



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

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

+ **MAC.APP. 410/2013 & CM APPL. 7257/2013**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: **Mr. Pankaj Seth, Adv.**

versus

VINOD KUMAR & ORS Respondents
Through: **Mr. Manjeet Godara, Adv. for**
R-4

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This appeal is preferred by the appellant/insurance company in terms of Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 06.03.2013 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02 (Central), Tis Hazari Courts Delhi², whereby compensation in the sum of Rs. 20,87,040/- with interest @ 9% per annum from the date of filing of the petition till realization has been granted to the claimants i.e. the respondents No. 1 and 2 in the present appeal (*hereinafter referred as the 'claimants'*), who are the husband and minor child respectively of the deceased Smt. Savitri Devi.

2. Learned counsel for the appellant/insurance company has urged that the learned Tribunal overlooked the decision in the case of **Lata**

¹ MV Act

² Tribunal



Wadhwa v. State of Bihar³ and wrongly assumed the notional income of the deceased @ Rs. 10,000/- per month allowing increase by 25% for future prospects and has granted interest @ 9% per annum, which is against the ordinary norms of awarding interest i.e. 7.5%.

3. Further, it is vehemently urged that the learned Tribunal did not wait for the verification report of the driving license, which was found to be fake, and thus, no liability to pay compensation could have been fastened upon it and the driver and the registered owner of the offending vehicle, should have been directed to make compensation to the claimants.

4. Having heard the learned counsels for the rival parties and on perusal of the record including the digitized Trial Court Record, at the outset, it would be apposite to reproduce the reasons which prevailed in the mind of the learned Tribunal while assessing the compensation towards loss of financial dependency, which read as under:-

“Issue no. 2 in Suit no. 654/12:-

In view of the findings of issue no. 1, petitioners are entitled to compensation.

It is stated that deceased was 27 years of age, undertaking the work of stitching at her house, earning Rs. 10,000/- p.m. and is survived by her husband and one 1-½ year old son.

As per birth certificate of deceased, date of birth is recorded as 09/12/1985 i.e. she was 27 years on the date of accident in question. The relevant multiplier as per age of deceased is 17.

There is no proof in regard to working or earning of the deceased. As per Hon'ble High Court in "Royal Sundaram Alliance Insurance Co. Ltd. Vs Master Manmeet Singh" MAC 590/2011, minimum wages of Rs. 8,008/- p.m. as applicable to a non matriculate on the date of accident in question is taken as the value of services of the

³ (2001) 8 SCC 197



deceased to the household. There will be an addition of 25% in the assumed income as the deceased was less than 40 years.

Petitioners are therefore, entitled to (Rs. 8,008/- + 25% of Rs. 8,008/-) X 12 X 17 = Rs. 20,42,040/- + Rs. 10,000/- towards loss of consortium + Rs. 10,000/- as funeral expenses + Rs. 25,000/- towards love and affection. Total Rs. 20,87,040/- (Rupees Twenty Lakh Eighty Seven Thousand and Forty Only).”

5. First things first, learned Tribunal erred in reckoning the increase in future prospects by 25%, which as per the decision in the case of **National Insurance Co. Ltd. v. Pranay Sethi**⁴ should have been 40%. There was certainly no error in reckoning the value of services rendered by the deceased-homemaker, who was 27 years of age⁵, as per the prevalent minimum wages for a non-matriculate. However, a bare perusal of the aforesaid reasons would show that no amount was deducted towards personal use and living expenses of the deceased. The multiplier of ‘17’ has been rightly applied in terms of decision in the case of *Pranay Sethi (supra)*. But then it is apparent that the learned Tribunal has wrongly allowed Rs. 25,000/- towards loss of love and affection but at the same time, a meagre amount of Rs. 10,000/- has been awarded towards consortium and the same amount towards funeral expenses. Accordingly, the quantum of compensation requires to be modified, which is re-assessed as under:-

i. LOSS OF FINANCIAL DEPENDENCY:

Taking the minimum wages of Rs.8,008 per month, which would annually come to Rs.96,096/-, 40% is added towards future prospects, which comes to Rs.1,34,534/-. Further, 1/3rd is required to be deducted towards personal use and consumption of the deceased

⁴ (2017) 16 SCC 680

⁵ Date of birth proven on record is 09.12.1985



and the amount of compensation towards financial dependency would come to Rs.89,689/-. (Rs.1,34,534 – 1/3rd i.e. Rs.44,845). Taking into consideration the age of the deceased, the multiplier of ‘17’ is applied and the total loss of financial dependency comes to Rs.15,24,713/-.

ii. **OTHER NON-PECULIAR BENEFITS:**

Without further ado, in terms of the decision in *Pranay Sethi (supra)*, the loss of estate should be Rs. 15,000/-. The claimants are the entitled to Rs. 40,000/- each towards loss of consortium and Rs. 15,000/- is to be awarded towards funeral expenses. Accordingly, the total compensation would come to Rs. 16,34,713/-.

6. As regards the interest on the amount of compensation is concerned, the accident in question had occurred on 27.10.2012 and the claim petition was filed on 22.12.2012 and the impugned judgment-cum-award came to be passed on 06.03.2013. Hence, there are no compelling grounds to award compensation towards interest @ 9% per annum, which should ordinarily be 7.5%, which the claimants shall be entitled to be paid from the date of filing of the petition till realization. Needless to say, the interest rate of 7.5% is awarded as per the decision of this Court in the case of **The Oriental Insurance Co. Ltd. v. Sohan Lal**⁶.

APPORTIONMENT OF LIABILITY:

7. At the cost of repetition, the plea of the learned counsel for the appellant/insurance company that in the face of the fact that the driving license of the respondent No.3/Gurdayal Singh was found to

⁶ 2024 SCC OnLine Del 1966



be forged and fabricated, the appellant/ insurance company should have been given recovery rights, is misconceived and untenable in law. Unfortunately, the learned Tribunal has not dealt with such plea. It is not clear if any such objections were even taken before the learned Tribunal. Be that as it may, what is evident from the record is that the driving license of respondent No.3 was initially issued from Hazari Bagh in the year 2005 and then it was renewed by the Transport Authority, Kathua, Lakhanpur, Jammu & Kashmir on 06.06.2011 upto 05.06.2014. The same driving license was verified by the IO/Police in his verification report and the authenticity of the same was never challenged by the appellant/insurance company. All said and done, even if the plea of the appellant/insurance company is accepted for the sake of convenience that initially the driving license was forged and fabricated and its renewal on 06.06.2011 was of no legal effect, no evidence is brought by the appellant/insurance company to the effect that the respondent No.4, who was employed as the driver, knew that the said driving license was forged and fabricated. Hence, there are proven no grounds on the record so as to grant recovery rights to the appellant/insurance company to recover the amount of compensation paid to the claimants by it.

8. In view of the foregoing discussion, the present appeal is partly dismissed holding that the appellant/insurance company is not entitled to recovery rights against the registered owner and the driver of the offending vehicle. However, the present appeal is partly allowed thereby directing that the claimants shall be entitled to total compensation of Rs. 16,34,713/- with interest @ 7.5% from the date



of filing of petition till realization, which be apportioned between the claimants in the ratio of 1:2 i.e. $1/3^{\text{rd}}$ to the claimant-husband and $2/3^{\text{rd}}$ to the claimant-minor son and its investment as per the directions of the learned Tribunal.

Perusal of the record shows that as per the interim order dated 07.05.2013, the appellant/insurance company had been directed to deposit the entire amount of compensation with accrued interest with the Registrar General of the High Court Delhi, New Delhi and 60% of the amount of compensation was ordered to be released to the claimants. Hence, the balance amount of compensation as calculated above with accrued interest be released to the claimants. The balance amount of compensation deposited with the Registrar General of this Court with accrued interest along with amount of statutory deposit of Rs.25,000/- shall be released to the appellant/Insurance Company forthwith.

9. The present appeal along with the pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 23, 2024

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