2024:DHC:9884

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

% ***Date of decision: 10th December, 2024***

\+ MAC.APP. 493/2024, CM APPL. 54081/2024

THE ORIENTAL INSURANCE CO. LTD.

.....Appellant

Through: Mr. Ravi Sabharwal, Advocate.

versus

SANGITA MISHRA & ORS.

.....Respondents

Through: Mr. Shekhar Aggarwal and Mr. Anuj Kumar, Advocates for R-1& 2.

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 bene filed on behalf of the Appellant/Insurance Company against the Award dated 20.07.2024 *vide* which the compensation in the sum of *Rs 56,76,100/- along with interest @ 8% per annum* has been granted to Respondent No.1 and 2, the parents on account of demise of their son Asim Anand, aged 26 years 7 months old in a road accident, which took place on 26.04.2021.

2. The *only ground pressed to challenge* the Impugned Award is that *1/3rd deduction* has been made on account of personal expenses of the deceased, who was unmarried. He is survived by the parents, but the father was not dependent on him and 50% deduction should have been made while calculating the *Loss of Dependency.*

3. **Learned counsel for the Claimants** has asserted that the father of the deceased was not having an independent source of income and the deduction has been rightly made.

4. **Submissions heard and record perused.**

5. *Briefly stated,* on 26.04.2021 at about 5.30 to 06.00 p.m. when deceased was returning home by his motorcycle bearing registration no.BHR-39AG- 0501, after performing his duty. When deceased reached near Pashmi Bypass bus stand, the offending vehicle bearing registration no.BR-19F-7949, driven by Suhash Kumar Singh, in a rash and negligent manner, came at a high speed and collided with the deceased's vehicle due to which deceased fell and succumbed to the accidental injuries. The deceased was taken to a nearby hospital where his MLC and post mortem was done.

6. *FIR No.348/2021 u/s. 279/338/304 IPC 1860* was registered at PS Madhepura, Bihar against the driver of the offending vehicle/ Suhash Kumar Singh. On completion of investigations, the Chargesheet was filed in the Court.

7. Vide the Impugned Award dated 20.07.2024, the Ld. Tribunal awarded *a compensation of Rs.56,70,600/- to the claimants along with interest @ 8% per annum, to the parents of the deceased*.

8. The *only ground of challenge* raised is that while computing the *Loss of Dependency,* a deduction of 50% should have been made towards personal expenses considering the father was not dependant on the deceased son.

9. The Apex court has opined in the case of *Sarla Verma v. DTC,* (2009) 6 SCC 121 that in absence of any evidence to the contrary, in cases of

bachelors, 50% is to be deducted as personal and living expenses on the premise that the father and the sibling are likely to have independent income or the sibling may be dependent on the father.

10. Pertinently, the natural corollary to the rider *"in the absence of evidence to the contrary"* becomes that for computing loss of dependency and deduction of personal expenses, the facts and circumstances of each case need to be considered.

11. In the case of *New India Assurance Co. Ltd. v. Vasantrao S/O Laxman Wanmali And Others, First Appeal No. 948 of 2023*, decided on 28.06.2024, the Bombay High Court held that the 65 year old father of the deceased would be considered a dependent as the aged father was not drawing any individual income and nothing contrary was brought on record to prove that the father of the deceased was working or gainfully employed.

12. In the present case, the deceased was about 27 years of age, was having a government job in Bank of India and was drawing salary of Rs.32,024/-. It has come on record that the father and mother of the deceased were not having any independent source of income and were dependent upon their son. Apart from a bald averment, nothing has been placed on record by the Insurance Company to show that the father was having independent income and was not dependent upon the deceased.

13. Thus, in the facts of this case, the Tribunal has rightly observed that the deceased left behind two dependents i.e. his parents and has rightly deducted 1/3rd towards personal expenses to compute the total Loss of Dependency.

14. There no infirmity in the Impugned Award dated 20.07.2024 and the same warrants no interference.

15. The Appeal is dismissed, along with pending Application(s), if any.

16. The statutory amount deposited by the Appellant be returned, in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/va