manner in which the accident took place, there is nothing to suggest that the triple riding on the motorcycle in any manner attributed to the happening of the accident.

20. There is no denial that three persons were travelling on the motorcycle which may be a violation under the Motor Vehicles Act, but definitely the manner in which the offending vehicle hit the motorcycle from behind, it cannot be held that triple riding was a contributory factor in the occurrence of the accident.

21. The Supreme Court in the decision in Mohammed Siddique Vs. National Insurance Company Ltd. AIR 2020 Supreme Court 520 has observed that “*the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim.*”

22. In the facts of the present case, the learned Tribunal has observed that the testimony of PW-3 is corroborated by the documents filed along with DAR and most specifically, the Charge Sheet. Further, the learned Tribunal has rightly observed that on the principles of preponderance of probabilities, it stands proved that the above accident took place due to rash and negligent driving of the offending vehicle by its Driver.



23. *Thus, the learned Tribunal has erroneously deducted 15% compensation towards contributory negligence of deceased Smt. Usha.*

24. The impugned Judgment dated 18.08.2021 in MACP No.85/2016 *qua* legal heirs of deceased, Smt. Usha, is hereby modified as under:-

S.No.	Heads	Awarded by the Tribunal	Awarded by the Court
1.	Income of Deceased (A)	Rs.10,140/-	Same
2.	Add-Future Prospects (B) assuming 40%	Rs.4,056/-	Same
3.	Less-Personal Expenses of Deceased (C) [1/4th of A+B]	Rs.3,549/-	Same
4.	Monthly loss of Dependency [(A+B)-C=D]	Rs.10,647/-	Same
5.	Annual loss of Dependency (Dx12)	Rs.1,27,764/-	Same
6.	Multiplier (E)	16	Same
7.	Total loss of Dependency	Rs.20,44,224/-	Same
8.	Medical Expenses	NIL	NIL
9.	Compensation for loss of Consortium (H)	Rs.2,20,000/-	Same
10.	Compensation for loss of Estate (I)	Rs. 16,500/-	Same
11.	Compensation towards funeral expenses (J)	Rs. 16,500/-	Same
	Contributory Negligence deducted	Rs.3,44,583.6/-	NIL
12.	Total Compensation (F+G+H+I+J=K)	Rs.19,52,640/- (after deducting contributory	Rs.23,00,000/- (rounded off)



		negligence)	
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Relief: -

25. With In view of the above, the Claimant is awarded total compensation of **Rs.23,00,000/-** along with the interest @7% per annum from the date of filing of the Petition till realization, to be disbursed in terms of the Award dated 18.08.2021. The Insurance Company is directed to deposit the enhanced Awarded amount within 30 days with the learned Tribunal.

26. The Appeal is allowed and disposed of accordingly along with the pending Application(s), if any.

NEENA BANSAL KRISHNA, J

DECEMBER 03, 2024

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