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

% ***Date of decision: 29th October, 2024***

+ **MAC.APP. 380/2024**

RAJEEV MATHUR & ANR.

.....Appellants

Through: Mr. Vaibhav Verma, Mr. Ved Vyas
Tripathi and Mr. Pramod Kumar Sah,
Advocates.

versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD.....Respondent

Through: Ms. Gayatri Nandwani, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 173 of the *Motor Vehicle Act, 1988* has been filed against the Award dated 18.04.2024, wherein a compensation of Rs.36,300/- has been granted on account of the demise of Shri Shabd Narayan Mathur in a road accident on 04.04.2018.
2. The deceased was walking on foot at Pushta Road, Indirapuram, near Chijarsi Chowk, Ghaziabad, when a Dumper bearing No.UP-16ET-1635 which was being driven in a rash and negligent manner came and hit the deceased resulting in grievous injuries. He was taken to SJS Hospital, Chijarsi, Ghaziabad, where he died during treatment. FIR No.773/2018 under Section 279/304A IPC was registered at P.S. Indirapuram.
3. The deceased was married, **but his wife had pre-deceased him**. He had no children. According to the claimants, the deceased was living with the family of his younger brother Swami Narayan Mathur/Appellant No.2 and his son Rajiv Mathur/ Appellant No.1, who filed a Claim Petition under



Section 166 of M.V. Act. The learned Tribunal observed that they were not the Class I Legal Heirs but granted *Funeral Expenses* and *Loss of Estate* in the sum of Rs.18,150/- each; a total compensation of Rs.36,300/- along with interest @ 9% per annum was granted to the Appellant No.2 Swami Narayan Mathur, the younger brother of the deceased.

4. Aggrieved by the said Award, the present Appeal has been filed challenging the quantum of compensation awarded to the claimants.

5. **Learned counsel on behalf of the Claimants** has argued that the deceased was having a monthly income of Rs.20,000/- per month from the Shares which he was giving totally to the family of the Claimants. After his demise, the family has suffered a loss of Rs.20,000/- per month.

6. It is further submitted that he was a *friend, philosopher and guide* for the claimant No.2 Swami Narayan Mathur who was being guided by the deceased in his business and other endeavors. It is submitted that if the Claim had been filed under Section 163 A, the claimants would have got the minimum of Rs.5 lakhs. Therefore, denial of any compensation on account of *Loss of Income* and also *Loss of Love and Affection/Loss of Consortium*, is not justified. Hence, enhancement of compensation is sought.

7. **Learned counsel for the Insurance Company** submits that these aspects in regard to Loss of Income, Loss of Love and Affection and Consortium has been considered by the learned Tribunal and for cogent reasons the same has been denied, there is no infirmity in the Award and the Appeal is liable to be dismissed.

8. **Submissions heard.**

9. The Appellants are the nephew and the younger brother of the deceased who unfortunately died in a road accident at the age of 83 years.



PW1 Rajiv Mathur, the nephew had deposed that deceased was the elder brother of his father and had been residing with them since beginning. To prove this aspect, Aadhar Card of Appellants Ex.PW1/1 collectively were produced which reflected that the Claimants were resident of M-1003, SPS Heights, Ahinsa Khand-2, Indirapuram, Ghaziabad U.P.-201014. However, the Aadhar Card of the deceased that was filed at the stage of final arguments reflected his address as 1304, Arihant Embince Crossing Republic, Ghaziabad, U.P.-201016.

10. Furthermore, reference be made to the testimony of PW1 Rajiv Mathur who had deposed that on the date of accident the deceased was coming to his house at Indirapuram, Ghaziabad from Ahinsa Crossing (i.e. the address of the deceased as per Aadhar Card).

11. PW2 Sh. Alok Kumar Mathur had deposed that he was present at M-1003, SPS Heights, Indirapuram, Ghaziabad (i.e. the address of Petitioner No.1 Rajiv Mathur) and that the deceased was coming to his house from Ahinsa Crossing. The testimony of PW1 and PW2 coupled with the Aadhar Cards made it absolutely clear that the deceased had not been residing with the Claimants as was alleged by them.

12. Though during the course of arguments, the counsel for the Appellants insisted that the deceased had been residing with them and giving Rs.20,000/- per month to the family of the claimants. However, this contention is absolutely not tenable in the light of the documents that had been produced on behalf of the claimants before the learned Tribunal.

13. *The learned Tribunal has thus, concluded that the deceased was not residing with the Claimants. There is no infirmity in the findings of the learned Tribunal in this regard.*



14. PW1 Rajiv Mathur, Appellant No.1 had further deposed in his testimony that the deceased was a businessman and earned Rs.20,000/- per month. His wife Smt. Kamlesh Mathur had pre-deceased him and he had no children. He was contributing Rs.20,000/- from his income to the Claimants who are the Class-II legal heirs of the deceased.

15. In this regard the learned Tribunal to determine the financial dependency of the Claimants on the deceased, observed that not a single document has been filed to show the deceased was taken to the hospital or admitted by any of the Claimants or even by their relative PW2 Alok Kumar Mathur. Though the deceased was aged about 82 years and it was asserted that he was earning Rs.20,000/- month and was giving his entire earnings to the claimants, no proof either of the income of the deceased or payment of Rs.20,000/- per month to the claimants was filed. The petitioners aside from their bald assertions failed to produce any cogent evidence and the learned Tribunal concluded that the claimants were not financially dependent on the deceased. Pertinently, the learned Tribunal has also observed that the Medical Bills produced by the Claimants, were not supported by the medical prescriptions and were in contradiction to the medical treatment.

16. The learned counsel for the appellant sought to argue that the deceased had used to deal in shares and Rs.20,000/- per month was being generated by trading in shares. As has been rightly observed by the learned Tribunal, there is no evidence whatsoever in this regard. Even otherwise, if the deceased was holding the shares and the Claimant No.2 was the Class-II legal heir, he in any case would be in possession of the shares and would be deriving the dividend and other incomes from those share certificates.

17. On a specific query, the learned counsel submitted that the Share



Certificates had been transferred to *Investor Education Fund* as the same have not been claimed by the claimants till date. Pertinently, no Succession Certificate or Survivor Certificate in the name of the Claimants has been sought till date. When specifically questioned, if there were any other assets including the bank account of the deceased, no details were forthcoming. No evidence to this effect has also been led.

18. Therefore, the findings of the learned Tribunal that no financial dependency of the claimants on the deceased has been proved, warrants no interference. Since there was no financial dependency proved, there was no question of granting compensation under the head of Loss of Income.

19. Learned counsel for the Appellants vehemently contended that the deceased was the elder brother of Appellant No.2 and had been a friend, philosopher and guide and his demise has resulted in immense loss of love and affection for which no compensation has been granted.

20. The learned Tribunal made a reference to Magma General Insurance Co. Ltd. Vs. Nanu Ram (2018), 18 SCC 130, wherein the Supreme Court had observed that “*Consortium*” is a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium (parental consortium). The right to consortium would include company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to the family.

21. In the case of Raj Bala & Ors. Vs. Rakeja Begum & Ors. 2022 SCC Online SC 1453 it was observed that while considering the question of interference with the compensation granted by the Court under the head ‘Love and Affection’, it is pertinent to observe that the Constitution Bench in National Insurance Company vs. Pranay Sethi [(2017) 16 SCC 680] has



recognized only three conventional heads where compensation can be awarded viz. 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses'.

22. It has been held in the case of Magma General Insurance Company Ltd. Vs. Nanu Ram 2018 ACJ 2782 that though compensation under the head of 'Love and Affection' is impermissible, compensation for loss of spousal consortium to wife and loss of parental consortium to children, is admissible.

23. The learned Tribunal thus, concluded that the claimants did not come in any of the head of Loss of Consortium. They do not have any Surviving Legal Heir Certificate nor any proof for the Court to believe that the Claimant No.2 Swami Narayan Mathur is a person who would fall in a category to be held entitled to any Loss of Consortium.

24. The entire evidence as discussed above, does not show the petitioners/claimants and the deceased living together or being the persons who were taking care of the deceased in his old age.

25. The learned Tribunal by a reasoned Order, has denied the compensation under the head of Loss of Consortium.

26. The learned Tribunal has awarded compensation towards Loss of Estate and for Funeral Expenses Rs.18,150/- to each of the Claimant totalling to Rs.36,300/-. There is no ground for interfering in the compensation amount granted by the learned Tribunal.

27. The Appeal is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 29, 2024

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