



2024:DHC:6264



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

% **Date of order: 21st August, 2024**

+ **MAC.APP. 517/2016 & CM APPL. 24602/2016**

**M/S ICICI LOMBARD GENERAL INSURANCE COMPANY
LTD.**

.....Appellant

Through: **Mr. Ankit Kalra, Advocate**

versus

**RENU JHA & ORS. (ORIENTAL INSURANCE COMPANY
LIMITED)**

.....Respondents

Through: **Ms.Sujata Ray, Advocate for R-1 to
R-5, Mr.Ravi Sabharwal, Ms.Ruchi
Sharma & Ms.Santosh Katiyar,
Advocates for R-10/Oriental
Insurance Ms.Deepti Gupta and
Mr.Rahul Gupta, Advocates for R-8
and 9**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal has been filed on behalf of the appellant under Section 173 of The Motor Vehicles Act, 1988 against the impugned judgment/award dated 6th January, 2016 passed by Presiding Officer, MACT, Dwarka Courts, New Delhi (hereinafter as the 'learned Tribunal') in



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claim petition bearing no. 210/09 (hereinafter as the “impugned order”) seeking the following reliefs:

“(a) To admit the appeal and summon the original records in Case No. 210/09 titled Smt. Renu Jha & Others Vs. Sunil Kumar and Others from the Court of Shri Jitendra Mishra, P.O., MACT-I, Dwarka Courts, New Delhi;

(b) To set aside the impugned final award dated 08.10.2015 as the negligence of the driver was not proved by the claimants in the petition;

or

i) To modify the impugned final award dated 08.10.2015 by holding that 1/4th should be deducted towards personal living expenses of the deceased instead of 1/5th as granted in the impugned award;

ii) To modify the impugned final award dated 08.10.2015 by holding that the deceased was not earning a sum of Rs. 10,000/- (Rupees Ten Thousand Only) per month;

iii) To modify the impugned final award dated 08.10.2015 by holding that the claimants are not entitled to a 50% addition towards future prospects as granted in the impugned award;

iv) To modify the impugned final award dated 08.10.2015 by holding that the claimants are not entitled to interest @ 10% per annum on the awarded amount as granted in the impugned award;

v) To modify the impugned final award dated 08.10.2015 passed in Case No. 210/09 titled Smt. Renu Jha & Others Vs. Sunil Kumar and Others from the Court of Shri Jitendra Mishra, P.O., MACT-I, Dwarka Courts, New Delhi, by holding that the appellant company is not liable to pay the awarded amount, or in the alternative, the rights of recovery be granted



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to the appellant against the owner and driver of the insured vehicle;

vi) To set aside the order dated 06.01.2016 passed in Case No. 210/09 titled Smt. Renu Jha & Others Vs. Sunil Kumar and Others from the Court of Shri Jitendra Mishra, P.O., MACT-I, Dwarka Courts, New Delhi;

To award costs of the appeal in favor of the appellant and against the respondents; and

To pass such other and further order(s) as deemed fit and proper in the facts and circumstances of the present case.”

2. The brief facts that have led to the present appeal are as follows:
- a) On 10th May, 2009, Shri Gagan Kumar Jha, the deceased, was travelling as an employee of Kohinoor Koach Industries in the company-owned truck bearing registration no. HR-56G-6417 (hereinafter as the “injured vehicle”), which was travelling from Mohali to Bhopal. At about 11:15 PM, when the injured vehicle arrived at Churu Road, Village Khota on NH-56 in Ramgarh, Sethan, Sikar, Rajasthan, a truck bearing registration no. HR-37A-9881 (hereinafter as the “offending vehicle”) coming from the opposite direction, collided with the injured vehicle due to being driven in a rash and negligent manner. As a result of the accident, the deceased fell down from his vehicle, thereby resulting in his demise.
- b) An FIR bearing no. 41/2009 u/s 279/337/304A IPC was lodged at P.S. Ramgarh Sethan, Distt. Sikar, Rajasthan in relation to the accident.



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- c) Subsequently, the claimants/respondents No. 1 to 5 filed a claim petition under section 166 and 140 of Motor Vehicles Act, 1988 before the learned Tribunal as the legal heirs of the deceased claiming compensation of Rs. 40,00,000/-.
- d) Accordingly, the learned Tribunal held that the respondent no. 6, the driver of the offending vehicle, is liable in driving rashly and negligently and awarded a compensation of Rs. 29,73,000/- along with interest @ 10% from the date of filing of the petition till its realisation, which is to be recovered from the appellant.
3. Aggrieved by the impugned order, the present appeal has been filed.
4. Learned counsel appearing on behalf of the appellant submitted that the impugned order passed by the learned Tribunal failed to appreciate the evidence on record. It is further submitted that in case the impugned order is not set aside, it will result in gross miscarriage of justice and irreparable injury and damage to the appellant.
5. It is submitted that the learned Tribunal erred in holding respondent no. 6 liable for driving the offending vehicle in a rash and negligent manner as the same was neither based on any cogent evidence on record nor proved by any eye-witness. Since the only witness examined was the wife of the deceased, Smt. Renu Jain/ PW-1, who in her cross examination testified that she was not an eye-witness to the accident, therefore the same is not reliable.
6. It is submitted that the learned Tribunal failed to appreciate the fact that the injured vehicle was being driven in violation of the terms of the



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insurance policy as the owner had committed a wilful breach of the terms and conditions of the insurance policy by permitting an unauthorised passenger/gratuitous passenger, the deceased herein to travel in the injured vehicle.

7. It is submitted that the learned Tribunal has taken an incorrect value of $1/5^{\text{th}}$ instead of taking $1/4^{\text{th}}$ while calculating the deductions of personal expenses as there are only five claimants in the present case.

8. It is submitted that the learned Tribunal erred in passing the impugned order as the claimants/ respondents no. 1 to 5 failed to prove that the deceased was carrying any goods with him at the time of the accident.

9. It is further submitted that the learned Tribunal incorrectly considered the income of the deceased as Rs. 10,000/- on the basis of salary certificate that was allegedly issued by M/s Kohinoor Koach Industries, however, the same was not proved by an independent witness as per law.

10. It is submitted that the learned Tribunal erred in granting 50% increase in the income of the deceased for future prospects and in imposing interest @ 10% on the awarded compensation as the same are against the settled principles of law.

11. It is submitted that the learned Tribunal erred in making the appellant liable to pay for the awarded compensation as no the right to recover from the owner and driver of the offending vehicle has been granted.

12. Therefore, in light of the foregoing submissions, it is prayed that the present appeal may be allowed and reliefs may be granted, as prayed.



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13. *Per Contra*, learned counsel appearing on behalf of the respondent no. 1 to 5 vehemently opposed the arguments made by the learned counsel appearing on behalf of the appellant submitting to the effect that the same is liable to be dismissed being devoid of any merits.

14. It is submitted that the impugned award is valid in the eyes of law and has been passed by the learned Tribunal after meticulously examining the evidence placed on its record by the respondent no. 1-5 herein and the testimony of PW-1.

15. It is submitted that there was no breach of terms and conditions of the insurance policy and if the deceased is considered a gratuitous passenger, the insurance policy cannot exclude such a passenger.

16. It is submitted that respondent no. 1 to 5 belong to the lower strata of the society and the deceased was the only earning member of the family, thereby the whole family was dependent on him and due to his sudden demise of the age of 26, it has become very difficult for the respondent no. 1 to 5 to sustain themselves and therefore, the learned Tribunal was right in taking 1/5th reduction for personal expenses and in determining the future prospects.

17. It is submitted that the deceased was working as Supervisor in M/s Kohinoor Koach Industries at a salary of Rs. 10,000/- per month and the same was proved by the respondent no. 1 to 5 by adducing the original salary certificates of the deceased.



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18. It is further submitted to the effect that learned Tribunal has merely imposed 10% as interest instead of 12% given the facts and circumstances of the case and the same is liable to be increased accordingly.

19. It is submitted that the learned Tribunal rightly held that no evidence was led by the respondent no. 6 to prove his innocence. Hence, it was held that the respondent no. 6 was driving negligently, which ultimately led to the demise of the deceased.

20. Learned counsel appearing on behalf of the respondent nos. 8 and 9 submitted that that the learned Tribunal has rightly decided the issue of negligence, which led to the deceased being fatally injured due to the rash and negligent driving.

21. It is submitted that with respect to compensation awarded, the learned Tribunal has been rightly decided after taking into consideration the age and multiplier, income and profession, future prospects, number of dependants, interest on the compensation etc.

22. It is submitted that that the learned Tribunal held that Respondent no. 1 i.e., Respondent no. 6 herein was driving in a rash and negligent manner and caused fatal injuries to the deceased. It is further submitted that the learned Tribunal did not find any adverse findings against respondent no. 8 and 9. It is also submitted that the Respondent no. 8 and 9 are not liable for the death of the deceased.

23. Learned counsel appearing on behalf of the respondent no. 10 the learned Tribunal correctly held that there is no negligence that should be attributed to the respondent no. 8, who is the driver of the injured vehicle.



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24. It is further submitted that a chargesheet was filed against Sunil Kumar/Respondent no. 6 who driving the vehicle bearing no. HR-56G-6417 and was solely responsible for the accident in question.

25. Therefore, in view of the forgoing submissions, it is submitted that the appeal may be dismissed.

26. Heard the learned counsel appearing for the parties and perused the records.

27. The instant appeal is admitted.

28. It is the case of the appellant that the learned Tribunal erred in passing the impugned order in observing that the respondent no. 6 was negligent in driving the offending vehicle as no cogent evidence regarding the same has been brought on record and that as per the insurance policy, the owner was not allowed to let unauthorised personnel i.e., the deceased, to travel in the injured vehicle without any goods. Hence, it is prayed that the instant appeal may be allowed.

29. In rival submissions, it has been rebutted that the learned Tribunal has rightly passed the impugned order by making respondent no. 6 liable for rash and negligent driving of the offending vehicle after appreciating the entire evidence and testimonies of the witnesses and that the respondent no. 8 and 9 are not responsible for the accident as no adverse findings can be made against them and that the deceased was solely negligent. Hence, the present appeal may be dismissed.

30. The limited question before this Court is whether the impugned award is liable to be set aside or modified by reducing the compensation awarded.



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31. At this juncture, this Court deems it pertinent to peruse the impugned award passed by the learned Tribunal. The relevant extracts of the same as under:

“ISSUE NO. 1:

Whether Sh. Gagan Kumar Jha received fatal injuries on 10/05/2009 due to the rash or negligent driving of vehicle no. HR-37A-9891 by the respondent? OPP

PW1 Smt. Renu Jha has stated that on 10/05/2009, her deceased husband, Sh. Gagan Kumar Jha, was traveling as an employee in the truck bearing no. HR-56G-6417 and was going from Mohali to Bhopal. When he reached Churu Road, Village Khota on NH-56, in Ramgarh, Sethan, Sikar, Rajasthan, at about 11:15 PM, the truck collided with another truck bearing no. HR-37A-9881, which was being driven by its driver, respondent no. 1, Sunil Kumar, in a rash and negligent manner. As a result of the accident, the truck in which Sh. Gagan Kumar Jha was sitting turned turtle, and he fell onto the road and was killed.

The criminal record, including Challan Ex. PW1/1, supports the case of the petitioners that the respondent driver, Sunil Kumar, caused the death of Gagan Kumar Jha.

In Bimla Devi & Others Versus Himachal Road Transport Corporation & Others (2009) 13 SCC 513, it has been observed that in a road accident, the strict principles of proof as in a criminal case are not attracted. The relevant portion of the judgment is reproduced as under:

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to bear in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible for the claimants. The



claimants were merely required to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For this purpose, the High Court should have taken into consideration the respective stories set forth by both parties."

As per law, in the present case, the claimants need not prove their case beyond reasonable doubt, and the case is to be judged on the touchstone of preponderance of probability. It is clear from the consideration of the evidence on record that respondent no. 1, Sunil Kumar, caused fatal injury to Gagan Kumar Jha by his rash and negligent driving. Thus, this issue is decided accordingly.

FINDING ON ISSUE NO. 2: Whether the petitioners are entitled to claim compensation, and if so, what amount and from whom? OPP

For deciding the quantum of compensation that may be awarded in favor of the petitioners, regard shall be had to the fatal injuries received by Gagan Kumar Jha. Keeping this in view, it will be expedient to separately ascertain the compensation due under the following heads:

AGE & MULTIPLIER

It is argued by the learned counsel for the insurance company that the age of the deceased has been shown as 26 years in the postmortem report. As far as future prospects and the multiplier are concerned, the same shall be as per the law laid down by the Hon'ble Delhi High Court in Bharti Axa General Insurance Co. vs. Punam, decided on 27/05/2015 in MACP Appeal No. 79/14.

On the other hand, it is argued on behalf of the petitioners that they belong to the lower strata of society, and the deceased was the only earning member in the family. The entire family was



dependent on his salary, and due to the sudden demise of Gagan Kumar Jha, the petitioners are facing starvation. They prayed that, as per the age of the deceased, i.e., 26 years at the time of the accident, a multiplier of 17 be applied.

For considering the multiplier, the court has to determine various factors, including the financial status of the family of the deceased and the loss of earnings. Even as per para 13 of Bharti Axa General Insurance Co. vs. Punam, decided on 27/05/2015 in MACP Appeal No. 79/14 (supra), it is clear that the multiplier applied was based on the particular facts and circumstances of that case and is not applicable to the facts of the present case.

The law regarding the multiplier was laid down in Sarla Verma's case by the Apex Court. As per the ration card (Ex. PW1/9), the year of birth of the deceased is mentioned as 1983. Therefore, he was aged about 26 years at the time of the accident. Considering the age of the deceased, which was about 26 years at the time of the accident, a multiplier of '17' is applied in view of Sarla Verma's judgment.

INCOME & PROFESSION

PW1, Smt. Renu Jha, has stated that her husband, Gagan Kumar Jha, was working as a Supervisor with Kohinoor Coach Industries and earning a salary of Rs. 10,000/- (Rs. Ten Thousand Only) per month. She proved the original salary certificate of the deceased as Ex. PW1/6, which is duly attested and on the letterhead of Kohinoor Coach Industries, making it credible. Therefore, his annual income amounts to Rs. 10,000/- $\times$ 12 = Rs. 1,20,000/- (Rs. One Lakh and Twenty Thousand Only) per annum.

FUTURE PROSPECTS



The learned counsel for the insurance company argued that in view of the judgment of the Hon'ble High Court in MAC APP 79/2014 titled Bharti Axa General Insurance Co. Ltd. vs. Smt. Poonam and Anr., in case no. 165/10, wherein in para 23 it has been held that: "Thus, in the absence of any evidence of good future prospects, no addition towards future prospects ought to have been made by the Claims Tribunal," it is prayed that the petitioners are not entitled to future prospects in this case.

When we consider the law on this point, apart from Sarla Verma, where the law was laid down by the Apex Court, the recent case of Rajan vs. Soly Sebastian & Anr. in SLP (C) No. 853 of 2014, decided on 28.07.2015, has held in para 14 that:

"After hearing both the learned counsel for the parties and perusing the material evidence on record, we are of the view that the Tribunal was not right in assessing the notional income of the appellant at Rs. 2000/-, which was wrongly accepted by the High Court. The High Court erred in not interfering with the same and should have assessed the notional income of the appellant after taking into consideration the relevant Minimum Wages Notification dated 11th January 2000, published in the Kerala Gazette Extraordinary issued by the Labour & Rehabilitation (E) Department, Government of Kerala, and the undisputed fact that the appellant was working as a professional driver and that he has suffered 100% permanent disability with regard to his earning capacity. Therefore, we are of the view that the notional income of the appellant must be taken at Rs. 3,500/- per month. After considering 50% enhancement for future Prospects, the compensation for permanent disability can be calculated as (Rs. 3,500/- + Rs. 1,750/-) $\times$ 12 $\times$ 17 = Rs. 10,71,000/- by applying the appropriate multiplier as per the principles laid down by this Court in the case of Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.



Hence, it is clear that the Apex Court, in the case of minimum wage, has allowed future prospects. Therefore, in the facts of this case, the petitioners are entitled to future prospects, and the judgment in Bharti Axa General Insurance Co. Ltd. vs. Smt. Poonam and Anr. (supra) is not applicable to the present matter. In view of the fact that at the time of the accident, the age of the deceased, Gagan Kumar Jha, was 26 years, a 50% increase in his annual income towards future prospects is justified as per the law laid down, considering he was 26 years old at the time of the accident.

NUMBER OF DEPENDENTS

As per the statement of PW-1, the deceased left behind Smt. Renu Jha (wife), Master Vikram Jha (minor son), Master Vishal Jha (minor son), Sh. Narayan Jha (father), and Smt. Chitar Kala (mother). Therefore, 1/5th deductions must be made on account of personal and living expenses as per Sarla Verma's case.

LOSS OF DEPENDENCY

Now, the annual contribution to the family when The amount multiplied by a multiplier as per the guidelines shall give us the loss of dependency for the entire family.

Annual income of the deceased: Rs. 1,20,000/-

50% addition towards future prospects: Rs. 60,000/-

Total income: Rs. 1,80,000/-

1/5th deductions for personal living expenses: -Rs. 36,000/-

Total after deductions: Rs. 1,44,000/-

Award Rs. 1,00,000/- (One lakh) towards loss of estate according to the principles laid down in the case of Kalpanaraj & Ors. vs. Tamil Nadu State Transport Corporation 2014 (5)



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SCALE 479. Rs. 25,000/- (Twenty-five thousand) is awarded towards funeral expenses and Rs. 1,00,000/- towards loss of consortium as per the principles laid down in the case of Rajesh & Ors. vs. Rajbir Singh & Ors. (2013) 9 SCC 54.

*Further, award Rs. 1,00,000/- each to the children towards loss of love and affection due to the loss of their father (deceased) as per the judgment in Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors. (2013) 9 SCC 166. Additionally, a sum of Rs. 50,000/- each is awarded to the parents towards loss of love and affection for their deceased son as per the principles laid down in the case of **M. Mansoor & Anr. vs. United India Insurance Co. Ltd. 2013 (12) SCALE 324.**"*

32. Upon perusal of the impugned order, while addressing the issue of negligence, the learned Tribunal relied upon the testimony of PW-1, who deposed that the accident took place due to the negligence of the respondent no. 6, causing the death of the deceased. Observing that the motor vehicle accident cases are not subjected to strict principles of proof as well as on the basis of preponderance of probabilities, the learned Tribunal held that the respondent no. 6 was rash and negligent in driving the offending vehicle, which led to the death of the deceased.

33. With respect to issue of compensation, the learned Tribunal has considered the testimonies of the witnesses, the evidence on record, such as the income certificate, ration card, post-mortem report etc. as well as the circumstantial difficulties of the respondent no. 1 to 5 as dependants for determination of compensation under requisite heads of expenses.



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34. At this juncture, this Court deems it pertinent to address the following issues in a phased manner. The said issues are as follows -

1. *Whether the learned Tribunal right in holding respondent no. 6 negligent?*
2. *Whether the amount of compensation is liable to be reduced?*
3. *Whether the liability of disbursement of the insurance amount lie with the appellant/ insurance company.*

Issue of negligence:

35. It is the case of the appellant that the learned Tribunal erred in holding respondent no. 6 liable for rash and negligent driving as reliance has been placed on the sole testimony of PW-1, who is not even the eye-witness in the present case.

36. Therefore, it is pertinent for this Court to peruse the deposition of PW-1/ Smt. Renu (wife of the deceased). It was testified by PW-1 that the deceased was travelling as an employee in the truck bearing no. HR-56G-6417 and was going from Mohali to Bhopal and that when he reached at Churu Road, Village Khota on NH-56, in Ramgarh, Sethan, Sikar, Rajasthan, at about 11:15 PM, it collided with the other truck bearing no. HR-37A-9881 which was being driven by its driver i.e., respondent no. 6 herein in rash and negligent manner and as a result, the deceased was declared dead on the road. However, in her cross-examination, PW-1 testified that she was not present at the time of the accident.



37. At this stage, this Court deems it appropriate to state that the strict principles of evidence are inapplicable to the claims filed under the Motor Vehicles Act, 1988 and that the requirement of standard of proof is one of ‘preponderance of probabilities’, rather than ‘beyond reasonable doubt’. This principle has been reiterated in a plethora of cases, including **Anita Sharma v. New India Assurance Co. Ltd., 2020 SCC OnLine SC 1002**, wherein the Hon’ble Supreme Court stated as follows –

“21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.”

38. Upon perusal of the aforementioned case, this Court is of the opinion that examination of eye-witnesses are not particularly necessary to prove negligence, as the standard of proof is that of preponderance of probabilities. Therefore, the contention of the appellant with regards to the same cannot be taken as conclusive.

39. Moreover, it is important to note that an FIR bearing no. 41/2009 has been registered u/s 279/337/304A IPC at P.S. Ramgarh Sethan, Distt. Sikar, Rajasthan and subsequently, chargesheet against respondent no. 6 has been



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filed for the accident caused. In *National Insurance Co. Vs. Pushpa Rana 2009 ACJ 287 Delhi*, this Court laid down that the filing of FIR and chargesheets after completion of investigation are sufficient proof of negligence of the driver of the offending vehicle.

40. This Court observes that the contents of the Final Form Report i.e., the chargesheet are in consonance with the testimony of PW-1. Moreover, no evidence placed on the record to prove that the sequence of events described by PW-1 are untrue. Since the motor vehicle accident cases are not put to strict proof of evidence and by placing reliance on the aforementioned cases, this Court is of the view that the learned Tribunal was right in making respondent no. 6 liable for rash and negligent driving causing the death of the deceased based on the principles of preponderance of probabilities. The first issue is accordingly answered.

Issue of compensation reduction:

41. It is contended by the appellant that the learned Tribunal erred in taking the income of the deceased as Rs. 10,000/- as the same has not been proved by an independent witness.

42. With respect to same, a salary certificate issued by M/s Kohinoor Koach Industries has been placed on record, which reflects that the deceased was incurring Rs. 10,000/- as monthly income. As enough evidence being shown on record, the same has been rightly ascertained by the learned Tribunal while computing the compensation.



43. It is further contended that the learned Tribunal failed in taking the value of $1/5^{\text{th}}$ instead of $1/4^{\text{th}}$ for the deduction towards personal expenses and has wrongly granted 50% towards the future prospects while calculating the loss of dependency.

44. It is pertinent to note that the deceased belongs to the lower strata of the society with earning a monthly income of Rs. 10,000/- and that he is the sole earning member of the family on whom his family of five is dependent, namely his wife, two minor children and parents. Moreover, the deceased was 26 years of age at the time of his death and had several financial as well as familial responsibilities towards his family.

45. In light of the same, this Court relies on *Reshma Kumari & Ors vs Madan Mohan & Anr, (2013) 9 SCC 65*, wherein it was stated that the percentage of deduction on account of the personal and living expenses may vary with respect to the number of dependants and that the personal living expenses of the deceased need not exactly correspond to the number of dependants in certain exceptional circumstances. It has also been stated that while awarding future prospects, departure from the settled principles can be made in exceptional cases.

46. Therefore, relying on the aforesaid case, it is observed that the learned Tribunal was right in taking $1/5^{\text{th}}$ for computing the deduction for personal expenses and 50% for future prospects as the deceased had major familial responsibilities at the young age of 26 and the situational difficulties which the claimants will be enduring in his absence are immense.



47. It has been further contended that the learned Tribunal incorrectly imposed an interest @ 10% on the total amount of compensation as the same is exorbitant and contrary to the principles of law.

48. In light of the said contention, it is to be observed that the Motor Vehicles Act, 1988 is a beneficial legislation. To illustrate this aspect further, this Court adverts to the settled position of law with regard to the same. In the case of *Sidram v. United India Insurance Co. Ltd.*, (2023) 3 SCC 439, the Hon'ble Supreme Court held that the primary object of awarding damages is to make good the loss suffered due to a wrongdoing in a manner that is fair, reasonable and equitable.

49. Additionally, PW-1 has also testified that she is illiterate and was fully dependent on her deceased husband and that she needs to take care of her in-laws as well as her two minor children with no source of income at hand.

50. At this juncture, it is pertinent to peruse the contents of Section 171 of the MV Act, 1988, wherein claims tribunal is empowered to decide the rate at which the interest is to be imposed on the compensation.

51. Therefore, given the circumstantial difficulties of the claimants/respondent no. 1-5 as well as the contents of Section 171 of the MV Act, this Court is of the view that the interest @ 10% is reasonably imposed by the learned Tribunal, giving effect to the beneficial objective of the legislation. The second issue is accordingly answered.



Liability of insurance company

52. A “gratuitous passenger” is someone who is traveling in a vehicle without any consideration or payment for the transport service, and who is not covered under the terms of the vehicle’s insurance policy.

53. Section 147(1)(b)(ii) of the Motor Vehicles Act, 1988, specifies that an insurance policy must cover the death or bodily injury of any passenger in a transport vehicle. However, it explicitly excludes gratuitous passengers in a goods vehicle from this coverage. This means that insurance policies are not required to cover injuries or death of passengers who are traveling without payment or consideration in a goods vehicle. The relevant portion of the said provision has been reproduced as under:

“147. Requirement of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.”



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54. In the case of the Hon'ble Supreme Court held that the Insurance Company is not liable for payment of any compensation for death of a gratuitous passenger travelling in a goods vehicle.

55. Hence, the settled position of law on "gratuitous passengers" under Section 147(1)(b)(ii) of the Motor Vehicles Act, 1988, is that insurance policies are not required to cover the death or bodily injury of such passengers in a goods vehicle. The term "gratuitous passenger" typically refers to someone who has taken a lift without payment or consideration, and these passengers are explicitly excluded from the mandatory insurance coverage applicable to other transport vehicle passengers.

56. There is no dispute as to whether the injured vehicle was insured at the time of the accident or when the accident occurred. On perusal of the Insurance policy attached as part of the Lower Court's Record, it is made out that at the time of the accident, the injured vehicle was insured at the time of the accident since the period of validity of the insurance policy was from 22nd August, 2008 to 21st August, 2009 and the accident took place on 10th May, 2009.

57. It has been contended that at the time of the accident, the deceased was not carrying any goods, thereby violating the insurance policy. However, this Court notes that no evidence has been placed on record to prove that the deceased person was not on duty and was not carrying goods at the time of the accident.

58. This Court notes that there is no evidence placed on the record that enhances the case of the appellant with regard to the deceased being a



gratuitous passenger. Thus, sufficient evidence has not been produced to determine the deceased as a gratuitous passenger.

59. Even otherwise, reliance maybe placed on *Balu Krishna Chavan v. Reliance General Insurance Company* dated 6th November, 2022 arising out of SLP(C) No. 33638/2017, wherein the Hon'ble Supreme Court observed that the insurance company is liable for the payment of the compensation, considering the facts and beneficial object of the legislation. Accordingly, the third issue is answered.

60. Based on the foregoing reasoning, this Court lays down the amount of compensation to be awarded under different heads, without interfering with the learned Tribunal's award –

S.No	Heads of Expenses	Amount
1.	Loss of dependency	Rs. 24,48,000/-
2.	Loss of love and affection to minor sons	Rs. 2,00,000/-
3.	Loss of love and affection to parents	Rs. 1,00,000/-
4.	For funeral expenses	Rs. 25,000/-
5.	Loss of estate	Rs. 1,00,000/-
6.	Loss of consortium	Rs. 1,00,000/-
	TOTAL	Rs.29,73,000/-



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61. Considering the observations made hereinabove, this Court does not find any error or illegality in the impugned order and it is held that the learned Tribunal rightly adjudicated the claim petition.

62. In light of the foregoing discussions on law as well as facts of the instant case, the impugned judgment award dated 10th April, 2018 passed by Presiding Officer, MACT, Rohini Courts, New Delhi in Case no. 210/ 09 merits no interference and is upheld.

63. Accordingly, the appeal is dismissed along with pending applications, if any.

64. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 21, 2024

Dy/aa/mk/av

Click here to check corrigendum, if any