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

% *Date of decision: 06th December, 2024*

\+ **MAC.APP. 444/2016, CM APPL. 20169/2016, CM APPL. 20171/2016**

THE ORIENTAL INSURANCE CO. LTD.
Delhi Regional Office-I, TP Hub,
F-14/20, 1ST and 3rd Floors,
United India Life Building,
Connaught Circus,
New Delhi-110001 .....Appellant

Through: Mr. Pankaj Seth, Advocate.

Versus

1. **OMBIR SINGH**
S/o Shri Amar Singh .....Respondent No.1.

2. **Ms. SEEMA**
D/o Shri Ombir Singh
(Through her father and natural guardian Shri Ombir Singh) .....Respondent No.2.

Both R/o Village Gomat
PS Khari, Distt. Aligarh, U.P.

3. **CHANDRA YADAV**
S/o Shri Ram Mahal Yadav
R/o Ladi Tilanga
Mohaba,U.P. .....Respondent No.3.

4. **SATENDER SINGH**
S/o Shri Pal Singh
Rio Village Sanpki, Nangli

Tehsil Sohna, Gugaon,
Haryana. .....Respondent No.4.

5. **SHRIRAM GENERAL INSURANCC CO. LTD.**
E-8, EPIP, RIICO Industrial Area
Sitapur, Jaipur.
Rajasthan .....Respondent No.5.
Through: Counsel for R5 (appearance not given)

9

+ **MAC.APP. 565/2016, CM APPL. 26735/2016**

SHRIRAM GENERAL INSURANCE CO LTD
1001, LGF, Arya Samaj Road
Karol Bagh, New Delhi. .....Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

1. **OMBIR SINGH**
S/o Shri Amar Singh .....Respondent No.1.

2. **Ms. SEEMA**
D/o Shri Ombir Singh
(Through her father and natural
guardian Shri Ombir Singh) .....Respondent No.2.

Both R/o Village Gomat
PS Khari, Distt. Aligarh, U.P.

3. **CHANDRA YADAV**
S/o Shri Ram Mahal Yadav
R/o Ladi Tilanga
Mohaba,U.P. .....Respondent No.3.

4. **SATENDER SINGH**

S/o Shri Pal Singh
Rio Village Sanpki, Nangli
Tehsil Sohna, Gugaon,
Haryana. .....Respondent No.4.

5. **GANGA TOURIST INDIA PVT. LTD.**
Plot No.749, Sector 39,
Green Gurgaon, Haryana. .....Respondent No.5.

6. **SHRIRAM GENERAL INSURANCC CO. LTD.,**
E-8, EPIP, RIICO Industrial Area
Sitapur, Jaipur.
Rajasthan
.....Respondent No.6.
Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. The aforesaid two Appeals shall be decided together as in the Award dated 08.02.2016, both the Insurance Companies i.e., The Oriental Insurance Co. Ltd. and Shriram General Insurance Co. Ltd. held liable to compositely pay the compensation to the Respondent Nos. 1 and 2/Claimants.

2. The two Insurance Companies have challenged the compensation granted in the sum of Rs. 23,34,000/- and Rs. 16,000/- along with interest @ 9% per annum on account of demise of Smt. Sumita, aged 27 years *(hereinafter referred to as* "deceased"*)* and injury to Ombir Singh *(husband of the deceased)* in a road accident on 06.11.2013.

3. ***Briefly stated,*** on 06.11.2013, deceased/Smt. Sumita along with her family members was travelling in a Cab/Taxi bearing No. HR-55NT-1279 being driven by Shri Suresh Kumar who had also died in the same accident.

At about 05:45 A.M., when the Cab/Taxi reached near Subroto Park Red Light, Dhaula Kuan side Delhi Cantt., Delhi, the offending Truck bearing No. HR-55E-9367 by Respondent No. 3/Chandra Yadav stopped suddenly because of which Cab/Taxi collided in the backside of the said Truck, resulting in fatal injuries to Smt. Sumita and Shri Suresh Kumar both died on the spot. The Respondent No. 1 herein/Ombir Singh, the husband of deceased and Ms. Seema/minor daughter also suffered injuries in the accident.

4. The deceased was taken to the Army Hospital, Delhi Cantt., Delhi where she was declared "*Brought Dead*".

5. *FIR No. 380/2013 under Sections 279/337/304A of the Indian Penal Code, 1860 (hereinafter referred to as* "IPC, 1860"*)* was registered at Police Station Delhi Cantt, Delhi. After completion of investigations, the Chargesheet was filed before the learned Tribunal.

6. The Respondent Nos. 1 and 2 filed the two Claim Petitions under Section 166 of the Motor Vehicles Act, 1988 *(hereinafter referred to as* "MV Act, 1988"*)* to claim compensation from the driver, owner and the Insurance Companies of both the vehicles.

7. In the impugned Award dated 08.02.2016, the learned Tribunal found that the Respondent No. 3/Chandra Yadav (Driver) of the truck and the Respondent No. 5/Ganga Tourist India Pvt. Ltd. (the owner of the Cab/Taxi), were negligent in driving their respective Vehicles. Both Appellant Insurance Companies, with which the two vehicles were registered, were held jointly and severally liable to pay the compensation to

the Respondent Nos. 1 and 2/Claimants.

8. Both the Appellant Insurance Companies i.e., The Oriental Insurance Co. Ltd. and Shriram General Insurance Co. Ltd. aggrieved by the impugned Award dated 08.02.2016 have preferred the present respective Appeals.

9. *Both the Appellant Insurance Companies have taken the common grounds which are as under: -*

(i) that the Minimum Wages of the deceased have been wrongly calculated on the basis of a non-matriculate;

(ii) that the Future Prospects @ 25% have been erroneously granted to the Respondent Nos. 1 and 2/Claimants, since there is no evidence that the deceased was in a permanent employment;

(iii) that the deduction of 1/3rd towards personal expenses has been made, when in fact, it should have been 50%, since the husband of deceased cannot be taken as a dependent; and

(iv) that the interest @ 9% has been granted by the learned Tribunal, which is on higher side.

Additional ground taken by the Appellant/Shriram General Insurance Company is: -

(i) that the Chargesheet in FIR No. 380/2013 has not been filed against Respondent No. 3/Chandra Yadav, the Driver of the offending Truck, and therefore, there is no fault attributable to the Truck Driver. Therefore, no compensation can be held to be payable by the Insurance Company.

10. It is submitted that the Chargesheet under Section 173 of Cr.P.C.,

1973 was prepared against Shri Suresh Kumar, the Driver of the Cab/Taxi (Innova), but in the Final Report the offence was abated, since Shri Suresh Kumar had died in the same accident.

11. **Submissions heard and record perused.**

***Loss of Dependency*:-**

12. *The first aspect for consideration is whether the income of the deceased/Smt. Sumita has been calculated correctly.*

13. The Apex Court in *Rajendra Singh vs. National Insurance Co. Ltd.*, (2020) 7 SCC 256 held that there can be no fixed approach to assess notional income of a homemaker. It is to be understood that in such cases the attempt by the court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.

14. Recently, in the judgment of *Arvind Kumar Pandey vs. Girish Pandey*, Civil Appeal No. 2515 of 2024, decided on 16.02.2024, the Apex Court has settled ***that the direct or indirect income of a homemaker cannot be less than the prevailing Minimum Wages of the State at the time of the accident***.

15. In the present case, the income of the deceased has been assessed as Rs. 8,918/- per month on the basis of a Mon-Matriculate which is of an Unskilled Worker. Considering the gratuitous services provided by a homemaker and in absence of evidence with respect to the educational qualification of the deceased, the income of the deceased should have been

on the basis of Minimum Wages for the Skilled Worker i.e., Rs. 9,862/- per month.

16. ***Accordingly, the income of the deceased is taken on the basis of Minimum Wages of a Skilled Worker i.e., Rs. 9,862/- per month.***

Future Prospects:-

17. *The second ground of challenge* is that the *Future Prospects* should have been taken 40%, as held in the case of *National Insurance Co. Ltd vs. Pranay Sethi & Ors*., 2017 SCC OnLine 1270 and not 25% as has been granted by the learned Tribunal.

18. The learned Tribunal on the basis of the decision of the Supreme Court in *Sarla Verma vs. DTC,* (2009) 6 SCC 121 has taken the Future Prospects as 25% in the assumed income of the deceased. However, the Supreme Court later in *Pranay Sethi,* (supra) held that the same should be 40%.

19. Accordingly, the decision of the Apex Court in *Pranay Sethi,* (supra) shall be applicable and thus, ***the Future Prospects is taken as 40%.***

Deduction towards Personal Expenses:-

20. *The third ground of challenge* raised by the Appellant/Insurance Company is towards the *Deductions towards Personal Expenses*.

21. The learned Tribunal has observed that in the present case, there is no question of any deduction towards the personal and the living expenses, since it is a case of housewife. Even though she was rendering the services to the family members but that also included for herself. Therefore, the logic in not deducting the personal expenses, is *not tenable*.

22. The deceased is survived by her husband, the Respondent No. 1 and her daughter, the Respondent No. 2, who both were dependents for her services being rendered as a housewife. ***Therefore, the deduction of 1/3rd towards personal expenses is required to be made.***

23. *The total loss of dependency is calculated as under:*

i. Rs. 9862 p.m. + 40% *(Future Prospects)* = Rs. 13,806.8/-;

ii. Rs. 12,933 - 1/3 *(Personal Expenses)* = Rs. 9204.5/-;

iii. Rs. 9204.5/- x 12 x 17 **= Rs. 18,77,724.8/-.**

Loss of Consortium:-

24. While re-considering the calculation of the compensation amount, it has been noticed that the compensation awarded under Loss of Consortium has to be re-calculated in the light of observations of the Apex Court's decision in *Pranay Sethi,* (supra) which provides that each Claimant shall be entitled to Rs.40,000/- towards Loss of Consortium. The learned Tribunal fell in error in granting a lump sum of Rs.10,000/- to all the Claimants.

25. The deceased is survived by her husband and daughter and each is entitled to Rs. 40,000/-.

26. Therefore, the Loss of Consortium is enhanced to ***Rs. 40,000 x 2*** *(husband and child)* = ***Rs. 80,000/-.***

Assessing the liability of the driver of offending truck:-

27. *The Appellant/Oriental Insurance Co. Ltd. has taken a defence* that since the FIR had not been registered against the Truck Driver and the Chargesheet had also been filed only against Shri Suresh Kumar, the Cab/Tax Driver, there can be no finding in regard to the driver of the Truck

being rash and negligent and consequently, the Appellant Oriental Insurance Company which is only vicariously liable to pay the compensation, cannot be held liable.

28. The perusal of the FIR shows that it recorded the involvement of both the vehicles i.e., the offending Truck and the Cab/Taxi (Innova). Further, the Chargesheet under Section 173 of MV Act, 1988 got filed wherein also it was recorded that the Truck was parked on the road without any indicator or warning sign in a negligent manner by its Driver. Also, as per the Chargesheet the offence stood abated as the Driver of lnnova car/Suresh Kumar had expired in the accident and Driver of the Offending Truck/Chandra Yadav was *challaned* for the offence under Sections 122/177 MV Act.

29. The learned Tribunal referring to the *Kalandara* under Sections 122/177 of MV Act, 1988, observed that the testimony of PW1/Ombir Singh, coupled with the *Kalandara,* proved the *contributory negligence* on the part of the offending Truck Driver. The Chargesheet though stood abated against Shri Suresh Kumar on account of his demise in the same road accident, but the *Kalandara* got filed against the offending Truck Driver clearly reflecting his negligence in contributing towards the accident.

30. While the FIR and the subsequent Chargesheet may be relevant facts for ascertaining the rashness and negligence of the vehicles involved in the accident, but that is not a correct view for adjudicating the negligence of the vehicles involved in the accident.

31. *In the present case,* the Driver, Owner and the Insurance Company of

the Truck as well as the Owner and the Insurance Company of Cab/Taxi (Innova) have all been impleaded as the Respondents and the learned Tribunal in detail has considered the aspect of negligence of both the vehicles and has concluded that there was composite negligence of both the vehicles.

32. There is no challenge to the findings of the learned Tribunal in regard to the conclusion of rashness and negligence of both the vehicles.

33. Therefore, the contention raised on behalf of the Oriental Insurance Co. Ltd. that merely because the Chargesheet was not filed against the Truck Driver, there can be no negligence imputed in regard to the Truck, *is totally fallacious.*

34. It is pertinent to observe that the proceedings under the MV Act, 1988 for grant of compensation are essentially in the nature of Enquiry and are not bound by the findings in the criminal case. Further, the acquittal of the Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident Tribunal, as has been held in the cases of *NKV Bros (P) Ltd. v. M. Karumal Ammal*, 1980 Law Suit (SC) 141; *Delhi Transport Corporation v. Navjyot Singh*, 2015 LawSuit (Del) 1750 and *National Insurance Company Ltd. v. Sarbjit Kaur*, 2018 LawSuit (P&H) 1711.

35. Proceedings under the MV Act and under the Criminal Code, both have their own independent scope of inquiry and the negligence in the Compensation cases is essentially based on *preponderance of evidence*.

36. The Apex Court has opined in the judgment of *Mangla Ram v. The Oriental Insurance Company Ltd.*, (2018) 5 SCC 656 : AIR 2018 SC 1900

that the key-point of negligence of the driver as set up by the Claimants, is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt.

37. Therefore, there is no infirmity in the conclusion of the Tribunal in holding the Truck Driver and its Insurance Company as being liable compositely with the Cab/Taxi Driver and its Insurance Company, to pay the compensation.

Conclusion:-

38. In view of above, the compensation is, therefore, re-calculated as under: -

S. No.	Heads	Awarded by Tribunal (Rs.)	Enhanced by this Court
1.	Income of deceased	Rs. 8,918/-	**Rs. 9,862/-**
2.	Add-Future Prospects	@ 25%	@ **40%**
3.	Less- Personal Expenses of deceased	NIL *(not granted)*	**1/3**
4.	Loss of Dependency	Rs. 11,147/-	**Rs. 9204.5/-**
5.	Annual Loss of Dependency	Rs.1,33,770/-	**Rs. 1,10,454.4/-**
6.	Multiplier	17	Rs. 17 (same)
	Total Loss Of Dependency	Rs.22,74,090/- (rounded off)	**Rs. 18,77,724.8/-**
9.	Loss of Affection	Rs. 25,000/-	Rs. 25,000/- (same)
10.	Loss of Consortium	Rs. 10,000/-	**Rs. 80,000/-**

11	Funeral Expenses	Rs. 25,000/-	Rs. 25,000/- (same)
13.	**TOTAL COMPENSATION**	**Rs. 23,34,000/-**	**Rs. 20,07,724.8/- (rounded off to Rs. 20,08,000/-)**

<u>Relief:-</u>

39. The ***compensation amount in the sum of Rs. 20,08,000/- along with interest @ 9% per annum***, be deposited by the Appellant/Insurance Companies within four weeks, which shall be disbursed in terms of the Award dated 08.02.2016.

40. Accordingly, the Appeals along pending Applications are disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 6, 2024/RS