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

% ***Date of decision: 12th December, 2024***

\+ **<u>MAC.APP. 655/2024 & CM APPL. 73053/2024</u>**

THE ORIENTAL INSURANCE CO LTD

Through its Delhi Regional Office-I,
A-25/27, IInd Floor, Asaf Ali Road,
New Delhi-110002 .....Appellant

Through: Mr. AK Soni, Advocate through VC.

versus

1. **SMT SANGITA YADAV**

   W/o Late Shri Birender Singh .....Respondent No. 1

2. **JIYA YADAV**

   D/o Late Shri Birender Singh .....Respondent No. 2

3. **PIYUSH YADAV**

   S/o Late Shri Birender Singh .....Respondent No. 3

4. **NAND RAM**

   S/o Shri Lila Ram .....Respondent No. 4

5. **KRISHNA DEVI**

   W/o Late Shri Nand Ram .....Respondent No. 5

(Respondent Nos. 2 & 3 herein being minor represented through their mother/natural guardian/Respondent No. 1 herein)

All R/o VPO Gunti, Teh Buhana,
District Jhunjhunu, Rajasthan

6. **KARAN SHARMA (DRIVER)**

S/o Narain Pal Sharma,
R/o RZF-31/562, Gali No. 23,
Sadh Nagar, Delhi

Also R/o B-13B, Kamruddin Nagar,
Delhi .....Respondent No. 6

7. **SURENDER SINGH (OWNER)**

S/o Bakhat Ram,
R/o A-87, A Block, JJ Colony,
Wazirpur, Delhi .....Respondent No. 7

Through: Mr. S.N. Parashar, Advocate for R-1 to 5.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL. 73052/2024 *(Exemption)*

1. Allowed, subject to all just exceptions.

2. The Application is disposed of.

MAC.APP. 655/2024:

3. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the *Appellant/Insurance Company* against the Award dated 23.09.2024 *vide* which a compensation in the sum of Rs. 78,81,865/- along with interest @ 7.5% p.a. has been granted to the Respondent Nos. 1 to 5/Claimants on account of demise of Shri Birender Singh in a road accident on 13.12.2015.

4. *The grounds of challenge to the impugned Award are: -*

(i) that there is no involvement of the offending vehicle proved since the FIR was registered against an unknown vehicle and the witnesses produced are all Police Officials who in connivance with one other, have *falsely implicated the alleged offending vehicle*;

(ii) that the *quantum of compensation* is challenged as :

(a) that certain deductions towards Transport Allowance, Washing Allowance, Metro Allowance and Ration Money have been not deduced from the salary of deceased while calculating the Loss of Income for which reliance is placed on the decision in *Bajaj Allianz Gen. Ins. Co. Ltd. vs. Meenakshi & Ors*., decided *vide* MAC. APP. 1061/2011 by this Court on 30.05.2012.; and

(b) that deceased was 30 years and 8 months old and the *multiplier of 16 and not 17* should have been applied.

5. Issue notice.

6. *Mr. S.N. Parashar, learned counsel appearing on advance Notice, accepts Notice on behalf of the Respondent Nos. 1 to 5/Claimants. He* submits that the involvement and the negligence of the offending vehicle has been sufficiently proved from the evidence on record. Moreover, the driver and owner had failed to appear in the witness box to disprove the involvement. Therefore, it is submitted that the learned Claim Tribunal has rightly concluded the negligence on the part of the offending vehicle.

7. In respect of *quantum of compensation*, the learned Counsel for the Claimants submit that the multiplier of 17 has been correctly applied since deceased Shri Birender Singh was 30 years and 8 months old and as per the

Multiplier Chart, the multiplier of 16 is for the persons of age of 31 to 35 years and there is one year gap between 30 and 31. Therefore, the multiplier of 17, has been rightly applied.

8. Insofar as the *deductions in the salary are concerned*, it is submitted that they are fixed Allowances. Moreover, 1/4th of earnings have already been made towards personal expenses of deceased Shri Birender Singh. In case these Allowances are also deduced, it would amount to double deduction while calculating the Loss of Income.

9. It is, thus argued that there is no infirmity in the impugned Award and the Appeal is liable to be dismissed.

10. **Submissions heard and the record perused.**

11. ***Briefly stated,*** on 13.12.2015, the deceased Constable, Shri Birender Singh was going on his motorcycle from Dhaula Kuan towards Gurgaon. At about 7 a.m. when he reached near Metro Pillar No.136 Delhi, he was hit by the offending car bearing No. DL-2FFL-0042, which was being driven by Respondent No.1/Shri Karan Sharma, in a rash and negligent manner. He sustained fatal injuries in a motor accident.

12. An FIR No. 676/2015 was filed under *Sections 279/304-A of the Indian Penal Code, 1860* at PS Delhi Cantt.

<u>Involvement of the offending vehicle:-</u>

13. The first ground of challenge is that the alleged offending vehicle did not cause the accident.

14. To prove the accident, the Claimants examined *PW-4, Shri Banshi Lal Yadav,* who deposed that on 13.12.2015, while he was present on duty at Traffic Point GGR PDR, at about 7 a.m., he saw one Indigo car bearing

registration No. DL-2FF-0042 hit the motorcycle which was being driven by the police officer.

15. During his cross-examination, PW-4, Mr. Bansi Lal Yadav, who is also a Constable, denied the suggestion that he and the deceased both belonged to Rajasthan or that he was an acquaintance of the family of the deceased or was deposing only to favour their family. He admitted that he was not an eye-witness to the occurrence of the accident and the incident was narrated to him by some person, whose mobile number and address he could not note, but he denied that the offending vehicle was not involved in the accident. He further denied that the accident was caused by some other vehicle. He admitted that he did not communicate about the accident to any police person and that he informed the family about the accident after about 15-20 days of the accident. From his testimony, it emerges that he had deposed about the manner of the accident on the basis of information given to him by some third unknown person.

16. In this context, it would also be relevant to refer to the testimony of PW-3, Rtd. S.I. Lakh Ram, who was the second Investigating Officer. He deposed that he recorded the statement of eye-witness, Shri Bansi Lal Yadav and had got the Mechanical Inspection of both the vehicles conducted. In his cross-examination he also admitted that Mr. Bansi Lal Yadav was not an eye-witness to the accident and he had made the Statement on the basis of information received by him from some unknown person. The accident occurred on 13.12.2015 but his statement was recorded on 10th or 12th March, 2016. He denied the suggestion that the offending vehicle was not involved in the accident.

17. From the comprehensive appreciation of the testimony of PW-3, Rtd. S.I. Lakh Ram and that of PW-4, Shri Bansi Lal Yadav, it is evident that there was no eye-witness to the accident; however, the Investigating Officer on the basis of information collected and the investigation conducted, admittedly filed the Charge-Sheet against Shri Karan Sharma, driver of the offending vehicle. Though, much has been argued about there being no eye-witness to the incident, but the most significant aspect is that the driver of the alleged offending vehicle, has not stepped into the witness-box to depose about his defence.

18. In this context, it would be pertinent to also refer to the joint Reply of the driver-owner, who had stated that the motorcycle of the deceased was first hit by some unknown vehicle, which was being driven in a rash and negligent manner and because of this forceful impact, the motorcycle of the deceased touched their Car. It is the admission of the Respondents/Driver-owner that their car was involved in the accident. There can be no better evidence than the admissions of the parties. Having admitted that their Car was involved in the accident, the correct circumstances could have been best brought forth by the driver, who has chosen not to step into the witness-box. The circumstances explained by the driver-owner in their Reply itself reflect not only the involvement of the offending vehicle in the accident, but also that it was being driven in a rash and negligent manner.

19. In the case of *National Insurance Co. vs. Pushpa Rana*, 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of *United India Insurance Co. Ltd.*

vs. Deepak Goel, (2014) 2 TAC 846 Del, that if the Claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of chargesheet under *Sections 279/304-A of the IPC* against the driver have been proved, then the documents mentioned above are sufficient to establish the fact that the driver was negligent in causing the accident. Likewise, similar observations have been made in the case of *Jamanti Devi vs. Maheshwar Rai*, MAC Appeal no. 831/2015 decided on 19.11.2022.

20. Thus, the learned Tribunal rightly held that the accident took place due to rash and negligent driving of the offending vehicle bearing registration No. DL-2FFL-0042, which was driven by Respondent No. 1.

Challenged to the Quantum of Compensation:

Loss of income:-

21. Learned counsel on behalf of the Respondents/Claimants has argued that the amounts mentioned as *Allowances/Perks* were part of the fixed salary and cannot be deducted.

22. The Salary Slip reflects the earnings/Allowances and deductions for the month of October 2015, as under:

EARNINGS FOR THE MONTH (in Rs.)	
Basic	8440
Grade Pay	2000
D.A.	12424
H.R.A.	3132
Transport Allowance	3504
Washing Allowance	90
Comp. H.R.A	310

Metro P. Allowance	180
Ration Money	2961
Conv. Allow.	90
TOTAL	**Rs. 33,131**

DEDUCTIONS FOR THE MONTH (in Rs.)	
NPS - I	2286
CGEGIS	30
TOTAL	**Rs. 2,316**

ACQT RECOVERIES (in Rs.)	
D.P.W.S.	150
Martyred Fund	10
TOTAL	**Rs. 160**

23. The gross salary is **Rs. 33,131,** while the Net Salary after deductions is **Rs. 30,655.** However, the gross salary includes the allowances in the sum of Rs. **Rs. 3,864** towards *Transport, Washing, Metro P. and Conveyance* as mentioned above. These are all perks available to the deceased on account of his working in the Organization. It cannot be overlooked that these were the perks or the job-specific benefits which were being consumed by the deceased when was doing his job. Once he was no longer working because of his demise in the accident, he cannot be utilizing his Washing Allowance for washing the clothes or the Transport Allowance or the Conveyance and Metro Pass Allowance.

24. The Supreme Court in the case of *Shyamwati Sharma vs. Karam Singh*, (2010) 12 SCC 378, while considering the issue of deduction of taxes, contributions, etc., for arriving at the figure of net monthly income,

held that, while ascertaining the income of the deceased, any deductions shown in the Salary Certificate as deductions towards GPF, life insurance premium, repayments of loans, etc. *should not be excluded from the income*. The deduction towards Income Tax/Surcharge alone should be considered to arrive at the net income of the deceased.

25. Pertinently, in the case of *Ram Charan and Ors. vs. New India Assurance Co. Ltd. and Ors.*, 2022 SCC OnLine Del 5146, it has been held that the benefits granted to the deceased, specifically *Travel and Washing Allowances*, were inherently tied to the amelioration of workplace hardships experienced during employment. Consequently, these allowances cannot be considered part of the compensation that would benefit the Appellants (legal heirs of the deceased). By excluding Travel and Washing Allowances, the this Court also affirmed a principled method of calculating the deceased's income by only deducting the allowances that were solely for the personal benefit of the deceased, ensuring that compensation reflects genuine economic loss to the family rather than job-specific transient benefits.

26. It is not a case of double deduction, as is argued on behalf of the Counsel for the Claimants as these deductions are job related while the other deduction is on account of personal expenses that the deceased would have made in his personal life.

27. Hence, these amounts which add up to Rs. 3,864 have to be deducted and ***the Net Salary of the deceased comes to Rs. 29,267/- per month.***

Multiplier :-

28. The Appellants have argued that Shri Birender Singh was 30 years and 8 months old and, therefore, the *multiplier of 16 and not 17* should have

been applied.

29. In the case of *Sarla Verma vs. DTC,* (2009) 6 SCC 121, the Apex Court held that the *Multiplier of 17 is to be applied for 26 to 30 years and Multiplier of 16 to be applied for 31 to 35 years.*

30. In this case, the learned Tribunal has rightly relied upon date of birth as mentioned on the Salary Slip of the deceased and has taken the age of the deceased as 30 years, 8 months and 8 days at the time of accident.

31. ***Accordingly, the multiplier of 17 has been applied correctly.***

Relief :-

32. The compensation amount is re-calculated as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation enhanced
1.	Income of Deceased (A)	Rs. 33,131/-	**Rs. 29,267/-**
2.	Add-Future Prospects @ 50% (B)	Rs. 16,565.5/-	**Rs. 14,633.5/-**
3.	Less-Personal Expenses of Deceased (C)	Rs. 12,424.12/-	**Rs. 10,974.63/-**
4.	Monthly loss of Dependency (D)	Rs. 37,272.38/-	**Rs. 32,925.37/-**
5.	Annual loss of Dependency	Rs.4,47,268.56/-	**Rs. 3,95,104.5/-**
6.	Multiplier (E)	17	17
7.	Total loss of Dependency (F)	Rs.76,03,565/-	**Rs.67,16,775.5/-**
8.	Medical Expenses (G)	Nil.	Nil.
9.	Loss of love and affection (H)	Nil.	Nil.
10.	Compensation for loss	Rs.2,42,000/-	Rs.2,42,000/-

	of Consortium (I)	*(enhanced every 3 years @ 10 %)*	
11.	Compensation for loss of Estate (J)	Rs. 18,150/- *(enhanced every 3 years @ 10 %)*	Rs. 18,150/-
12.	Compensation towards funeral expenses (K)	Rs. 18,150/- *(enhanced every 3 years @ 10 %)*	Rs. 18,150/-
Total Compensation (F+G+H+I+J+K)		**Rs.78,81,865/-**	**Rs.70,00,000/- (rounded off)**

33. The **total amount of Compensation of Rs. 70,00,000/-** is awarded to the Claimants along with **interest @ 7.5% per annum, to be disbursed** as per the terms of the Award dated 23.09.2024.

34. The statutory amount be returned, as per rules.

35. The Appeal stands disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2024
S.Sharma