



2024:DHC:9644



\$~61

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

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

+ **MAC.APP. 647/2024**

1. GAYATRI JAIN
wife of Late Shri Ajay JainAppellant No.1
2. GAURAV JAIN
s/o Late Shri Ajay Jain ..Appellant No.2
3. GARIMA JAIN
d/o Late Shri Ajay JainAppellant No.3

Through: Mr. Navneet Goyal, Advocate.

versus

1. SAHIL
Shri Manmohan SinghRespondent No.1
2. MANMOHAN SINGH
s/o Shri Mahabir SinghRespondent No.2
3. Hdfc Ergo General Insurance Co.Ltd. ...Respondent No.3
Through: Mr. Sameer Nandwani, Advocate for R3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellants/Claimants, to challenge the Award dated 31.07.2024 for enhancement of the compensation



2024:DHC:9644



granted in the sum of Rs.48,72,102/- along with the interest @7.5%.

2. The *sole ground* on which the enhancement has been sought is that the deceased, who was 58 years old, was doing the business along with his wife and son but after his demise, the wife had to withdraw while the business though continued by their son, has suffered the losses. The deduction has been made of 50% when in fact it should have been 1/3rd as deceased is survived by his wife, son and daughter.

3. *Learned counsel on behalf of the Insurance Company* has submitted that the son and daughter are adults and married. Moreover, the son is continuing with the business. The deduction of 50% has been rightly made by the learned Tribunal and the Award does not need any interference.

4. **Submissions heard.**

5. *Briefly stated*, On 28.01.2015 at about 12:00 PM, the Deceased/Ajay Jain along with his wife/Appellant No. 1 and Son/Appellant No. 2 was traveling to Beri Haryana in his Renault Car bearing registration No DL-8CZ-4293 when suddenly their car was hit by one Ford Eco-Sport bearing registration No. DL-11CA-3456 ('offending vehicle' *hereinafter*) which came from opposite direction, hit the road divider, flung into air and fell on the victim's vehicle and as a result of the said impact, the Deceased's vehicle was crushed and all the three occupants in the vehicle of the deceased sustained grievous injuries and Akshat Sharma, who was present inside the offending vehicle, sustained fatal injuries. It is further alleged that all the victims were immediately removed to BSA Hospital Delhi, where Akshat Sharma was declared brought dead and on the same day, the victims namely Ajay Jain/deceased, Gayatri Devi Jain/Appellant No. 1 and Gaurav Jain/Appellant No. 2 were shifted to Fortis Hospital, Shalimar Bagh, Delhi,



2024:DHC:9644



where they were medically examined and on 02.02.2015 the Mr. Ajay Jain succumbed to his injuries.

6. FIR No. 133/2015 was registered at PS Begum Pur, Delhi u/s 279/338/304A of the *Indian Penal Code, 1860* ('IPC' hereinafter).

7. The Petition under Section 166 and 140 of the M.V. Act was subsequently filed for grant of compensation by the Wife and two major Children of the Deceased. The DAR was also filed before the tribunal on 03.11.2015

8. The *primary ground* on which enhancement is sought is that deduction has been made of 50% when in fact it should have been 1/3 as deceased is survived by his wife, son and daughter.

9. Before the Ld. Tribunal Appellant no. 2/Gaurav Jain got himself examined as PW4, by way of evidence affidavit Ex. PW4/A wherein, he deposed that all the three legal heirs of the deceased were dependent upon the deceased. PW4 further deposed that he as well as his sister Garima Jain were 33 years old, at the time of accident and during the course of his cross examination, PW4 admitted that Garima Jain got married in the year 2007. Based on the testimony of the Ld. Tribunal concluded that both Gaurav Jain and Garima Jain were not entitled to any compensation as they were not financially dependent upon the deceased. Consequently, the deduction of 1/2 of his income was taken towards Personal Expenses of Deceased in the impugned Award.

10. The Apex Court in National Insurance Company Ltd. vs Birender AIR 2020 SC 434 while examining the issue that whether the major, married and gainfully employed sons of the deceased would be entitled to "loss of dependency", opined that the sons were earning a meagre sum of 1 lacs-1.5



2024:DHC:9644



lacs per annum and were financially dependent upon the income of their mother, who contributed her entire salary towards household expenses and reduced 50% deduction for personal expenses to 1/3rd on account of deceased having 2 major sons of the deceased.

11. The Kerala High Court in United India Insurance Co Ltd. v. Shalumol MACA No. 1768/2021 has held that even if dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the ‘ark of the covenant’. The Karnataka High Court in Reliance General Insurance Company Ltd. v. Gangappa has relied on Shalumol (Supra) and Birender (Supra) to hold that even major married daughters can be treated as dependents of the deceased.

12. Applying the above principles in the present case, it cannot be overlooked that though the major married son and daughter might be having some earnings, they continued to be the responsibility of their deceased father.

13. The support that the father would have provided in the times of need to his sons cannot be measured in money. Thus, while deciding the entitlement of Loss of Dependency one has to keep in mind that dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Due consideration is to be given to situations where the sons/claimant still relies on the deceased’s income for any substantial aspect of their life which could include a contribution towards the standard of living or education or even financial support if the claimant is in a lower-paying job.



2024:DHC:9644



14. In the present case, the deceased is survived by a wife, major son and a major daughter. The Ld. Tribunal erred in holding that the Wife was the only dependent family member as the two children were major. The number of dependents has to be taken as 3 members.

15. **Consequently, the deduction towards personal and living expenses deducted as 50% is reduced to 1/3rd** as per *Sarla Verma v. DTC* (2009) 6 SCC 121 which provides that the deduction towards *personal and living expenses* of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3. Therefore, the Awarded amount is accordingly modified as follows:

a. Rs. 78,635.58/- (monthly income) + Rs. 7863.55/- (i.e. 10%) = Rs. 86,499.13/-

b. 1/3rd Personal Expenses = $1/3 \times 86,499.13 = 28,833/-$

c. **Therefore, total loss of dependency is calculated as:**

$(86,499.13 - 28,833) \times 12 \times 9$ (multiplier) = Rs. 62,27,942/- (rounded off)

Relief:-

16. In view of the above observations, the modified amount of compensation is encapsulated in the Tabular Chart as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	Rs. 78,635.58/-	Rs. 78,635.58/-
2.	Add-Future Prospects (B)	10%	10%
3.	Less-Personal Expenses of Deceased (C)	1/2	1/3
4.	Monthly loss of Dependency [(A+B)-C=D]	43,249.5	57,666.13
5.	Annual loss of Dependency (Dx12)	5,18,994	6,91,993.5
6.	Multiplier (E)	9	9
7.	Total loss of Dependency	Rs. 46,70,953.02/-	Rs. 62,27,942/-



2024:DHC:9644



8.	Medical Expenses	19,649/-	19,649/-
9.	Compensation for loss of Consortium (H)	Rs. 1,45,200/- (48,400 x 3)	Rs. 1,45,200/- (48,400 x 3)
10.	Compensation for loss of Estate (I)	Rs. 18,150/-	Rs. 18,150/-
11.	Compensation towards funeral expenses (J)	Rs. 18,150/-	Rs. 18,150/-
12.	Total Compensation (F+G+H+I+J=K)	Rs. 48,72,102/-	Rs. 64,29,091/-
13.	Rate of Interest Awarded	7.5%	7.5%

17. In view of the above the total amount of Compensation awarded is thus, modified to **Rs. 64,29,091/-** along with interest @ 7.5% per annum, as per the terms of the Award dated 31.07.2024 passed by the Ld. Tribunal. The enhanced compensation be deposited by the Insurance Company, before the Tribunal within four weeks, which shall be disbursed, in terms of the Award.

18. The Appeal stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/RS