



2024-IMC-3143



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

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**Judgment reserved on : 04 March 2024**  
**Judgment pronounced on : 23 April 2024**

+ **MAC.APP. 357/2013**

**IFFCO TOKIO GENERAL INS. CO. LTD. .... Appellant**

**Through: Mr. Nitin Chandra, Proxy  
Counsel for Mr. Dhananjay  
Rana**

**versus**

**WASLIA & ORS. .... Respondents**

**Through: Mr. Amjad Khan, Adv. for R-1  
along with R-1 in person.**

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. The appellant/insurance company has preferred this appeal in terms of Section 173 of the Motor Vehicles Act<sup>1</sup>, 1988, assailing the impugned judgment-cum-award dated 30.11.2012 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, South-District, Saket Courts, New Delhi<sup>2</sup>, whereby the learned Tribunal has granted a total compensation of Rs.24,79,400/- to the claimants with interest @ 9% p.a. from the date of filing of the petition till realisation of the amount and the liability to pay compensation has been fastened upon the appellant/insurance company.

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<sup>1</sup> M.V. Act

<sup>2</sup> Tribunal



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2. Shorn of unnecessary details, the claimants are the widow, three children and parents of the deceased Firoz Ahmed Khan, who died in a motor accident that occurred on 28.07.2009 at about 10:40 PM when his motorcycle bearing registration No. DL-3S-X-6007 was hit by the offending Hydra Crane bearing registration No.HR-55J-1405 at Mehrauli-Gurgaon Road, in front of Vikram Farm, Mehrauli, Delhi. The accident resulted into registration of an FIR bearing No.412/2009, under Section 279 read with Section 304A of the Indian Penal Code, 1860 with PS Mehrauli. On the filing of the claim petition under Section 166 read with Section 140 of the M.V. Act, respondents No.1 and 2 i.e. driver and registered owner of the offending vehicle contested the claim and blamed the deceased motorcyclist for causing the accident. Insofar as the appellant/insurance company, which is arrayed as respondent No.3 in the claim petition, is concerned, the offending vehicle was insured for third-party risks for the period 09.02.2009 to 08.02.2010. The appellant/insurance company in the present appeal is not challenging the findings rendered by the learned Tribunal, insofar as issue No.1 is concerned holding respondent No.7/driver/Vijay Kumar guilty of rash and negligent driving of the offending crane and thereby causing the accident.

3. Learned counsel for the appellant/insurance company has vehemently urged that the learned Tribunal has awarded exorbitant amount of compensation overlooking the fact that although it was claimed in the petition that the deceased was earning Rs.25,000/- p.m., no evidence was led in this regard except for the income tax return for the year 2008-09, which was filed after the death of the deceased and,



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therefore, the annual notional income of Rs.1,55,406/- reckoned by the learned Tribunal was not sustainable. It is further pointed out that the learned Tribunal awarded Rs.25,000/- towards loss of love and affection which is also not sustainable. However, the main plank of the objection by the appellant/insurance company is that despite the fact that the driving licence of respondent No.7/driver/Vijay Kumar was found to be fake, the learned Tribunal failed to appreciate that primary responsibility to pay compensation was to be borne by the driver and the registered owner of the offending vehicle i.e. respondents No.7 and 8 herein.

#### **ANALYSIS AND DECISION:**

4. Having heard learned counsels for the rival parties at Bar and on perusal of the record, including the digitized Trial Court Record, at the outset, this Court finds that the objections raised by the appellant/insurance company in the present appeal are bereft of any merits.

5. First things first, insofar as assessment of compensation by the learned Tribunal on the issue of loss of financial dependency is concerned, it would be apposite to refer to the reasoning given by the learned Tribunal, which reads as under:

#### **“LOSS OF DEPENDENCY**

13. PW-5 Smt. Wasila has stated that the deceased left behind her (Wife), three minor children and old aged parents. Due to untimely death of her husband they are deprived from his love and affection. They also suffered financial losses. She has stated that the deceased at that time was earning Rs.25000/- p.m. He was an income tax payee. There is a history of longevity in the family of the deceased. She proved the income tax return and ration card etc. Her testimony is supported by PW-4. As per the income tax return of the assessment year 2008-09 the deceased's income was



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Rs.1,61,998/- on which he paid Rs.6592/- as income tax. After deducting income tax his annual income comes to Rs.1,55,406/-. He was a contract by profession. In the case of **Rakhi vs. Satish Kumar & Ors. MAC App. 390/2011, Hon'ble High Court of Delhi vide order dated 16.07.12** held that on the basis of judgment in Santosh Devi Vs. National Insurance Co. Ltd. & Ors. Manu/SC/0322/2012, it can very well be said that the persons who are getting fixed salary or who are self employed as skilled / unskilled workers like Barber, Blacksmith, Cobbler, Mason, Carpenter etc. would be entitled to an increase in the income to the extent of 30% on account of inflation when the deceased or the victim is aged upto 50 years. Applying the ratio of the case (Supra), the claimants in the present case are entitled to an increase of 30% in the salary/income/wages on account of inflation. Adding the future prospects the annual income comes to Rs. 1,55,406 +46,622/. (30% of Rs. 1,55,406/-) = Rs 2,02,028/-. In the present case the deceased was married. He was survived by his wife, two sons, one daughter and old aged parents. Out of the gross income and considering that there are six legal heirs of deceased, by no stretch of imagination could have spent more than one-fourth of his earning on himself. In view thereof, annual loss of dependency of the petitioners would come to Rs. 2,02,028 -  $[1/4^{\text{th}}$  of 2,02,028] = Rs. 1,51,521/-. It was held in the case of **Sarla Verma Vs. DTC 2009 (6) Scale 129** that while calculating the dependency, the multiplier is to be applied with reference to the age of the deceased. As per the voter I-card the age of the deceased was 33 years as on 01.01.08. Thus, as on the date of accident he was 34 years of age. Hence, a multiplier of '16' is taken for calculating the A loss of dependency. Using the multiplier of '16', the total loss of dependency comes to **Rs. 24,24,336/-** (16 x 1,51,521) which is rounded off to Rs.24,24,400.

14. I therefore, award a sum of **Rs. 24,24,400/-** to the petitioners towards "**Loss of Dependency**".

6. At the outset, there are some blemishes in the assessment of compensation towards loss of financial dependency. The deceased was admittedly 33 years of age at the time of the accident and the learned Tribunal rightly deducted  $1/4^{\text{th}}$  of the annual income towards personal use and living expenses and correctly applied the multiplier of '16'. Insofar as the annual notional income is concerned, the learned



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Tribunal reckoned it based on the income tax return for the year 2008-09, which was evidently filed on 03.11.2009 i.e. 3½ months after the accident. However, the amount of Rs.1,55,406/- is not exaggerated or unconscionable. It is pertinent to mention that as per testimony of PW-2/Md. Wasila the deceased was running a shop at Iffco Chowk, Gurgaon. The deceased was maintaining a large family consisting of his wife and three children.

7. Considering that the scale of minimum wages has no correlation with the age and experiences. It could be safe to assume that the deceased was earning about Rs.15,000/- p.m. to support his family. Whereas, the learned Tribunal has assumed it to be Rs. 12,838/- per month. It is also evident that the learned Tribunal committed an error in reckoning the increase in annual income with regard to future prospects by 30% which should be 40%, since the deceased was self-employed, in terms of the decision in **National Insurance Co. Ltd. v. Pranay Sethi**<sup>3</sup>. Therefore, the compensation towards loss of financial dependency has to be re-assessed which comes to Rs. 1,55,406 + Rs. 62,162/- (40 % of Rs. 1,55,406/-) = **Rs. 2,17,568/-**, less ¼ towards personal care and living expenses i.e., Rs. 54,392/- = **Rs. 1,63,176/-**, upon which the multiplier of 16 is applied. Hence, the compensation towards the loss of financial dependency will be **Rs. 26,10,816/-**.

8. As per the impugned judgment, learned Tribunal had proceeded to award Rs.25,000/- towards loss of love and affection, Rs.10,000/- each towards loss of estate, funeral expenses and consortium, the same

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<sup>3</sup> (2017) 16 SCC 680



also requires to be corrected. As per the decision in *Pranay Sethi (supra)*, the loss of estate should be reckoned as Rs.15,000/-. Each of the dependents has to be awarded Rs.40,000/- towards loss of consortium which comes to Rs.2,40,000/- besides funeral expenses @ Rs.15,000/-. Accordingly, the total compensation comes to **Rs. 28,80,816/-** and having regard to the baseless objections which have been taken by the appellant/insurance company, there is no reason to tinker with the compensation with regard to rate of interest at 9% p.a. from the date of filing of the petition till realisation.

### **APPORTIONMENT OF LIABILITY**

9. At the cost of repetition, the offending vehicle was evidently insured for third-party risks, the objections raised by the appellant/insurance company with regard to violation of the insurance policy on the ground of driving licence of the driver/respondent No.7 not being found genuine was dealt with by the learned Tribunal in the impugned judgment as under:

“23. In the instant case the respondent no.3 had summoned the District Transport Authority, Patna. Verification was also made by the SHO of the license which was seized during the Investigation. Proceedings of the date 17.05.12 reveals that the license no. V/91418/4 dated 17.08.07 was not issued from the District Transport Office, Patna and it was a fake license. The said report was considered as evidence. R2W1 has stated that prior to hiring the driver i.e. respondent no.1 he had taken the copy of his driving license after seeing its original. Respondent no.1 had also stated that it was a genuine license. He after getting satisfied employed respondent no.1 to drive the Crane. Respondent no.1 had also stated his vide experience on such vehicle when he was appointed. He has denied that he did not take proper precaution nor checked his driving skills at the time of hiring him as a driver. It was held in the case of **United India Insurance Co. Ltd. Vs. Lehu & Ors. 1 (2003) ACC 611 (SC)** that the owner at theme of hiring a driver has to check whether the driver has a driving license. If the driver



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produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. He would then take the test of the driver, If he finds that the driver is competent to drive the vehicle, he will hire the driver. In the case of **Lal Chand Vs. Oriental Insurance Co. Ltd. (2006) ACJ 2161 SC**, the owner had not only seen and examined the driving license produced by the driver but also took test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. It was held that the owner had satisfied himself that the driver had a license and was driving competently so there would be no breach of Section 149 (2) (a) (ii) and the insurance company would not then be absolved of its liability. In that case, National Insurance Co. Ltd. Vs. Swarn Singh (Supra) was also referred and sub para (iii) of para 102 discussed.

"(iii) The breach of policy conditions e.g. disqualification of driver or Invalid driving license of the driver, as contained in sub-section (2) (a) (ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insured against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

24. It was held that as observed in the above para the insurer has to prove that the insured, namely the owner of the vehicle was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed vehicle or one who was not disqualified to drive at the relevant point of time. Hon'ble Supreme Court allowed the appeal filed by the owner of the vehicle and absolved him from any liability.

The facts of the present case are similar to the case supra. In the present case also the respondent no.2 had checked the license and driving skills before appointing him as a driver on the vehicle in question. After satisfying himself that the respondent no.1 had a license and had driving skills, he engaged him on the offending vehicle. He has also stated that had been working as a driver for 4-



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5 years. I am of the view that the respondent no.2 fulfilled the conditions of the policy regarding use of the vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant point of time. I am of the view that the respondent no.3 cannot be absolved of its liability to compensate the petitioners thus, no liability can be fastened on the respondent no.2, the insured since at the time of accident, the policy was valid.”

10. Unhesitatingly, this Court finds that the aforesaid reasoning given by the learned Tribunal in fastening the financial liability primarily upon the appellant/insurance company, cannot be faulted on any legal grounds. Although the driving licence of respondent No.7 was found to be fake in terms of the testimony of **R2W1**, that it was not issued by the District Transport Authority, Patna. However, there is no evidence worth its salt on the record to suggest that respondent No.8/registered owner had any knowledge or that they intentionally or deliberately engaged the services of respondent No.7/driver to operate its hydra crane/offending vehicle despite having a fake driving licence. Learned Tribunal has very rightly relied on the decision in **United India Insurance Co. Ltd. v. Lehu**<sup>4</sup> and **Lal Chand v. Oriental Insurance Co. Ltd.**<sup>5</sup>.

11. In view of the foregoing discussion, the present appeal fails. However, the impugned judgment-cum-award dated 30.11.2012 is hereby modified to the effect that respondents No.1 to 6 shall be entitled to compensation of **Rs. 28,80,816/-** with interest @ 9% p.a. from the date of filing of the petition till realisation. As per the interim direction dated 22.04.2013, 50% amount of compensation has been

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<sup>4</sup> (2003) 3 SCC 338

<sup>5</sup> (2006) ACJ 2161 SC



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ordered to be released to the respondents/claimants, the balance amount be released to the respondents/claimants forthwith in terms of the directions passed by the learned Tribunal. Needless to state that the amount of compensation which stands enhanced by this Court has to be also deposited with the learned Tribunal within four weeks from today failing which, the appellant/insurance company shall be liable to pay the enhanced amount of compensation with interest @ 12% p.a. from the date of this judgment till realisation.

12. With the aforesaid, the appeal stands disposed of.

**DHARMESH SHARMA, J.**

**APRIL 23, 2024**

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