



2024:DHC:9410



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 20th November, 2024+ MAC.APP. 794/2019 & CM APPL. 42003/2019

IFFCO TOKIO GENERAL INSURANCE CO. LTD.Appellant

Through: Mr Anil Soni, Advocate

versus

NEETU YADAV & ORS.

.....Respondents

Through: Ms. Mayuri Luthra,
Advocate**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Appeal under *Section 173* of the *Motor Vehicle Act, 1988* has been filed against the impugned award dated 02.07.2019 whereby the learned Motor Accident Claims Tribunal has allowed a total sum of Rs. 1,05,56,783/- along with 9% interest to the claimants.

2. ***Briefly stated***, the deceased, Sh. Kamljit Yadav, on 29.10.2016 at about 10:30 AM was riding on his motorcycle bearing No. HR-26-AD-9765 and coming from the side of Kapriwas, when suddenly a Truck Canter bearing No. HR-55-H-1170, driven by Respondent No. 6, owned by Respondent No. 7, and insured by the Appellant, driven in a rash and negligent manner came from wrong side and hit the motorcycle of the deceased. He was rushed to the Govt. Hospital, Rewari and was declared brought dead. The deceased was employed by Maruti Suzuki India Ltd. and was earning around Rs. 53,428/- per month.



2024:DHC:9410



3. The Ld. Tribunal held that the accident took place due to rash and negligent driving of Respondent No. 6. The annual income of the deceased was Rs. 6,21,439/- (after deduction of Rs. 19,685/- as income tax liability). The Tribunal further added 50% of the oncome towards future prospects and deducted 1/4th towards personal and living expenses of the deceased. Furthermore, the Tribunal computed loss of income by applying a multiplier of 15 applicable according to the age of the deceased and assessed Rs. 1,04,86,783/- as loss of dependency. Further, the Tribunal awarded Rs. 40,000/- towards loss of consortium, Rs. 15,000/- towards funeral expenses, and Rs. 15,000/- towards loss of estate. Thus, the total sum of Rs. 1,05,56,783/- has been awarded.

4. The Appellant, Insurance Company, has challenged the impugned Award mainly on two aspects: -

- (i) the negligence has not been proved from the testimony of PW-2 and the Driver has been acquitted in the criminal proceedings as the eyewitness could not identify him,
- (ii) while taking salary of the deceased at Rs.53427/-, necessary deductions qua uniform maintenance reimbursement, B Shift allowance and conveyance allowance, has not been made, and
- (iii) that the Id. Tribunal erred by not deducting the amount of Rs. 15,00,000/- and Rs.34,12,250/- paid to the claimants as compensation by the employer of the deceased out of compensation.

5. Opportunity is given to the learned counsel for the Claimants/ respondents to address arguments.

6. **Submissions Heard.**

MAC.APP. 794/2019

Page 2 of 11



2024:DHC:9410



7. Sh. Kamljit Yadav aged about 34 years met with an accident on 29.10.2016 with Truck Canter bearing No. HR-26-AD-9765 driven by its driver Sh. Rajnesh Kumar and was pronounced dead on arrival at the Govt. Hospital, Rewari. A Claim Petition under Section 166 of the Motor Vehicle Act, 1988 was filed by his wife, two children, and his parents. The compensation in the sum of Rs. 1,05,56,783/- along with interest @ 9% p.a. has been granted.

8. The first ground of challenge is that the driver has been acquitted in the criminal proceedings and his negligence is not proved by the testimony of PW2.

9. The Id. Tribunal has noted in the impugned Award that the Claimants have examined a total of 3 witnesses in support of their case. PW1, Smt. Neetu Yadav, widow of the deceased. PW2, Sh. Jagdish Chander, is the alleged eye-witness of the accident. PW3, Sh. Vijay Vir Singh, Manager (HR) of the company with which the deceased was employed. Since, only PW2 witnessed the accident, so only his testimony is relevant to determine the alleged rashness and negligence on part of the driver.

10. PW2 has stated that at the time of accident, he was standing at the bus stand at Kapriwas and that he saw one canter coming on the wrong side from Rao Hotel and going towards Hero Honda Chowk side in a rash and negligent manner and hit the motorcycle of the deceased, which was coming from the service road. PW2 was duly cross-examined by the Ld. Counsel for the Insurance Company, but nothing came from the said cross-examination that could cast any doubt on his presence at the spot of accident.



2024:DHC:9410



11. The Id. Tribunal has rightly observed that the claim of PW2 regarding his being an eye-witness of the above accident is further substantiated from the contents of the FIR which was registered on the basis of the statement of PW2 only.

12. Rather in his cross-examination by Respondent No.3/Insurance Company, he clarified that he had witnessed the accident from the side of the road which was at a distance of about 15 feet from the place where he was sitting at the time of accident. Moreover, he stated that his statement was recorded by the Police as an eye witness, which is also substantiated by the contents of the FIR Ex.PW1/9 which had been recorded on the statement of PW2 Shri Jagdish Chander. The testimony of the eye witness PW2 therefore, has been rightly relied upon by the learned Tribunal. Furthermore, the truthfulness of the testimony of PW2 is further corroborated by the fact that the FIR was registered under Section 279/304 A IPC and after due investigations, the Chargesheet was filed against the Driver and it was concluded that the accident was caused by him while driving the offending vehicle in a rash and negligent manner.

13. Learned Counsel on behalf of the Insurance Company has contended that even though the Chargesheet had been filed, but the Respondent No.1/Driver stands acquitted of the charges in the Criminal Case vide judgment of the learned M.M Ist Class dated 15.01.2019 since this very eye witness failed to identify the Driver. However, as held in the cases of N K V Bros (P) Ltd. vs. M. Karumal Ammal, 1980 LawSuit (SC) 141; Delhi Transport Corporation & Anr. Vs. Navjyot Singh & Ors., 2015 LawSuit (Del) 1750 and National Insurance Company Ltd. vs. Sarbjit Kaur & Ors., 2018 LawSuit (P&H) 1711, the acquittal of the

MAC.APP. 794/2019

Page 4 of 11



2024:DHC:9410



Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident Tribunal.

14. Furthermore, the Driver himself was the best witness to depose about the true circumstances in regard to the accident. However, he has chosen not to step into the witness box. As has been held in the case of Cholamandalam M.S. General Insurance Company Ltd. vs. Kamlesh 2009 (3) AD (Del) 310, an adverse inference can be drawn against him for not stepping into the witness box in his defence.

15. In the present case cogent evidence has been led by the Claimant to prove that the accident was caused due to the rash and negligent driving of the Offending Vehicle by his Driver. Learned Tribunal has rightly held that the above said accident resulting into death of the deceased was caused only due to rash and negligent driving of the offending truck owned by R-2 and insured with R-3 at the relevant time of accident.

16. The other aspect under challenge is that the relevant deductions have not been made, such as allowance towards Uniform, B-Shift Allowance, Conveyance, and Flexi Pay, which could not have been considered while taking the salary of the deceased as Rs. 53,427/- per month.

17. The Salary Slip **Ex. PW1/1** reflects the earnings as under:

	<u>Description</u>	<u>Earning</u>	<u>Deduction</u>
(i)	Basic Pay	20,200	
(ii)	DA/VDA	383	
(iii)	HRA	8080	
(iv)	UNIF. MAINT. REMIB.	2000	
(v)	FIXED DA	1189	
(vi)	CHILD EDU. ALLOW.	200	
(vii)	B-SHIFT ALLOW	480	



2024:DHC:9410



(viii)	MSIS3	5558		
(ix)	CONV. ALLOW.	2000		
(x)	BALANCE FLEXI PAY	5106		
(xi)	MSIS (1+2)	7598		
(xii)	PF		2613	
(xiii)	VPF		5000	
(xiv)	UNION SUBS.		10	
(xv)	DEATH RELIEF FUND		150	
(xvi)	CANTEEN		43	
(xvii)	CANTEEN		108	
(xviii)	CANTEEN		287	
(xix)	SUPERANNUATION FUND		100	
(xx)	HARYANA WELFARE FUND		10	
(xxi)	TRANSPORT CHARGES		600	
(xxii)	DA/VDA ARR		13	
(xxiii)	HRA ARR		266	
(xxiv)	UNIF. MAINT. REIMB. ARR.		66	
(xxv)	FIXED DA ARR.		39	
(xxvi)	CHILD EDU ALLOW ARR.		7	
(xxvii)	PF ARR	86		
(xxviii)	CANTEENA RR.	30.45		
(xxix)	TRANSPORT CHARGE ARR.	120		
	<u>TOTAL:</u>	53,431.25	9995.38	43435.87

18. The total salary of the deceased as per his Salary Slip was Rs.53,431.25/- However, these allowances as mentioned above, are all perks enjoyed by the deceased on account of his working in the Organization. These were the expenses the deceased was incurring in attending the Office and on Transportation. Learned counsel on behalf of the Respondents/Claimants has argued that these were not the perks but were part of the fix salary and cannot be deducted. However, it cannot be overlooked that these were the perks which were being consumed by the deceased when he went to attend his Office. Once, he is no longer working, he cannot be earning any Unif. Maint. Remib, Child Edu.



2024:DHC:9410



Allow, B-Shift Allow, Conv. Allow. and Balance Flexi Pay. These amounts which add up to Rs.4,811/- have to be deducted and the **Net Salary** of the deceased comes to **Rs.48,111/-** (53,431-4,811) per month.

19. Learned counsel on behalf of the Claimants has further argued that since 1/4th deductions have already been made on account of the expenses of the deceased, the deductions from the Salary of certain allowance, would become a double deduction. However, this argument is not tenable as personal expenses of 1/4th are deducted towards the expenditure incurred by the deceased as an individual living in the family as a member. However, the deductions from the salary of the allowances are those which he would have enjoyed, which he would have consumed, had he been attending the Office. It is not a case of double deduction, as is argued on behalf of the counsel for the Claimants.

20. The other aspects in regard to Multiplier, Future Prospects etc. have not been challenged. Therefore, the Loss of Dependency is calculated as under: -

- a. Annual income of deceased: Rs.5,77,332 (Rs.48,111 X 12) [Rs. 5,60,00/- after tax]
- b. Addition of 50% towards Future Prospects: Rs.2,80,000/-
- c. Deduction of 1/4th towards personal expenses: Rs.2,10,000/-
- d. Multiplicand: a + b - c = Rs.6,30,000/-

21. **Loss of Dependency** thus, comes to Rs.94,50,000/- (Rs.6,30,000 X 15), rounded off to **Rs.94,50,000/-**.

Non- Pecuniary Heads: -

22. The Ld. Tribunal has granted only Rs. 40,000/- towards the Loss of Consortium. However, considering there are 5 legal heirs surviving the

MAC.APP. 794/2019

Page 7 of 11



2024:DHC:9410



deceased, (irrespective of age) each member is entitled to compensation for loss of consortium. ***Thus, the Total Loss of Consortium is enhanced to Rs. 40,000/- X 5 = Rs. 2,00,000/-.***

23. No modification is required in the compensation granted for the Loss of funeral expenses in the sum of Rs. 15,000/- and Loss of estate as Rs. 15,000/-.

Deduction of Compensation received from Employer: -

24. The Learned counsel for Appellant has vehemently contended that the payment received the ex-gratia were in the nature of compensation for the injuries suffered in the accident, and should have been excluded while computing the income of the injured / deceased.

25. In the case of Helen C. Rebello Vs. Maharashtra State Road Transport, 1999 (1) SCC 90, the issue before the Apex Court was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, cash, bank balance, shares, fixed deposits etc. are pecuniary advantages received by the hers on account of death of deceased and liable to be deducted from the compensation. The Apex Court held that none of these amounts have any correlation with the compensation receivable by the dependants under the Motor Vehicles Act, which is on account of injury or death without making any contributions towards it. The fruits of the amount received through contribution of the insured, cannot be deducted out of the amount receivable under the Motor Vehicles Act. Only the amount under the Motor Vehicle Act which are those which are payable without any contribution, as it is statutory in the nature. However, the amount



2024:DHC:9410



receivable under the Insurance Policy was such like documents is contractual.

26. Similarly, the Apex Court in Union of India Insurance Company Limited Vs. Petricia jean Mahajan, 2002 (6) SCC 281 observed that the principle of balancing of losses and gains or benefits of death, has to be done in order to arrive at the amount of compensation but what is more important is that such receipts of the amount by the claimants must have correlation with the accidental death by reason of which alone the claimants have received the amount. The amount received on account of social security must have a nexus or relation with the accidental death or injured and has to be deducted from the amount of compensation. It was observed that such gains may be on account of savings or other investment made by the deceased would not go the benefit of wrong doer and the claimant should not be left worse off, if he had never taken any insurance policy or had not made investments for future returns.

27. Similarly, in the case of Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, AIR 2016 SC 4465, the deceased was an employee of Haryana Government. It was observed that under the Government rules, the family was to continue to receive the financial assistance equal to pay and other allowances that were drawn by the deceased. However, only such pecuniary addition from advantage from whatever source which correlate to the injury or death caused on account of mother accident, should be considered while claiming the compensation.

28. In the case of Sebastiani Lakra Vs. Natioinal Insurance Company Ltd., AIR 2018 SC 5034, the Apex Court observed that advantage which accrues to the legal heirs of the deceased or to his dependents as a result



2024:DHC:9410



of some contract or act, which the deceased performed in his lifetime, cannot be considered to be the outcome or result of the death of the deceased even though these amounts may into the hands of the dependents only after his demise.

29. The High Court of Jammu and Kashmir in Union of India and Others Vs. Usha Rani and ors. In MAC App 122/2020, dated 05.08.2020, held that the principle which emerges is that such payments have been received on the demise of a person on account of independent investments or contracts, are not to be deducted or the ex gratia payments received from the employer are not to be deducted.

30. Thus, the Id. Tribunal has not made any error in not deducting the compensation received by the claimants of the deceased from the employer from the awarded compensation.

Relief: -

31. The **total amount of compensation** thus, awarded to the Claimants is as under: -

Sl. No.	Heads under which Compensation is Granted	Compensation awarded by the Tribunal	Compensation awarded/modified by this Court
1.	Loss of Dependency	Rs. 1,04,86,783/-	Rs. 94,50,000/-
2.	Loss of Estate	Rs. 15,000/-	Same
3.	Loss of Consortium	Rs. 40,000/-	Rs. 2,00,000/-
4.	Funeral Expenses	Rs. 15,000/-	Same
TOTAL COMPENSATION		Rs. 1,05,56,783/-	Rs. 96,80,000/-

32. In view of the above, the total amount of Compensation granted by the Ld. Tribunal is modified to **Rs. 96,80,000/-** along with interest @ 9% p.a. from the date of claim till the disbursement, as per the terms of the



2024:DHC:9410



Amended Final Award 02.07.2019.

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

NEENA BANSAL KRISHNA, J

NOVEMBER 20, 2024

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MAC.APP. 794/2019

Page 11 of

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