



2024:DHC:10158



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

% *Date of decision: 20th December, 2024*

+ **MAC.APP. 401/2024 & CM APPLs. 44115/2024, 73926/2024**

NATIONAL INSURANCE CO. LTD.

National Legal Vertical, 2E/9,
Jhandewalan Extension,
Delhi-110055

Also at: - Shop No.B-13,
Yuvraj BSNL Exchange,
G.T. Road, Ghaziabad, U.P.

.....Appellant

Through: Mr. Himanshu Bhushan, Advocate
through VC.

versus

1. **SHISHPAL (DRIVER)**

S/o Shri Jai Prakash,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 1

2. **ALOK KUMAR GOYAL (OWNER)**

S/o Shri Ashok Kumar Goyal,
R/o H-19, West Jyoti Nagar,
New Delhi-110094

.....Respondent No. 2

3. **MANJU**

W/o Late Shri Karan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 3

4. **SHIVA**



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S/o Late Shri Karan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 4

5. **PRINS**

S/o Late Shri Karan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 5

6. **PRITI**

D/o Late Shri Karan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 6

7. **FOOLVATI**

W/o Late Shri Jai Bhagwan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 7

8. **SAVITA**

D/o Late Shri Jai Bhagwan,
R/o Village Hasanpur Mansoori,
District Baghpat, U.P.

.....Respondent No. 8

Through: Ms. Archana Verma & Mr. Amit
Sharma, Advocates for R-3 to 8.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the Appellant/Insurance Company against the Award dated 27.03.2024 *vide* which compensation in the sum of Rs.



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34,97,760/- along with interest @ 8% per annum has been granted to the Respondent Nos. 3 to 8/Claimants, who are the wife, children, mother and sister of Shri Karan (*hereinafter referred to as “deceased”*), who died in the road accident which took place on 31.12.2022,.

2. *The main grounds of challenge are: -*

- (i) that as per the Driving Licence of deceased, *his date of birth is 01.01.1977* which implies that he was 45 years old at the time of accident, but his age has been wrongly taken as 36 years;
- (ii) that the Minimum Wages of Delhi have been taken, when in fact, there is no proof of deceased working in Delhi; the *Minimum Wages of Unskilled Worker of Uttar Pradesh* should have been taken;
- (iii) that the *Loss of Consortium* has been incorrectly granted to the Respondent No. 8/Sister; and
- (iv) that the interest @ 8% p.a. is *on the higher side*.

3. *Learned counsel for the Respondent Nos. 3 to 8/Claimants* submits that the witnesses examined on behalf of the Respondent Nos. 3 to 8/Claimants had deposed about the deceased's place of work as Delhi and also about his earnings, which has been rightly considered by the Tribunal. Moreover, the Aadhar Card of the deceased reflects his date of birth as 01.01.1987 and on that basis, the age of the deceased has been rightly taken as 36 years.

4. *Learned counsel for the Respondent Nos. 3 to 8/Claimants* further submits that the interest rate @ 8% is also optimum and no revision in the compensation, is merited. Therefore, it is submitted that the Appeal is liable to be dismissed.



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

6. *Briefly stated*, on 31.12.2022, the deceased, who was working as cleaner/labour on a truck, went with that truck to get bricks and were on their way back to Delhi with bricks loaded in the Truck. At about 11:15 p.m., they parked the truck at UP Petrol Pump for filling CNG. In the meantime, the Respondent No. 1/Driver of the offending vehicle bearing No. UP-17T-0351, without taking precautions and without seeing the rear view mirror, reversed the offending vehicle in a rash and negligent manner and struck the deceased who was standing behind, who sustained grievous injuries and succumbed to the injuries.

7. An FIR bearing No. 03/2023 under Sections 279/304A of the Indian Penal Code, 1860 was registered at Police Station Jyoti Nagar, Delhi. After due investigations, the Chargesheet was filed before the concerned learned Metropolitan Magistrate and the Detailed Accident Report /Claim Petition was filed before the learned Claim Tribunal.

8. The learned Claim Tribunal, after considering the evidence on record, granted compensation in the sum of Rs. 34,97,760/- along with interest @ 8% per annum to the Respondent Nos. 3 to 8/Claimants, *vide* Award dated 27.03.2024.

Age of the Deceased:-

9. *The first ground of challenge* to the impugned Award by the Appellant/Insurance Company is that the age of the deceased was 45 years and not 36 years, as has been taken by the learned Claim Tribunal.

10. Pertinently, the Driving Licence of the deceased shows his date of birth as 01.01.1977. Though the learned Claim Tribunal has relied upon the



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Aadhar Card of the deceased which indicates his date of birth as 01.01.1987, but it is pertinent to observe that the age of Respondent No. 3/Wife of deceased has been shown as 01.01.1984 and the age of eldest child, Respondent No. 4/Shiva, has been shown to be born on 28.06.2008.

11. Even though the date of birth of the deceased as 01.01.1987 on the basis of Aadhar Card, it cannot be overlooked that the age mentioned on the Driving Licence of the deceased as 01.01.1977 is more authentic as on the basis of the same, he became eligible to get a Driving Licence.

12. Therefore, the age of the deceased is proved to be 01.01.1977, which means the deceased was 45 years, 11 months old and 30 days at the time of accident which took place on 31.12.2022.

13. **Accordingly, the Multiplier of 15 taken by the learned Claim Tribunal is revised and modified to 14.**

Minimum Wages of Uttar Pradesh:-

14. *The second ground of challenge* to the impugned by the Appellant/Insurance Company is that the *Minimum Wages of Uttar Pradesh* for Unskilled Worker should have been taken instead of the Minimum Wages for the Unskilled Worker of Delhi.

15. The Respondent No. 3/Manju as PW1, had deposed that her husband, deceased, was working as a Cleaner-cum-Helper on the truck. However, nowhere in her Affidavit of evidence has she stated that she was a resident of Delhi or that her husband, was working in Delhi.

16. Pertinently, the deceased was working on the Truck bearing No. UP-17T-0351, which again reflects that the truck was registered in Uttar Pradesh. All the Respondent Nos. 3 to 8/Claimants are the resident of Uttar



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Pradesh. Nowhere in their Affidavit of evidence or otherwise, any document has been placed on record to show that the deceased was the resident of Delhi. So much so, not even the address of Delhi has been reflected in any of the documents and statements of the parties.

17. PW3/Alok Goyal, the Employer of deceased, had deposed that the deceased was resident of Baghpat, Uttar Pradesh and was working on his truck to whom he was paying a sum of Rs. 500/- per day. PW3/Alok Goyal at no place had deposed that the deceased was employed in Delhi.

18. In this context, learned counsel for the Appellant/Insurance Company has referred to his admissions in cross-examination that he was not working as a Driver, but was sitting as a gratuitous passenger. However, in the next sentence, PW3/Alok Goyal states that the deceased was on duty on the date of accident.

19. The overwhelming evidence on record leads only to one conclusion that the deceased was working as a Labour on the truck owned by PW3/Alok Goyal resident of Baghpat, Uttar Pradesh and was employed in Baghpat, Uttar Pradesh.

20. **Accordingly, the Minimum Wages for Unskilled Worker of Uttar Pradesh are hereby taken which is Rs. 9,743/-p.m.**

Loss of Consortium to the Sister:-

21. *The third ground of challenge* to the impugned Award by the Appellant/Insurance Company is that the Loss of Consortium has been given to the Respondent No. 8/Savita, who is the unmarried sister of deceased, which has been incorrectly awarded to her in view of the decision of the Apex Court in Magma General Insurance Co. Ltd. vs. Nanu Ram & Ors.,



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(2018) 18 SCC 180, wherein the Apex Court has defined the terms consortium to only include, spousal consortium, parental consortium and filial consortium, but did not include siblings. The Respondent No. 8/Savita, sister, does not come in any way of these three categories and the Loss of Consortium could not have been awarded to her.

22. It must not be overlooked that these are the proceedings for assessing fair compensation for the family members of the person who has died in the accident. It is on record that the Respondent No. 8/Savita, sister, was unmarried and was living with the deceased. In these circumstances, it is clearly reflected that the Respondent No. 8/Savita was dependent upon the deceased.

23. Therefore, the Loss of Consortium has been rightly granted to her by the learned Claim Tribunal. Accordingly, this aspect of challenge does not warrant any interference.

Rate of Interest:-

24. *The fourth ground of challenge* to the impugned Award by the Appellant/Insurance Company is that the interest @ 8% per annum awarded by the learned Claim Tribunal is on the higher side.

25. However, considering the prevailing rate of interest and that the accident took place on 31.12.2022, the rate of interest @ 8% per annum granted by the learned Claim Tribunal, cannot be said to be excessive. Accordingly, this aspect of challenge does not warrant any interference.

Conclusion:-

26. In view of above, the compensation is recalculated as under: -

S. No.	Head	Amount	Awarded/Modified
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		awarded by Tribunal	by this Court
1.	Monthly income of deceased (A)	Rs. 16,792/-	Rs. 9,743/-
2.	Add future prospects @ 40% (B)	Rs. 6,717/-	Rs. 3,898/-
3.	Less 1/4 th towards personal and living expenses of deceased (C)	Rs.5,877/-	Rs. 3,411/-
4.	Monthly loss of dependency (A+B-C)=D	Rs. 17,632/-	Rs. 10,230/-
5.	Annual loss of dependency (Dx12)	Rs. 2,11,584/-	Rs. 1,22,760/-
6.	Multiplier (E)	15	14
7.	Total loss of dependency (Dx12xE=F)	Rs. 31,73,760/-	Rs. 17,18,640/-
8.	Compensation for loss of Consortium (48,000 x 6) (G)	Rs. 2,88,000/-	Rs. 2,88,000/- (same)
9.	Compensation for loss of estate (H)	Rs. 18,000/-	Rs. 18,000/- (same)
10.	Compensation for funeral expenses (I)	Rs. 18,000/-	Rs. 18,000/- (same)
TOTAL COPMENSATION (F+G+H+I)		Rs. 34,97,760/-	Rs. 20,42,640/-



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27. The total compensation of **Rs. 20,42,640/-** be paid along with **interest @ 8% per annum** to the Respondent Nos. 3 to 8/Claimants in terms of the Award dated 27.03.2024. In case there is a surplus amount deposited by the Appellant/Insurance Company, the same be released to it along with corresponding interest.

28. The statutory amount, if any, be returned to the Appellant/Insurance Company.

29. Accordingly, the Appeal along with pending Applications is hereby disposed, of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 20, 2024
S.Sharma