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

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

\+ **MAC.APP. 243/2020, CM APPL. 30229/2020**

RELIANCE GENERAL INSURANCE COMPANY LTD.
A-12, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi-110044.
.....Appellant
Through: Ms. Prerna Mehta, Advocate.

Versus

1. **DR. RAJKUMAR SHYAMANANDA SINGH**
S/o Late Rajkumar Bhubansana Singh
R/o 744, Paul Metivier Drive Ottawa Ontario
K2J 3G4, Canada

2. **MS. SHEETAL RAJKUMARI**
D/o Dr. Rajkumar Shyamananda Singh
R/o 744, Paul Metivier Drive Ottawa Ontario
K2J 3G4, Canada

3. **MS. SEABIRD RAJKUMAR (now known as Sanah Rajkumari)**
D/o Dr. Rajkumar Shyamananda Singh
R/o 461 Simcoe Street North
Oshawa, Ontario L1G 4T8, Canada.

4. **MS. STARRY RAJKUMAR (Minor)**
D/o Dr. Rajkumar Shyamananda Singh
R/o 744 Paul Metivier Drive Ottawa Ontario
K2J 3G4, Canada.

5. **SH. VINAY KATARA**
S/o Sh. Jitendera Kumar Katara
R/o B-47/3, Top Floor, Dilshad Colony,

Delhi-110095.

6. **SH. AMIT ARORA**
S/o Sh. Baldev Raj Arora
R/o 1911 A, Despiyan Nagar,
KotwaliBhor, Mathura, UP.

.....Respondents

Through: Mr. Maibam N. Singh, Advocate for R-1 to R-4.

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\+ **MAC.APP. 278/2020**

1. **DR. RAJKUMAR SHYAMANANDA SINGH**
S/o Late Rajkumar Bhubansana Singh
R/o 9, Corral Court, Whttiby, Ontario L1N 8E7, Canada.

2. **MS. SHEETAL RAJKUMARI**
D/o Dr. Rajkumar Shyamananda Singh
R/o 9, Corral Court, Whttiby, Ontario L1N 8E7, Canada.

3. **MS. SANAH RAJKUMARI)**
D/o Dr. Rajkumar Shyamananda Singh
R/o 461, Simcoe Street North,
Oshawa, Ontario L1G 4T8, Canada.

4. **MS. STARRY RAJKUMAR (Minor)**
D/o Dr. Rajkumar Shyamananda Singh
R/o 9, Corral Court, Whttiby, Ontario L1N 8E7, Canada.

.....Appellant

Through: Mr. Maibam N. Singh, Advocate.

versus

1. **VINAY KATARA**
S/o Sh. Jitendera Kumar Katara
R/o B-47/3, Top Floor, Dilshad Colony,
Delhi-110095.

2. **SH. AMIT ARORA**
S/o Sh. Baldev Raj Arora
R/o 1911 A, Despiyan Nagar,
KotwaliBhor, Mathura, UP.

3. **RELIANCE GENERAL INSURANCE COMPANY LTD.**
202-210, Second Floor, Mercantile House,
15, Kasturba Gandhi Marg,
Connaught Place, New Delhi-110001.

.....Respondents

Through: Ms. Prerna Mehta, Advocate for Insurance Company.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. ***MAC.APP. 243/2020*** *under Section 173 of the Motor Vehicle Act, 1988* has been filed by the Insurance Company against the Award dated 03.09.2020 *vide* which compensation in the sum of *Rs.82,97,500/- along with interest @7% per annum* has been awarded to the Respondents/Claimants i.e. the Husband and three daughters of *Smt. Hijam Ibeyaima Devi* who expired a road accident dated 19.01.2012.

2. The Appellant/Insurance Company has challenged the Impugned Award on the following ***grounds***: -

i. The case was remanded back by this Court for calculation of quantum of compensation, however, the learned Tribunal has erred in *reappreciating evidence* and giving a finding on the involvement as well as rashness and negligence of the vehicle;

ii. The *involvement and the negligence* of the offending Vehicle has not been proved;

iii. The *Income of the deceased* has been assessed as 20,000/- CAD $, ignoring the discrepancies in the Salary Certificates placed on record by the Claimants and also by not considering that the Income Tax Returns of the previous year despite repeated directions, had not been filed by the Claimants.

3. It is, therefore, submitted that the Impugned Award dated 03.09.2020 is liable to the set aside/modified.

<u>The cross-appeal MAC APP. 278/2020</u> has been preferred under Section 173 of the Motor Vehicle Act, 1988 on behalf of the Claimants to seek ***enhancement of compensation*** on the following ***grounds***: -

i. The learned Tribunal had itself had calculated the *Income of the deceased* as 31,304 CAD on the basis of the Salary Certificates for part-time as well as full-time employment, but have erronously taken the income of the deceased as 20,000 CAD, without giving any reasons. The income of the deceased is required to be taken as 31,304 CAD;

ii. $1/4^{th}$ should have been deducted towards the *personal expenses* of the deceased;

iii. the Future Prospects have been granted @ 10%, when it should *have been 15%* as she was a permanent employee;

iv. The conversion rate of Canadian Dollar to INR as on the date of passing of the Award, should have been applied instead of the rate prevailing on the date of institution of the

Claim Petition.

4. It is, therefore, submitted that the quantum of compensation as granted by the impugned Award needs to be enhanced.

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

6. ***Briefly stated,*** the deceased *Smt. Hijam Ibeyaima Devi*, Canadian National born in Imphal, India, along with her daughter Ms. Seabird Rajkumari (Sanah Rajkumari) and other relatives, had come to visit India, and were visiting Vrindavan with other tourists. On 19.01.2012, at about 9:30 PM, when they were going towards their Tourist bus on foot, near Ambha Beauty Parlor at Patharpura, the *offending vehicle Hyundai Verna No. DL 7 CK 9106,* being driven in rash and negligent manner by the *driver/Vinay Katara*, came from the wrong side and hit the deceased and her daughter. Smt. Hijam Ibeyaima Devi received grevious injuries and was taken to the nearby Hospital 'Brij Health Care' at Mathura, UP. Since her condition was serious, she was immediately shifted to Apollo Hospital, Delhi on 20.01.2012, where *she died on 21.01.2012 at around 5 P.M.*

7. The MLC *Ex.PW2/ 6* reveals that the cause of death was *DIC (Disseminated Intervascular Coagulation) with multiorgan failure, post polytrauma (Chest and abdomen) following RTA (Road Traffic Accident).*

8. *FIR No. 23/2012* dated 22.01.2012 *U/s. 279/304 A IPC, 1860* was registered against the Driver/ Amit Arora, at PS Vrindavan, Distt. Mathura, UP.

9. *The Claim Petition was filed by the Claimants i.e. the Husband and three daughters of the deceased, which was dismissed by the*

Learned Tirbunal on 27.04.2018.

10. Aggrieved by the dismissal, the claimants preferred Appeal bearing *MAC APP. 630/2018* against the Award. *Vide* the Order dated 05.11.2019, this Court observed that the criminal case has been initiated and the Charge Sheet has been filed against the driver of the offending vehicle; and the involvement of the alleged vehicle and it being driven in a rash and negligent manner which caused a fatality and injuries, is not in dispute. Thus, the matter was remanded back for determination of compensation.

11. *Thus, the Claim Petition was decided afresh by the Learned Tirbunal vide the Impugned Award dated 03.09.2020, whereby the compensation in the sum of Rs.82,97,500/- along with interest @7% per annum was granted to the Claimants.*

<u>Involvement and Negligence/Rashness of the Offending Vehicle: -</u>

12. The Insurance Company has taken a plea that neither the rashness and negligence on part of the driver nor the involvement of the Offending Vehicle was established.

13. In this regard, the Claimants had examined *PW-2/Ms. Seabird Rajkumari @ Sannah Rajkumari,* the daughter of the deceased who *was* accompanying her mother at the time of the accident and was an eye witness to the incident. She in her *Affidavit of Evidence Ex. PW-2/A* deposed that on 19.01.2012 at about 9.30 p.m., when she was walking along with her mother/victim and a relative near Amba Beauty Parlour, Vrindavan, the Driver of Offending Vehicle who was driving the vehicle rashly and negligently, came ***from the wrong side*** and ran over

the deceased resulting in serious injuries to which she succumbed on 21.01.2012 in Apollo Hospital. PW-2 was extensively cross-examined by the Insurance Company but no material contradiction could be elicited.

14. The second eye-witness, *PW-3/Rajkumari Rimasana,* the niece of the Deceased, who was also accompanying her at the time of the accident, has supported the testimony of PW-2. She also placed on record Photographs clicked by her of the Number plate of the Offending Vehicle as *Ex. PW3/17.* During her Cross- examination, she also clarified that she had given the photos to the husband of the deceased.

15. Pertinently, neither the Owner nor the driver have denied the presence of the Offending Vehicle at the spot of accident. *R2W1/ Amit Arora, the Driver* of the Offending Vehicle deposed he had parked the vehicle near Govind Dev Temple, Vrindaban and had gone to worship in the temple.

16. Further, even the FIR registered at the instance of the daughter/ Seabird Rajkumari, has culminated into filing ***of the Chargesheet against the Driver of the Offending Vehicle.***

17. Significantly, after considering the above evidence, this Court *vide* Orders dated 10.10.2019 and 05.11.2019 in earlier *MAC APP No.630/2018* has given a finding on the merits of the case that the involvement of the offending vehicle being driven in a rash and negligent manner, has been established. The the matter was remanded back only for determination of compensation.

18. The above two Orders were assailed by the Insurance Company

by way of *SLP No. 06/2020* which was dismissed by the Hon'ble Apex Court on 21.01.2020.

19. Thus, the Orders dated 10.10.2019 and 05.11.2019 have attained finality and there is no scope or ground to challenge or re-agitate the settled issue about the involvement and Negligence of the Driver of the Offending Vehicle in causing the Accident.

20. The plea of the Insurance Company that the Learned Tribunal could not have given a detailed analysis of the evidence in consonance with the Orders of this Court after the matter was remanded back, is devoid of any merit as the issue already stands finally adjudicated.

Quantum Of Compensation: -

21. The parties have also challenged the Quantum of Compensation granted by the Learned Tribunal under the following heads: -

Loss of Dependency:-

Assessment of Income: -

22. *PW-1/Dr. R.K. Shyamananda Singh,* the husband of the deceased tendered his *Affidavit of Evidence as Ex. PW1/A* and has deposed that his wife had a Doctorate in Geology and also held a Diploma of Dental Assistant from Canada. She was working as a Dental Assistant for two employers namely, Dr. Alan Fernandes at $17 per hour ($ 1300 per week) on full time basis and with Dr, Jane Halkiotis at $17.5 per hour on part time basis, where she worked for a total of 235.3 hours (part-time) in 2011. Thus, her total annual income was *$34,202.06 (INR 17,10,103).*

23. *PW-2 /Seabird Rajkumari,* the daughter of the deceased *and*

PW-3/Rajkumari Rimasana, the niece of the deceased, in their respective depositions have corroborated the testimony of PW-1 in regard to the income of the deceased.

24. In addition, PW-2/*Seabird Rajkumari has* proved three Employment Certificates *Ex.PW2-11(Colly)* dated *23.02.2012, 24.02.2012* and *04.03.2015.*

25. As per the first ***Certificate dated 23.02.2012*** (*Ex. PW2/11)* of Brock North Dental issued by Dr. Alan Fernandes, the deceased was employed with him since 04.04.2011 till the date of her death and was working ***full-time*** in the office from 35-40 hours per week ,at a pay rate of 17 CAD/ hour. It further certifies that the average biweekly pay of deceased was approximately 1300 CAD.

26. This is also supported by another ***Certificate dated 04.03.2015 (Ex. PW2/11)****, of Brock North Dental issued by Dr. Alan Fernandes,* which certifies that the deceased was working as a ***full time*** employee in the office as on 21.01.2012 i.e. till the date of her demise. Her pay rate was 17 CAD/ hour with an assured work load of 35 hours or more weekly.

27. *Thus, the Certificates dated 23.02.2012 and 04.03.2015, imply that she was working for at least 7 hours per day on an average* and since her biweekly pay was 1300 CAD**,** the monthly income from full-time employment comes out to be about 2600 CAD and the annual income for the year 2011 was **2600 X 12 = 31,200 CAD (Full-time employment).**

28. The ***third Certificate dated 24.02.2012 (Ex. PW-2/11)*** issued by Dr. Jane Halkiotis (Dental Surgeon), certifies that the deceased was

also working ***on part time*** basis with Dr. Jane Halkiotis since 25.10.2008 till 17.12.2011 and her pay was 17.50CAD/per hours. She worked for 235.5 hours in total in year 2011, i.e. about 1 hour/day. As per this Certificate, the income of deceased from **part-time employment**, is **235.5 hrs x 17.50 CAD = 4121.25 CAD.** This reflects that in addition, the deceased was also working as a Part-Time Dental Assistant and earning **4121.25 CAD (part-time).**

29. The Claimants also filed a copy of *Notice of Assessment for the Year 2011 dated 31.05.2012* issued by the Canada Revenue Agency, which reflects that the income earned in the year 2011 by the deceased was *35,083 CAD.* The Income tax payable on the earned Income was of 3,778.3 CAD. Therefore, after deducting the Income Tax, the annual income of the deceased comes to **31,304 CAD per annum.**

30. The Learned Tribunal has erred in observing the ITRs of the deceased have not been filed to support the claim of Income and the Certificates of the deceased cannot be relied upon, when it is corroborated by the Salary Certificates and the Income Tax Notice.

31. *The Ld. Counsel on behalf of the Insurance Company contended* that there is evident overlap and contradiction in the Two set of Salary Certificates as some part of the period to which they pertain overlap; while the Full-Time employment Certificate is from 04.04.2011 to 21.01.2012, the Part-Time employment Certificate is also for the period 25.10.2008 till 17.12.2011. A person cannot be working at two places and the salary of the deceased should have been calculated only on the basis of Part-time employment Certificate which reflects the Yearly Income of the deceased as 4121.25 CAD for the

year 2011.

32. *Firstly, PW-1/Dr. R.K. Shyamananda Singh*- Husband, *PW-2/Ms. Seabird Rajkumari @ Sannah Rajkumari,* the daughter and *PW-3/Rajkumari Rimasana*- the niece, have consistently deposed that the deceased was working under two Employers; as full a time employee for about 7 hours per day with Dr. Alan Fernandes of Brock North Dental; and as a part time employee for about one hour daily on an average, in another Clinic with Dr. Jane Halkiotis, as it also borne out from the three Certificates. The Certificates are complimentary rather than contradictory or overlapping as it is easily comprehendible that a person may do extra work of about one hour after the full-day employment, as in the present case. The three Certificates thus, prove that on an average she was working for about 8 hours daily, in a five-day week.

33. The plea of the Insurance Company that the Income should be determined only on the basis of the Salary Certificate of the part-time employment which reflects the yearly income as 4121.25 CAD for working 235.5 hours in 2011 @17.5 CAD without considering the full-time employment Certificate is therefore, not tenable.

34. The Learned Tribunal fell in error in assessing the income of the deceased as Rs. 20,000 CAD without giving any cogent reasons for the said assessment.

35. Therefore, the yearly Income of the Deceased is re-assessed as **31,304 CAD *(i.e. 31,200 CAD + 4,121.25 CAD – Income tax)*** on the basis of the Notice of Assessment dated 31.05.2012 and the Certificates of Employment *Ex. PW-2/11.*

Future Prospects: -

36. The deceased was aged 52 years at the time of the accident and was working as *"Dental assistant employed in Private Clinics"*. The perusal of the Employment Certificates reflect that she was a private employee and was being paid on hourly basis.

37. Thus, in light of the judgment of *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, deceased is entitled to an addition of 10% on her annual salary, towards future prospects.

38. ***The Ld. Tribunal has rightly made an addition of 10%*** for granting Future Prospects and the same does not warrant any interference.

Personal and Living Expenses: -

39. *Another ground of challenge raised by Claimants is that the Ld. Tribunal has erred in deducting 1/3rd towards personal expenses, without considering that the husband was also a dependent upon the deceased.*

40. Admittedly, the deceased was survived by her husband and three daughters namely, Ms. Seabird Rajkumari (or Sanah Rajkumari), Ms. Sheetal Rajkumari and Ms. Starry Rajkumari.

41. *PW-1/Dr. R.K. Shyamananda Singh*, *PW-2/Ms. Seabird Rajkumari* and *PW-3/ Rajkumari Rimasana* have deposed that all the family members were financially and socially dependent upon the deceased.

42. *PW-1/ Dr. R.K. Shyamananda Singh* has explained in his

cross-examination dated 30.09.2014, that his eldest daughter, Ms. Sheetal aged about 25 years in 2012, was employed at the time of the accident.

43. As per the *Birth Certificate-Ex. PW2/16* of Ms. Seabird Rajkumari, her date of birth is reflected as 06.04.1990. Hence, she was about 22 years old at the time of the accident and in the cross-examination dated 30.09.2014 of *PW-1,* it has been stated that she was unemployed and was studying at that time.

44. As per the Birth Certificate- *Ex. PW2/15* of Ms. Starry Rajkumari, her date of birth is 21.09.1996 which indicated that she was about 16 years old i.e. a minor at the time of her mother's accident.

45. Thus, from the evidence it can be clearly deciphered that while the mother was alive, she being an earning member of the family was also contributing towards the maintenance of the household and was also supporting the *two unemployed daughters financially*. ***Thus, the Learned tribunal has rightly considered the two unemployed daughters as dependents of deceased.***

46. Though a plea has been taken that *PW-1/Dr. R. K. Shyamananda* was also dependent upon his deceased wife, but the same is not tenable as he himself has admitted in his cross-examination dated 30.09.2014, *that he was gainfully employed as an Assessor with a TML Supply Company, a Heating and Air Conditioning Company in Canada and was earning about 30,000 CAD annually, at the time of the accident.* Though he has voluntarily stated that he went into depression after the death of his wife and left his job on the advice of his doctor, but nothing has been placed on record in support thereof.

Rather, he has even admitted that he has resumed working and has started Immigration Consultancy and is the President of WiseWorld Immigration Canada, Ottawa.

47. Furthermore, the Insurance Company has not challenged the Deduction towards personal expenses while calculating the income of the deceased.

48. In view of the above, it is established that the husband was not a dependent and was earning, but there were two dependent daughters at the time of demise of Smt. Hijam Ibeyaima Devi and deduction of **1/3rd deduction** has rightly been made by the Ld. Tribunal towards personal expenses, as per the judgment of *Sarla Verma v. DTC,* (2009) 6 SCC 121. There is ***no ground to modify the same.***

49. Thus, the **Total Loss of Dependency in CAD** is calculated as under: -

i. **31,304 CAD** p.a. + 10% of Income = 34,435 CAD;

ii. 34,435 – 1/3rd of 34,435 towards personal expenses = 22,956.6 CAD;

iii. 22,956.6 CAD X 11 (multiplier) = **2,52,523,33 CAD.**

Rate of Conversion of INR to CAD/Exchange Rate: -

50. The next point which remains to be considered is the exchange rate of Dollar in Rupee.

51. Admittedly, the Claim Petition has been filed on account of demise of an India born Canadian National who expired in January 2012. Consequently, the Claim Petition was filed in 2012 and the Impugned Award was passed in the year 2020.

52. Since the compensation was claimed in Indian Currency and not CAD, the learned Tribunal applied the average exchange rate for the year 2011-12 relying upon the website www.exchangerates.org.uk, as Rs.48/per CAD during the year 2011-12 (*around the time of death of deceased*) as appropriate formula for conversion.

53. However, the Claimants have asserted that the exchange rate prevalent at the time of passing of the Impugned Award was Rs. 53 = 1 CAD, which should have been applied to calculate the Compensation.

54. In the landmark case of *United India Insurance Co. Ltd. Etc. Etc vs Patrica Jean Mahajan And Ors.* 2002 (6) SCC 281, the deceased was an American citizen, settled there and income accrued to him in America in terms of Dollars, details of income etc. have been given in Dollars. However, the compensation amount was calculated by Claimants in Rupees, by applying the conversion rate as applicable on date of filing of the Claim petition. Thus, the Apex Court held that the question of applying a conversion rate becomes irrelevant since the Claim itself is already denominated in the local currency of the court's jurisdiction.

55. Similarly, in the judgment of *Jiju Kuruvila & Ors vs Kunjujamma Mohan & Ors.* 2013 (9) SCC 166, while deciding whether the foreign currency amount has to be converted into the currency of the country on the basis of exchange rate as on the date of filing Claim petition (April, 1990) or as on the date of determination (May, 1993), the Apex court observed that when the claimants had filed a petition in April, 1990 and claimed compensation in INR i.e. Rs.57,25,000/- and not in U.S. Dollars, the date of filing of the Claim

Petition (April, 1990) becomes the appropriate date for fixing the rate of exchange at which foreign currency amount has to be converted into currency of the country (INR).

56. Applying the above principles, the Claim amount has been sought in INR and not in CAD. Further, in Form VIA-Written Submission filed by the Claimants before the Ld. Tribunal on 07.01.2020, they have themselves applied the Exchange Rate of CAD in April 2012 as per Economic Survey 2012-12-Source RBI @Rs.52.197, for calculating the compensation under the various Heads. No dispute can possibly be now agitated once they have accepted the rate prevalent at the time of the filing of the Claim Petition i.e. April 2012 and not at the time of passing of the Impugned Award on 03.09.2020.

57. However, the Learned Tribunal has incorrectly applied the average rate of exchange prevalent at time of death of the deceased and for the last year of her life i.e. 2011-12, when in fact rate prevailing at the time of the Claim Petition i.e. April, 2012 should have been applied which was about Rs. 52=1 CAD as per the website www.exchangerates.org.uk.

58. Thus, applying the rate of exchange at the time of filing the Claim Petition, the **Total Loss of Dependency in INR amounts to Rs. 1,31,31,213.3** (i.e. 2,52,523.33 CAD x 52).

<u>Relief: -</u>

59. Thus, the total amount of Compensation is re-calculated as under: -

S.No.	Heads	Compensation granted by the Tribunal	Modified by this Court
1.	Income of Deceased P.A.	20,000 CAD	**31,304 CAD**
2.	Rate of Exchange	Rs. 48 = 1 CAD (Average for year 2011-12)	**Rs. 52 = 1 CAD (in April 2012)**
3.	Total Loss of Dependency in INR	Rs.77,44,000/-	**Rs. 1,31,31,213.3/-**
4.	Medical Expenses	Rs. 3,55,216/-	Rs. 3,55,216/-
5.	Loss of Consortium	Rs. 1,60,000/-	Rs. 1,60,000/-
6.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
7.	Funeral Expenses and Transportation Charges	Rs. 23,200/-	Rs. 23,200/-
	TOTAL COMPENSATION	Rs. 82,97,416/-	Rs. 1,36,84,629.3/- **Rounded off to Rs. 1,36,85,000/-**

60. Thus, the total compensation granted to the Claimant is enhanced to **Rs. 1,36,85,000/-** along with interest @7% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 03.09.2020 of the Learned Tribunal.

61. **The compensation amount be deposited by the Insurance Company within six weeks.**

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

63. The Appeal of the Insurance Company is dismissed along with pending Application(s), if any. The statutory deposit be returned in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 03, 2024
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