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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 10 January 2024**
Judgment pronounced on : 27 February 2024

+ **MAC. APP. 240/2015, CM APPL. 43238/2023**

VEENA KHURANA & ORS. Appellants
Through: **Ms. Kamaljot Kaur, Adv.**

versus

AMAN VERMA & ANR. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellants/claimants/petitioners under Section 173¹ of the Motor Vehicles Act, 1988² assailing the Impugned Order dated 31.10.2014 passed by the learned Motor Accident Claims Tribunal³, Tis Hazari Courts, Delhi, whereby the compensation petition of the appellants was allowed and the appellants/claimants were awarded an amount of

¹ 173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

² Act.

³ Tribunal



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Rs. 9,24,104/- in Compensation Petition No. 62/2012 titled as “*Smt. Veena Khurana & Ors. vs. Aman Verma & Anr.*”

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellant / claimant that on 13.08.2011, Sh. Gopal Krishan Khurana (deceased herein), aged 65 years as on the date of the accident, at about 01:35 pm was riding his scooter. As the deceased approached Budhela Mandir, C Block, the offending vehicle, bearing No. DL 9C3 3284 (Wagon R Car) and driven by the Respondent No. 1 in a rash and negligent manner, collided with the deceased's scooter from behind. This collision caused the deceased to fall from his scooter, resulting in severe injuries. The offending vehicle was owned by the Respondent No. 2 and was not insured.

3. The appellant No. 2, who is the son of the deceased, took the deceased from the site of the accident to Mata Channan Devi Hospital, where he was subsequently admitted in the Intensive Care Unit (ICU). The deceased was in the Hospital from 13.08.2011 to 27.08.2011. The deceased succumbed to his multiple severe injuries on 27.08.2011.

PROCEEDINGS BEFORE THE LEARNED MACT AND IMPUGNED ORDER:

4. The applicants/claimants filed the compensation petition before the learned Tribunal on 12.01.2012. During the course of proceedings before the learned Tribunal, based on the pleadings and documents filed, following issues were framed on 19.07.2012: -

“1. Whether the deceased Sh. Gopal Krishan Khurana suffered fatal injuries in an accident that took place on 13/08/2011 at about



13:35 hours involving Wagon R bearing No. DL-9CE-3284 driven by the Respondent No.1, and owned by the Respondent o. 2? OPP

2. Whether the petitioner/petitioners is entitled for compensation? If so, to what amount and from whom?

3. Relief.”

5. The respondents were proceeded *ex parte*, as the respondents stopped participating in the proceedings before the learned Tribunal. The offending vehicle was not insured. The learned Tribunal examined the Petitioner No. 2 as PW-1 and Dr. Shifali Bhasin as PW-2. During cross-examination, Dr. Shifali Bhasin, in her deposition as PW-2, deposed that the hospital had charged a sum of Rs. 5,65,892.00 out of which Rs. 1,65,200.00 was paid by Medi Claim Insurer TPA. As per PW-2, the remaining amount of Rs. 4,00,692/- was paid by the deceased's family. The PW-2 during the course of the cross-examination proved the death certificate (Ex. PW2/2) and the original medical bills (Ex. PW1/2). The germane observations have been reproduced under:

“I have brought the summoned record i.e., bills pertaining to the patient namely Sh. G. K. Khurana who was treated in our hospital. The bill already Ex. PW-1/3 dated 28/08/11 is correct. The said bill was issued for sum of Rs. 5,65,892. 03 p.

Out of the said amount, a sum of Rs. 1,65,200/- was paid by Medi Claim Insurer TPA. Accordingly, the patient himself paid a lump sum of Rs. 4,00,692/-. This is the final bill. Later on the patient was admitted in this hospital and we did not charge anything from him. The detail of the final bill are contained in **Ex. PW-2/1. The bills are correct. (Original record, seen, matched and returned).**

The discharge summary issued by our hospital is already Ex. PW1/2. Later the patient expired in our hospital. I am filing the photocopy of death summary prepared by Dr. K. K. Trehan and Dr. S.K. Sethi, which is **Ex. PW-2/2 (original death summary seen, matched and returned)**

xxxxxxx by respondents NO. 1



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The witness is put to the respondent no.1, who has refused to cross examine. The opportunity to cross examine stands closed.

xxxxxxx by Sh. A. K. Dubey, Ld. Counsel for respondent no.2

It is correct that I am not concerned with the billing department of my hospital. It is further correct that I do not know about the charges taken by the hospital for the particulars of either test or medicine etc.”

6. The learned Tribunal, in regard to the Issue No.1, decided in favour of the appellants and against the respondents. The Tribunal held that after going through all the documents filed by the petitioner as well as the Detailed Accident Report (DAR) filed by the police, it stands clear that the respondent No. 1 was driving the vehicle in a rash and negligent manner.

7. In regard to the Issue No. 2, the tribunal awarded the compensation to the tune of Rs. 9,24,104/- with interest at the rate of 9% per annum including the interim award. It is the case of the appellants, the learned tribunal while calculating the award, did not consider the medical expenses which were incurred by the appellants during the deceased's treatment. The relevant observations have been reproduced below:

“26. The said categorization of expenses incurred upon family members and savings made by deceased is not required where the deceased had left L.Rs who were all dependent upon him, because in such an eventuality, finally the savings of the deceased shall also fall to the share of the dependents beside the pecuniary loss suffered by them and therefore it becomes futile exercise to assess savings of the deceased. Therefore, in view of aforesaid discussed law, it can be said that the deceased might have been spending 1/3"" of income on himself and 1/3"" of income on his wife and 1/3"" would have been saved by him. The saved 1/3"" in this case can be well treated as a loss to the estate for both the dependent wife as well as non-dependent son.



27. Accordingly, I hereby deduct 1/3rd of the amount from income of the deceased towards his personal and living expenses in terms of the judgment of Hon'ble Supreme Court of India in case of **Saria Verma Vs. DTC** decided on 15.4.2009 in C.A. No. 3483/08. It is pertinent to mention that the petitioner No. 1 (wife of the deceased) and petitioner No.2 are dependents and petitioners No. 3 & 4 are non-dependent daughters. The deduction would have been to the extent of 1/3rd of the income towards the personal expenses of the deceased in terms of **Sarla Verma Judgment(supra)** as the deceased had left behind two dependents. Therefore, after deducting one-third towards personal expenses, the loss of dependency annually comes out to be Rs. 2,36,731/- - Rs. 78,910. 3 p.= Rs. 1,57,820. 7 p. Now, after capitalizing the annual loss of income with number of years purchase i.e multiplier of 5 as mentioned the judgment of Hon'ble Supreme Court in **Sarla Verma's** case, the total loss of dependency comes out to (Rs. 1,57,820. 7 p. X 5) =Rs. 7,89,103.5 p.. rounded off to Rs. 7,89,104/-.

28. In terms of the judgment of Hon'ble Supreme Court of India in "**Rajesh & Ors. Vs. Rajbir Singh & Ors 2013(6) Scale 563**" wherein the Hon'ble Apex Court has granted Rs. 25000/- towards funeral charges, Rs. 1,00,000/- towards loss of consortium, accordingly, I award **Rs. 1,00,000/-** towards loss of consortium; **Rs. 25,000/-** towards funeral charges. I also award **Rs. 10,000/-** towards loss of estate. Therefore, in total, I hereby award a sum of **Rs. 9,24,104/-** in favour of the petitioners and against the respondents."

8. The learned Tribunal apportioned the liability on respondents No. 1 & 2 to pay the compensation jointly and severally to the appellants.

9. The impugned order has been assailed *inter alia* on the grounds that the learned Tribunal restricted the compensation to Rs. 9,24,104/- and did not consider the medical expenses incurred during the treatment of the deceased, and for pain and suffering undergone by the deceased. The applicants/petitioners contend that the compensation



awarded was not suitable and the interest rate of 9% was contrary to the current economy.

ANALYSIS & DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have meticulously perused the record of the present case.

11. At the outset, the observations made by the learned Tribunal in paragraph (16) referred above cannot be sustained in law. The testimony of PW-2 that injured was treated in Hospital and bill for a sum of Rs. 5,65,892.03 Paisa was paid as per Bill Ex.PW-1/3 dated 28.08.2011. It was also brought out that a sum of Rs. 1,65,200/- was paid by Mediclaim Insurer, and therefore, Rs. 4,00,692/- as per bill fill Ex.PW-2/1 was paid by the appellant-claimant. There was no reason to deny the reimbursement of such claim to the appellant-claimant. Reference in this connection can be had to decision **Sidram v. The Divisional Manager, United India Insurance Co. Ltd.**⁴ wherein the Hon'ble Supreme Court reiterated the proposition of law as under:

“(30) The principle consistently followed by this Court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions. [*Govind Yadav v. New India Insurance Co. Ltd.*, (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422]]

(32) This Court has emphasised time and again that “just compensation” should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that

⁴ Civil Appeal No. 8510 of 2022 decided on 16.11.2022



a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.

(36) Yet later and in near past, in an accident case, which tragically left in its wake a young girl in a life-long state of paraplegia, this Court in **Kajal v. Jagdish Chand** (2020) 4 SCC 413 : (2020) 3 SCC (Civ) 27 : (2020) 2 SCC (Cri) 577], reiterated that in addition to loss of earnings, compensation for future prospects too could be factored in, and observed that : (SCC pp. 421-24, paras 14-17 & 20)

“14. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [*Concord of India Insurance Co. Ltd. v. Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996] , this Court held : (SCC p. 366, para 2)

‘2. ... the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.’

15. In *R.D. Hattangadi v. Pest Control (India) (P) Ltd.* [*R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551 : 1995 SCC (Cri) 250] , dealing with the different heads of compensation in injury cases this Court held thus : (SCC p. 556, para 9)

‘9. Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.’

16. In *Raj Kumar v. Ajay Kumar* [*Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri)



1161] , this Court laid down the heads under which compensation is to be awarded for personal injuries : (SCC p. 348, para 6)

‘6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under Heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the Heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.’

17. In *K. Suresh v. New India Assurance Co. Ltd.* [*K. Suresh v. New India Assurance Co. Ltd.*, (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638] this Court held as follows : (SCC p. 276, para 2)

‘2. ... There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity “the Act”) stipulates that there should be grant of “just compensation”. Thus, it becomes a challenge for a court of law to determine “just compensation” which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.’



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12. In view of the foregoing discussion, the appellant-claimant is also made entitled to an additional compensation of Rs. 4,00,692/- over and above Rs.9,24,104/- awarded by the learned Tribunal and thereby awarding total compensation of Rs. 13,24,796/- with interest @ 9% including interim award from the date of filing of the petition till realization.

13. All interim orders stand vacated.

14. The appeal stands disposed of accordingly.

15. The pending application also stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 27, 2024

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