



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

% **Judgment reserved on : 15th January, 2023**
Judgment pronounced on : 1st March, 2024

+ **MAC. APP. 753/2018 & CM APPL. 9128/2019, CM APPL. 34523/2018 & CM APPL. 34525/2018**

NATIONAL INSURANCE CO. LTD Appellant
Through: **Mr. Sandeep Kumar Dubey and**
Mr. Bipin Kumar Dubey, Advs.
versus

HEMA DEVI & ORS. Respondents
Through: **Mr. Ram Singh, Adv.**

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 appellant/Insurance Company in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned order dated 25.04.2018 passed by the Presiding Officer, Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi², in petition No.314/09³ (New No.500440-16), whereby the learned Tribunal granted compensation in favour of the claimants.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the claimants that on 29.06.2005, at about 10 P.M., Sh. Bhagwat Singh aged 41 years (hereinafter referred to as the 'deceased') was standing at a bus stop at

¹ MV Act

² Tribunal



Azadpur Flyover, Delhi, when suddenly one a Motorcycle CBZ Hero Honda,⁴ bearing registration No. UP-27F-7426 (hereinafter referred to as the ‘offending vehicle’) came at a high speed, being driven in a rash and negligent manner, hit Bhagwat Singh/deceased, as a result of which, the deceased fell down on the road and sustained grievous injuries.

3. It was further mentioned in the claim petition that thereafter, one Sh. Piyush Gupta/driver⁵-cum-registered owner⁶/respondent No.1 along with one of his associates, took the deceased away from the place of accident on the pretext that they were taking him to the hospital but instead, they left him in pain at Satyawati College Flyover, Ashok Vihar, Delhi, and fled away with the offending vehicle. Thereafter, the deceased was admitted to BJRM hospital, Jahangirpuri, Delhi and from there, he was shifted to a Trauma Centre where he remained admitted till 06.07.2005 and subsequently, died on 06.07.2005 at about 1 P.M. An FIR No.439/05 under Section 279/337/304A of Indian Penal Code, 1860⁷ was registered at PS Ashok Vihar on 06.07.2005.

4. The respondent No.1, who was the driver-cum-owner of the offending vehicle, filed his written statements before the learned

³ Claim petition

⁴ Section 2(27) of MV Act: “motor cycle” means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

⁵ Section 2(9) of MV Act: “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

⁶ Section 2(30) of MV Act: “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

⁷ IPC



Tribunal wherein, he stated that he had already been discharged from the present case by the learned Tribunal due to lack of evidence and no accident was caused by him and he had been falsely implicated in the present case. *Per Contra*, the respondent No.3/National Insurance Co. Ltd. acknowledged that the offending vehicle was insured with the company *vide* policy No. 462000/31/04/6200012567, which was valid from 07.01.2005 to 06.01.2006, covering the date of the accident and the policy was in the name of Piyush Gupta/respondent No.1 but denied that any accident was caused involving the insured motorcycle.

5. Based on the pleadings, the learned Tribunal framed the following issues:

- “(1) Whether on 29.06.2005 at about 10:00 pm at bus stop Azadpur, Delhi, vehicle no. UP-27F-7426 which was being driven rashly and negligently hit the deceased and caused his death? OPP
- (2). Whether petitioners are entitled to compensation, if so, to what amount and from whom ?OPP
- (3). Relief.”

PROCEEDINGS BEFORE THE TRIBUNAL AND IMPUGNED AWARD:

6. During the course of the proceedings before the learned Tribunal, the petitioner/Hema Devi was examined as PW1 and deposed about all the relevant documents including the original death certificate (Ex.PW1/2), Election card (Ex.PW1/3), copy of the FIR and other documents. Further, she stated that the deceased was indeed hit by the offending vehicle driven by respondent No.1. It is pertinent to mention here that she was cross examined by the counsel for respondent No.2/Insurance Company wherein, she admitted that she was not an eyewitness to the said incident.



7. It is pertinent to mention here that the learned Tribunal regarding Issue No.1, observed during the proceedings that the petitioner/PW-1 was examined on 04.06.2013 and the corresponding order sheet would show that none was present for the respondent No.1/Piyush Gupta/driver-cum-owner on that date to cross examine the petitioner. Thus, the learned Tribunal held that the cross-examination of PW-1 by the respondent would be deemed to be 'nil' considering the fact that an opportunity was given to them and thereby, the testimony of PW-1 that the deceased was hit by the offending vehicle driven by him in a rash and negligent manner, remaining unrebutted and uncontroverted. The learned Tribunal also observed that in the corresponding CC No. 1801/01 dated 15.05.2008, the matter was disposed of as 'untraced' by the learned Metropolitan Magistrate (M.M.), with liberty to the investigating agency to get it revived in case any evidence is found at a later stage.

8. Further, the certified copy of the aforementioned order would reveal that one Mohd. Rafique Ansari had made a written complaint dated 10.12.2007 to the Police Chowki, THC Delhi, wherein he had specifically stated that he had seen the accused driving the offending vehicle but was threatened while he was called to identify the accused upon a notice under Section 160 Code of Criminal Procedure, 1973. It would be expedient to reproduce the relevant observations:

“Petitioner/PW1 was examined on 04.06.2013 and the corresponding order sheet dated 04.06.2013 would show that none for R1 was present on that date to cross examine her. In the said circumstances, the cross-examination of PW1 by R1 would be deemed to be nil, opportunity given. R1 in the said circumstances, shall be deemed to admit the above said testimony of PW1 to the



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effect that on 29.06.2005 at about 10:00 pm, the offending vehicle which was being driven at a high speed and in a rash and negligent manner caused the case accident by hitting the deceased while he was standing at the bus stop at Azadpur Flyover, Delhi and caused him grievous injuries due to which he subsequently expired on 06.07.2005.

The record would show that in the corresponding CC No. 1801/01 titled as Hema Devi vs Piyush.Gupta & Ors., vide order dated 15.05.2008 the matter was disposed of as 'untraced' by Id. MM with liberty to investigating agency to get it waived in case any evidence is found at any later stage. The certified copy of said order is on record which would show that one Mohd. Rafique Ansari had claimed to be an eye witness but failed to identify him during TIP and he also did not mention the circumstances under which the accident occurred. The record would however, show that the said Mohd Rafique Ansari has made a written complaint dated 10.12.2007 to Chowki Incharge, Police Post, THC Delhi, wherein he has specifically stated that he had seen the accused driving the offending motorcycle no. UP-27AF-7426 at the relevant time but he was threatened while he was called to identify the accused upon notice u/s 160 Cr. PC."

9. The learned Tribunal considered the testimony of Mohd. Rafique Ansari/PW2 as he had specifically mentioned the registration number of the offending vehicle stating that he had recorded the number. Thus, holding that the driver/Piyush Gupta was negligent in his act and that the said accident took place at the above said date, time and place, the issue No.1 was decided in favour of the petitioner/Hema Devi and against the respondents.

10. The learned Tribunal considered the age of the deceased as 41 years although the petitioner wife/Hema Devi deposed that her husband was 45 years of age. Further, the petitioner deposed that her husband was a transporter and was earning Rs.15,000/- per month.



However, there was produced no evidence on record so as to prove the said fact. Further no evidence was led with respect to the educational qualifications of the deceased. Thus, the learned Tribunal assessed the income of the deceased at Rs.3,044/- per month as per the Minimum Wages in Delhi NCR. The germane observations have been reproduced below:

“PW1 deposed that her husband was a transporter and was earning Rs.15,000/- per month, however, during cross examination as conducted on behalf of insurance co. she has clearly admitted that she did not have any books of account to show that her husband was a transporter and earned Rs. 15,000/- per month. Further, petitioners have also not proved any document regarding the education of the deceased although she deposed that her husband was 10th class pass. In the said circumstances, it would seem that the petitioners have failed to prove the monthly income and educational qualifications of the deceased.”

11. Reliance was placed on **National Insurance Co. Ltd. v. Pranay Sethi**⁸ by the learned Tribunal for computation of the income of the deceased. Considering the age of 41 years, an addition of 25% to the established income i.e., Rs. 3,044 was made. Thus, the income was calculated at Rs.3,805/-. Further, as there were five dependents of the deceased, the learned Tribunal placed reliance on **Sarla Verma v. DTC**⁹, and accordingly, 1/4th deduction towards personal and living expenses was considered.

12. To sum up, the learned Tribunal concluded its findings by holding that the insurance company/respondent No.2 had no legal defence and since the offending vehicle was insured with them, the onus to pay the compensation to the claimants/petitioners lies upon

⁸ (2017) 16 SCC 680

⁹ (2009) 6 SCC 121



them. Accordingly, the claimants were made entitled to receive a sum of Rs.5,49,500/- as compensation along with interest @ 9% from the date of filing the petition till its realization.

GROUND FOR APPEAL:

13. In the instant appeal filed under Section 173 of the MV Act, the impugned judgment dated 25.04.2018 has been assailed *inter alia* on the grounds that the learned Tribunal failed to appreciate that the FIR was lodged against an unknown vehicle and there was no eyewitness to the accident. As the vehicle could not be traced and Mohd. Rafique Ansari/PW-2 also failed to identify the date of the accident, the insurance company cannot be held liable. An objection has been raised further by the appellant in the present appeal alluding to the aspect that Mohd. Rafique Ansari/PW-2 did not appear before the learned Tribunal as a witness and the learned Tribunal relied upon his statements, which were recorded before the learned Metropolitan Magistrate. Mere disclosure of the registration number by PW-2 does not prove the involvement of the vehicle in the accident.

ANALYSIS & DECISION:

14. Having heard the learned counsels for the parties and on perusal of the record including the digitized Trial Court Record, the plea canvassed by the learned counsel for the appellant/insurance company challenging the factum of the accident, cannot be sustained in law. Indeed, PW-1 was not an eyewitness to the accident, however, there is no gainsaying that the deceased was under medical treatment and remained hospitalised till 06.07.2005 and it is, but natural that he



disclosed all the facts concerning the accident to his wife (PW-1). The testimony of PW-1 in the affidavit filed in evidence as to the manner in which the accident occurred and the way her husband was removed from the place of occurrence and later on thrown at some place by the driver of the offending vehicle, are circumstances leading to the death of the deceased, which become relevant under Section 32(1)¹⁰ of the Indian Evidence Act, 1872. Further, it is borne out from the record that an FIR bearing No. 439/2005 under Section 279/337/304-A of the IPC was lodged soon after the death of the deceased and the possibility that PW-1 would falsely implicate any vehicle in the accident belies common sense and logic. There was no apparent motive in the mind of PW-1 so as to falsely implicate the driver of the offending vehicle. Learned Tribunal rightly concluded that the version of the claimant/wife with regard to the incident was not challenged in the cross-examination by the driver of the offending vehicle and a half-hearted attempt was made by the appellant/insurance company to put some suggestions here and there, which served no purpose.

15. Secondly, although the eyewitness Mohd. Rafique Ansari failed to identify the offender motorcyclist; however, his statement was categorical to the effect that the accident had been caused by a motorcycle bearing registration No. UP-27AF-7426. The witness also went on to state to the police that he was threatened by the accused

¹⁰ 32(1) **when it relates to cause of death.**- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.



persons not to identify them during the Test Identification Parade or else, there would be harm to his life. There was no apparent reason for an independent person like Mohd. Rafique Ansari to come forward and depose falsely so as to implicate the offending vehicle in the accident. Therefore, it does not lie in the mouth of the appellant/insurance company to dispute the factum of the accident, resulting in the death of the deceased, having been caused by the offending motorcycle insured with them.

16. As regards the quantum of compensation, the learned Tribunal found that PW-1 had failed to substantiate that her husband was working as a transporter and earning Rs. 15,000/- per month and therefore, the learned Tribunal had proceeded to reckon the minimum wages for a skilled person as the notional income in Delhi @ Rs. 3044/- per month. It is evident from the record that the deceased was having a wife and four minor children. Although no evidence was led so as to substantiate the income of the deceased, it would be fair to assume that he was maintaining a large family and he would have been earning at least Rs. 10,000/- per month at the age of 41 years. The scales of the minimum wages have no rational connection with the age of the worker concerned and same is only taken as an indicator so as to assume the notional income, but there can be no hard-and-fast rule that such scales of minimum wages would be applicable to every workman irrespective of his/her age. It is but common sense that with age and experience, even a workman starts getting more than what is prescribed as the 'minimum wages' by the law.



17. In view of the aforesaid facts, the annual income of the deceased is assessed @ Rs. 1,20,000/-. Accordingly, an addition of 25% to the actual salary/income shall be made towards loss of future prospects in terms of the decision in *Pranay Sethi (supra)*, which brings the income to Rs. 1,50,000/-. Further, after deducting 1/4th towards personal and living expenses, the figure comes to Rs. 1,12,500/-. Considering the age of the deceased, which was 41 years at the time of the accident, the multiplier of '14' has been adopted after taking into account the decision in *Sarla Verma (supra)*. Thus, the total financial loss of dependency comes to Rs. 15,75,000/- (Rupees Fifteen Lacs Seventy Five Thousand only). We further add Rs. 40,000/- to each of the five dependents towards loss of love and affection and loss of consortium, which comes to Rs. 2,00,000/-. Further, considering the decision in *Pranay Sethi (supra)*, Rs. 15,000/- each is awarded towards the loss of estate and funeral expenses. Accordingly, the total compensation is arrived at Rs. 18,05,000/- (Eighteen Lacs Five Thousand Only) which is shown as under:

S. No.	Head	Compensation Awarded
1.	Income	Rs.1,20,000/- per annum (10,000 x 12)
2.	Addition towards Future Prospects	Rs.30,000/- (i.e. 25% addition to the income; 1,50,000/-)
3.	1/4 th Deduction towards personal and living expenses	Rs.1,12,500/- (1,50,000 – 37,500)
4.	Multiplier	14



	Total Loss of dependency	Rs.15,75,000/- (1,12,500 x 14)
5.	Funeral expenses	Rs.15,000/-
6.	Loss of Estate	Rs.15,000/-
7.	Loss of love and affection and loss of consortium.	Rs.2,00,000/-
	Total	Rs.18,05,000/-

18. In view of the foregoing discussion, I find no merit in the present appeal filed by the appellant/insurance company. The same is accordingly dismissed.

19. The pending applications also stand disposed of.

20. However, this Court, *suo moto*, for the aforesaid reasons, decides to enhance the compensation in view of the decisions in **Vimla Devi v. National Insurance Company Limited**¹¹ and **Ningamma v. United India Insurance Company Limited**¹², which comes to **Rs. 18,05,000/-**, which shall be payable @ 9% interest from the date of filing of the petition till realization.

DHARMESH SHARMA, J.

MARCH 01, 2024

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¹¹ (2019) 2 SCC 186

¹² (2009) 13 SCC 710