



2024:DHC:8890



\$~18

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

%

Date of decision: 14 November, 2024+ **MAC.APP. 396/2023**

1. **RAJPAL**
2. **AVTAR SINGH**
3. **CHARANJIT SINGH**
4. **KARAN SINGH**

.....Appellants

Through: Mr. Umesh Kumar , Advocate

Versus

1. **KOTAK GENERAL INSURANCE COMPANY LTD.**
2. **AFAQUE AHMAD**
3. **JAMIRULLAH**

.....Respondents

Through: Mr. Pramod K. Shah & Mr. Ved Vyas
Tripathi, Advocates**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Appeal under *Section 173 of The Motor Vehicles Act, 1988* has been filed against the *Impugned Award dated 16.01.2023* whereby total compensation of *Rs.6,75,000/- along with interest @7% per annum* has been granted to the Claimants/Appellants, who are the husband and three sons of deceased late Smt. Anita.
2. The *only point of grievance* is that for Loss of Estate amount of *Rs.5,00,000/-* has been awarded by the learned Tribunal even though it has come on record that the deceased was working as a Marshall with DCD, Civil Defence, South District, Delhi and was earning *Rs.752/- per day*.
3. The Claimants/Appellants being the husband and three sons of the



deceased, were entitled to *Loss of Dependency* by taking her salary @Rs.752/- per day and applying the multiplier of 13.

4. Learned counsel has placed reliance on Ram Charan & Ors. Vs The New India Assurance Co. Ltd. & Ors. MAC.APP. 433/2013, decided on 18.10.2022 and United India Insurance Co. Ltd. Vs. Shalumol and Others, 2021 SCC OnLine Ker 3209 to argue that the Claim or Compensation for loss of dependency does not mean financial dependency. The dependency may include the gratuitous service, dependency which may be physical, emotional and psychological dependency.

5. ***Learned counsel on behalf of the Insurance Company*** has opposed the contention raised by the Claimants/Appellants and has argued that admittedly the deceased was living separately from the Claimants for the last more than twenty years. She may have come for the wedding of her son or birth of grandson, but this is not sufficient to reflect any kind of financial dependency on her of the family members of the deceased. The Loss of Estate in the sum of Rs.5,00,000/- has been rightly awarded by the learned Tribunal and the Award needs no interference.

6. **Submissions heard and record perused.**

7. It is an admitted case that the deceased Anita has been living separately from the Claimants/Appellants for last more than twenty years. Though it has come in evidence that she had come to attend the marriage of her son and birth of her grandson, but it is not disputed that she has been living separately.

8. The learned Tribunal, therefore, referred to the testimony of *PW-1/ Rajpal (husband of the deceased)*, wherein it is stated that his wife used to come on every Saturday night and leave on Monday morning. However, in



2024:DHC:8890



his *cross-examination* he has admitted that he has given the name of paramour of the wife to the police, as Imran. There are other admissions in the *cross-examination of PW-1* which belied his version that the deceased was living with him.

9. Ld Counsel for the claimants has relied upon United India Insurance Co. Ltd. Vs. Shalumol (Supra), wherein it has been explained that ***dependency is not limited to having financial dependency but also physical, mental and psychological dependency***. In this regard, the learned Tribunal concluded from the testimony of PW-1 Sh.Rajpal, the husband of the deceased that the deceased *was not living*, the Claimants/Appellants i.e. the husband and the sons who are all adults and it cannot be held that there was any kind of financial, mental, physical or physiological dependency. It is also not brought on record that deceased was rendering any kind of services towards the family. Consequently, it was rightly concluded that they were not entitled to Loss of Dependency. However, it was duly considered that since the deceased continued to be the legally wedded wife of PW-1, the Claimants shall only be entitled to Loss of Estate.

10. In such circumstances, the Tribunal has rightly granted Loss of Estate in the sum of Rs.5,00,000/- to the Claimants, in addition to Funeral Expenses in the sum of Rs.15,000/- and Loss of Consortium in the sum of Rs.1,60,000/-.

11. There is no infirmity in the *Impugned Award dated 16.01.2023* and the Appeal is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 14, 2024

r