



\$~12

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

% **Date of decision: 23rd December, 2024**

+ **MAC.APP. 526/2024**

THE ORIENTAL INSURANCE CO. LTD.

5th Floor, Sachdeva Tower,
Sector-8, Rohini,
Delhi-110085

.....Appellant

Through: Mr. M.P. Shahi, Advocate

Versus

1. **MOHINI TRIPATHI** (Wife)
W /o Late Sh. Shri Kant Tripathi

2. **ABHISHEK** (Minor son)
S/o Late Sh. Shri Kant Tripathi

3. **SUMITRA DEVI** (Mother)
W/o Sh. Ravi Nand Tripathi

4. **RAVI NAND TIWARI** (Father)
S/o Rajwant Tripathi

All R/o G-3/123, 2nd Floor, Gali no.10,
5th Pushta, Sonia Vihar,
Delhi-110094

Permanent Address: Village Katat,
Purushotampur, Birsinghpur,
Sultanpur, U.P.-228141

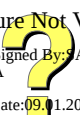
5. **YOGENDRA KUMAR** (Driver)
S/o Sh. Suresh
R/o Dalippur, Thorwa, Mainpuri,
U.P.-205263

6. **SUNNY GULAD** (Owner)

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 09.01.2025
06:03:46





S/o Sh. Rajendra Gulati
R/o L-51B, Gali no.22A,
New Mahavir Nagar, Tilak Nagar
Delhi-110018

.....Respondents

Through: Mr. S.N. Prashar, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 75424/2024

1. The present Application has been filed on behalf of the Claimants, seeking release of the compensation amount.
2. With the consent of learned counsel for the parties, the present Appeal is taken up for final hearing today itself.
3. The Application is disposed of.

MAC.APP. 526/2024:

4. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed against the Award dated 22.07.2024, whereby compensation in the sum of *Rs.43,86,000/-* along with the interest @8% p.a. has been granted to the Claimants/Respondents, on account of demise of Shri Kant Tripathi in a road accident, on 30.08.2020.
5. ***Briefly stated***, on 30.08.2020 at about 12:15 a.m., the deceased was going on his Bullet Motorcycle bearing No. DL-5-SX-6856 on Wazirabad Road leading from Yamuna Vihar, Delhi towards Bhopura; when a Truck bearing No.HR-55N-0760, being driven in a rash and negligent manner by Sh. Yogendra Kumar, came from back side and hit the Motorcycle with great force. The deceased fell and sustained serious injuries. He was taken to the hospital, where he was declared "*Brought dead*".



6. FIR No.1562/2020, under Sections 279/304A IPC was registered at Police Station Nand Nagri, Delhi. Upon completion of investigation, Charge Sheet was filed in the Court of Ld. MM. The Detailed Accident Report was filed before the Tribunal, on 23.09.2020. The Respondents, the legal heirs of the deceased, also preferred Claim Petition under S.166 Motor Vehicle Act, before the learned Motor Accident Claims Tribunal against the Driver, owner and Insurer of the offending vehicle.
7. Appellant No.1- Smt. Mohini Tripathi, wife of the deceased examined herself as PW-1. PW-2 Sh. Vishwajeet Pandey, the proprietor of Vijay Sales, the Employer of the deceased and PW-3 Sh. Bhim Prakash, the eye witness of the accident, were also examined. However, no evidence was led by the respondents in their defence.
8. The learned Tribunal vide impugned Award, granted compensation in the sum of Rs.43,86,000/- along with interest @8% p.a. in favour of the Claimants.
9. The *impugned Award has been challenged by the Appellant-Insurance Company on the following grounds:-*
- (i) The deceased was driving the motorcycle without a Driving License and without wearing a helmet and thus, there was contributory negligence on his part; and
 - (ii) That there is no evidence to show that the parents were dependent upon the deceased and therefore, deduction under the head “*loss of dependency*’ ought to have been 1/3rd instead of 1/4th.
10. Learned Counsel appearing *on behalf of Claimants* has submitted that there is cogent evidence by way of testimony of the eye witness/PW-



3, who has deposed about the manner in which the accident took place, which is also supported by the documents prepared during the investigation and the FIR, to establish the sole negligence on the part of the Driver of the offending Truck. Moreover, the Driver has chosen not to contest the Petition and no evidence is led in the defence, to establish negligence on the part of the deceased.

11. Learned counsel further argued that the assertion of the Appellant-Insurer that the deceased was not having a valid license was never agitated before the learned Tribunal. It is, therefore, argued that the learned Tribunal has rightly held that the negligence was of the Driver of the offending vehicle.

12. Insofar as the deduction on account of "*Loss of Dependency*" is concerned, it is asserted on behalf of the Claimants that father of the deceased was aged 61 years at the time of the accident and was fully dependent upon the deceased and therefore, deduction of 1/4th has rightly been made by the learned Tribunal.

13. **Submissions heard and record perused.**

Negligence of the deceased:

14. Pertinently, the eye witness Shri Bhim Prakash/PW-3 in his testimony has deposed that he had seen the truck bearing registration No.HR-55N-0760 being driven at a very high speed in a rash and negligent manner and hit the motor cycle bearing No.DL-5SX-6856 from its right side with great force. Resultantly, the motorcyclist fell and when the truck Driver tried to apply sudden breaks, it overturned over the motorcyclist, who sustained crushed injuries. PW-3 had categorically deposed that the accident occurred due to negligent driving of the Driver



of the offending vehicle.

15. It is relevant to note that the Driver has failed to question the testimony of the eye witness and thus, the learned Tribunal has rightly concluded that the accident occurred due to negligence of the truck Driver.

16. Insofar as the deceased was not having the Driving License is concerned, this plea was never agitated before the learned Tribunal. In the case of Saraswati Palariya & Ors. vs. The New India Assurance Company Ltd. & Ors., Civil Appeal No. 9114/2018, it has been held that merely because the Driving License was not proved in evidence or the Deceased was not in possession of the Driving License, would not *ipso facto* be a ground to hold that there was negligence on his part. Nothing has been brought on record to show any act of the deceased which is attributable to his not having a Driving License or causing the accident. There is no infirmity in the observation of the learned Tribunal and the objection raised by the Appellant-Insurance Company is not tenable.

Loss of dependency:

17. The *second objection* taken by the Appellant-Insurance Company is that there is no evidence to show that the father of the deceased was dependent upon him and therefore, while calculating the “*Loss of Dependency*” deduction of 1/3rd instead of 1/4th ought to have been done.

18. This Court finds that at the time of alleged incident, the father of the deceased was 61 years of age but this itself is not sufficient to prove that he was financially dependent upon the deceased. There is no evidence whatsoever to show that father of the deceased was dependent upon him. In these circumstances, deduction of 1/3rd ought to have been



made instead of 1/4th.

19. Thus, the “Loss of Dependency” is re-calculated as under:-

$$\text{Rs.18,500} \times 140/100 \times 2/3 \times 18 \times 12 = \text{Rs.37,29,600/-}$$

20. The modified compensation is as under:-

Sr.No.	Heads	Awarded by Tribunal	Awarded by Court
1.	Loss of Dependency	Rs.41,95,800/-	Rs.37,29,600/-
2.	Medical Expenses	Nil	Nil
3.	Loss of Consortium	Rs.1,60,000/-	Rs.1,60,000/-
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
TOTAL COMPENSATION		Rs.43,86,000/- (rounded off)	Rs.39,20,000/- (rounded off)

Relief: -

21. In view of the above discussion, the revised compensation is calculated as **Rs.39,20,000/-** with interest @8% per annum. The excess quantum of compensation, if any be refunded, and the modified awarded amount be released to the Claimants in terms of the Award dated 22.07.2024.

22. Statutory amount be refunded forthwith to the Appellant.

23. The present Appeal and pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 23, 2024

r