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

% ***Date of December: 12th December 2024***

\+ **MAC.APP. 435/2022**

ROYAL SUNDARAM GENERAL INSURANCE CO. LTD. .....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

SUNITA & ORS. .....Respondents

Through: Mr. Ram Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (*Oral*)

1. The Appeal under Section 173 of the Motor Vehicles Act, 1988 (‘M.V. Act’ *hereinafter)* has been filed on behalf of ***the Appellant/Insurance Company*** against the Award dated 26.08.2022 *vide* which the compensation in the sum of Rs. 36,87,977/- along with the interest @9% p.a. has been awarded, on account of *death of Mr. Rahul, aged about 28 years,* in a road accident on 26.11.2017.

2. Briefly stated, on 26.11.2017 at around 11 AM near Village-Pali, Faridabad, Haryana, deceased-Rahul along with his relative Mohit, Rajeev and Amit were travelling on Maruti Swift Car bearing No. DL-1CT-1137 towards Faridabad from Ali Ganj, Delhi. When their vehicle reached at village-Pali near Payu, Faridabad, Haryana,

suddenly a Truck bearing no. RJ-32GB-6533 ('Offending Vehicle'), which was being driven by its Driver/respondent No. 6 at a very high speed, rashly and negligently, without blowing any horn, in contravention of the Traffic Rules came from front side i.e. Faridabad side and hit the car with great force because of which the deceased-Rahul received fatal injuries.

3. *FIR No. 862/2017 under Sections 279/304-A and 377 of the Indian Penal Code, 1860 ('IPC')* was registered at PS Sector 55, Faridabad on 27.11.2017. Chargesheet was filed against the Driver.

4. Petition under Section 140 & 166 of the M.V. Act was filed by the parents, wife and Children of the deceased before the Ld. Tribunal.

5. The *ground of challenge* to the quantum of compensation pressed before this Court are as under:

   i. that it was a case of head on collision therefore, *driver and owner of the car, should have been held liable for contributory negligence*;

   ii. that the Minimum Wages of deceased has been taken as per the skilled worker erroneously as Rs.16,858/- per month instead of Rs.16,182/- per month. Moreover, there was no evidence of the deceased working as a car driver and his income should be calculated on the basis of *unskilled worker at Rs.13,584/-*; and

   iii. that the interest has been granted @9% p.a., which should be reduced to 6% p.a.

6. ***Learned counsel on behalf of the Claimants*** has submitted that

the compensation has been calculated fairly and does not require any interference.

7. **Submissions heard and Record Perused.**

Contributory Negligence:

8. The *first ground of challenge* agitated by the Appellant/Insurance Company is that driver and owner of the car, should have been held liable for contributory negligence as it was a case of head on collision.

9. The Claimants in support of their case had examined PW-2, Sh. Naveen Kumar, the eye witness on whose statement the FIR was registered. He deposed about the manner of the accident as already narrated above. He deposed that the Swift car in which deceased Rahul along with Amit and Mohit were travelling was being driven by Rajeev. He further deposed that because of the accident Rajeev, deceased Rahul and Amit died in Asian Hospital, Faridabad. He deposed that the accident occurred due to sole negligence of the truck driver.

10. In his cross examination the suggestion was given that the driver Rajeev was not having a valid license and it was implied that it was Rajeev who was negligent in driving the car, however, these aspects were denied by the witness in the cross examination. No evidence to the contrary has been proved by the Insurance Company or the driver owner of the truck trolla from where any inference of negligence on the part of Sh. Rajeev driver of the car could be drawn.

11. PW-2 in his cross examination by the Insurance Company had explained that there was no divider on the road and the width of the road was about 50 feet. He further explained that it is the truck which came on the wrong side of the road and caused the head on collusion.

12. The only ground on which the contributory negligence has been alleged by the Insurance Company is that it is the case of head on collusion, however, merely because a head on collusion has taken place cannot lead to any inevitable inference of contributory negligence. The place on the road where the accident has occurred and other attending circumstances have to be holistically appreciated to ascertain who was negligent in causing the accident. In the present case the facts and circumstances as detailed by PW-2 do not lead to any inference of there being any negligence on the part of the driver of the car. Therefore, the Insurance Company has not been able to prove that there was any contributory negligence.

13. Pertinently, the Insurance Company aside from giving suggestions has not produced the driver of the truck Trolla, the offending vehicle to prove otherwise. The consistent testimony of PW-2 is fully corroborated by the fact that a chargesheet against the Respondent No.6/driver of the truck under Section 279/304A IPC has been filed.

14. In the case of *National Insurance Co.,vs Pushpa Rana* 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. The Apex Court has opined in the judgment of *Mangla Ram vs. The*

Oriental Insurance Company Ltd., AIR 2018 SC 1900 that filing of Chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, Amanti Devi and Ors. v. Maheshwar Rai, *MAC Appeal no. 831/2015* decided on 19.11.2022).

15. Therefore, it is established that accident occurred due to sole negligence of the offending truck and no interference is warranted on this ground.

Loss of Dependency:

16. The *second ground* to challenge the impugned Award is that the Minimum Wages of deceased has been taken as Rs.16,858/- per month of a skilled worker, which is erroneous as there was no evidence that the deceased was working as a car driver; *his income should be calculated on the basis of unskilled worker at Rs.13,584/-*p.m.

17. PW-1/Widow of the deceased deposed that at the time of accident the Deceased was working as a Cab driver and had passed 10th Class though no documentary proof was produced in support of the educational qualifications. However, the driving license of deceased Rahul has been produced as Mark A which shows that the deceased was having a valid driving license for LMV-NT. While the Insurance Company has argued that merely having a driving license for non transport vehicle may not be sufficient to prove that he was working as a Cab driver. But it cannot be overlooked that the injured earned his

living in the unorganized sector as a Cab driver where appointment letters are a rarity. To insist on some documentary evidence, may be a hyper technical approach, which is not warranted or justified especially in the compensation case.

18. *In light of the record and the facts and circumstances of the present case, the Ld. Tribunal has rightly calculated the income of the Deceased but needs recalculation as Minimum Wages for skilled worker as Rs.16,182/- per month but have been erroneously taken as Rs.16,858/-. Accordingly, it is recalculated as:-*

i. Income of the deceased : Rs. 16,182;

ii. Future Prospect: (40% of 16,182) = 6,472.8;

iii. 1/4th Deduction for personal expenses = 5,663.7;

iv. Monthly Loss of Dependency = 16,991.1;

v. Multiplier = 17;

vi. Therefore, the Total Loss of Dependency is (16,991.1 x 12 x 17) = Rs. ***34,66,184/-.***

Rate of Interest:

19. The *third ground* is that the interest has been granted @9%, which should be reduced to 6% p.a.

20. It is no longer *res integra* that Tribunal has the power to decide whether to award interest and at what rate, based on the specific details of each case. Therefore, the Ld. Tribunal has rightly awarded interest @ 9% in view the entirety of the facts and circumstances and also that the accident is of 2022.

<u>Relief</u>

21. The Award is liable to be modified as under:

S. No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	16,858	**16,182**
2.	Add-Future Prospects (B) assuming 40%	40% (6743.2)	**40% (6,472.8)**
3.	Less-Personal Expenses of Deceased (C) [1/4th of A+B]	¼ (5900.3)	**¼ (5,663.7)**
4.	Monthly loss of Dependency [(A+B)-C=D]	17,700.9	**16,991.1**
5.	Annual loss of Dependency (Dx12)	2,12,410	**2,03,893.2**
6.	Multiplier (E)	17	17
7.	Total loss of Dependency	36,10,977	**34,66,184/-**
8.	Medical Expenses	NIL	NIL
9.	Compensation for loss of Consortium (H)	44,000/-	44,000/-
10.	Compensation for loss of Estate (I)	16,500/-	16,500/-
11.	Compensation towards funeral expenses (J)	16,500/-	16,500/-
12.	Total Compensation (F+G+H+I+J=K)	36,87,977/-	**35,43,184/-**
13.	Rate of Interest Awarded	9%	**9%**

Conclusion:

22. The compensation amount is accordingly modified to Rs. **35,43,184/-**. The statutory amount alongwith excess amount, if any, along with interest @ 9% to be disbursed in terms of Award dated 26.08.2022 be returned to the Appellant/ Insurance Company, as per Rules.

23. The Appeal stands disposed of along with the pending Application(s),

if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2024/RS