



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

% **Judgment reserved on : 16 April 2024**
Judgment pronounced on : 31 May 2024

+ **MAC.APP. 446/2015**

ORIENTAL INSURANCE CO LTD Appellant
Through: **Mr. Pradeep Gaur, Adv.**

versus

KASTURI LAL GUPTA & ORS Respondents
Through: **Mr. U.M. Tripathi, Ms. Nisha
Garg & Mr. Amit Kumar,
Adv. for R1 to R3.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 30.03.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi², whereby the claim petition filed by the respondents No. 1 to 3/claimants under Section 166 read with Section 140 of the M.V. Act, was allowed.

2. Shorn of unnecessary details, Rishi Gupta, son of respondent No.1, lost his life in a motor accident that occurred on 15.02.2008, involving a TATA 709 bearing registration No. DL-1LE-2439 (*hereinafter referred to as the 'offending vehicle'*), which was being driven by respondent No. 1/Mohd. Rehmat Shah (respondent No.4 in

¹ M. V. Act



the present appeal). The claimants being the parents of the deceased, filed a claim petition under Section 166 and 140 of the M.V. Act, but during the course of pendency of the matter, the mother of the deceased expired and in terms of the order dated 05.05.2009, the son and the daughter of the deceased were impleaded in her place and accordingly, an Amended Memo of Parties was filed.

3. While the factum of the accident as also the culpable rashness and negligence on the part of the driver of the offending vehicle has not been assailed, the appellant/Insurance Company has aggrieved that the total amount of compensation awarded to the claimants i.e. Rs. 19,87,500/- with interest @ 9% per annum from the date of filing of the petition i.e. 28.02.2008 till date of actual deposit or realization to the claimants, is on the excessive side, arbitrary and completely contrary to the legal parameters.

4. It is urged by the learned counsel for the appellant that the monthly income of the deceased, who probably had a start-up business, was hardly Rs. 8,040/- per month, which was wrongly assumed to be Rs. 12,854/- per month. It was further averred that although 1/2 was deducted towards personal use and living expenses of the deceased, the claimant/father was not financially dependent upon the deceased and therefore, the multiplier applicable to the age of the father should have been reckoned by the learned Tribunal.

5. *Per contra*, learned counsel for the respondents No. 1 to 3/claimants pointed out that the evidence was brought on the record that the deceased was a promising boy, who was in talks with Bikano

² Tribunal



Chat Café and in this regard, CW-2/Deepak Gupta was also examined and he stated that before the death of Rishi Gupta, the said business was a booming for about two months, but abruptly, came to an end due to the death of the deceased.

ANALYSIS AND DECISION:

6. Having heard the learned counsels for the parties and on perusal of the record including the Trial Court Record, this Court is of the opinion that the impugned judgment-cum-award with regard to the quantum of compensation awarded to the claimants, requires interference and has to be modified.

7. It would be apposite to refer to the findings recorded by the learned Tribunal after holding the claimants entitled to compensation, which read as under:-

“10. **Issue No. 4:-** The onus to prove this issue was upon the petitioners. The petitioners have examined PW-1 Shri Kasturi Lai Gupta, who filed his evidence by way of affidavit which is Ex. PW-1/A. He was also cross examined by the respondents. In the affidavit it is mentioned that deceased Rishi was authorized Franchisee for Bikano Chat Cafe and was running its business in the name of M/s. Madhushree Foods before his death. It is also mentioned that deceased was earning about Rs. 9000/- after deduction of all business expenses and was contributing towards his household expenses. In cross examination PW-1 stated that his son was pursuing graduation degree in Commerce from Open University. Date of birth certificate of deceased is Ex. PW-1/5 according to which his date of birth is 21.10.1979. Deceased was about 28 years old at the time of accident. PW-3 Shri Ashish Gupta, Area Manager, Bikanerwala Foods Pvt. Ltd, was also examined on behalf of petitioners who stated that Shri Rishi Gupta was proprietor of Madhushree Foods. He stated that in their business the profit margin is about 20-25% of the turnover and further stated that as per their record the business of the deceased was progressive as the business was rising month by month. In cross examination PW-3 deposed that the Franchisee contract was given to the deceased by their company on 15.12.2007. He deposed



that deceased was not the employee of Bikanerwala but a Franchisee. CW-2 Shri Deepak Gupta, Senior Account Executive, Bikanerwala Foods Pvt. Ltd, was also examined who deposed in chief examination that Franchisee given to M/s. Madhushree Foods started from 15.12.2007 and continued till 31.3.2008. He further deposed that in Franchisee business concerning Bikanerwala Foods Pvt. Ltd., they Sell goods to their Franchisees at a discounted rate of 20% approximately from the MRP written on the respective article. He further deposed that during the continuation of the Franchisee of M/s. Madhushree Foods, a total distributor value (i.e. amount received by them from M/s, Madhushree Foods) of goods sold was Rs, 1,94,757/-. He stated that Rs. 1,94,757/- is the distributor value and the MRP would be about 20% above this value, which the Franchisees sell.

11. The petitioners have also relied upon certain documents including the various retail invoices of Bikanerwala Foods Pvt. Ltd, in the name of Madhushree Foods. The income tax return acknowledgement for the assessment year 2006-2007 concerning the previous year 2005-2006 in the name of Rishi Kumar Gupta S/o Shri Kasturi Lai Gupta is also relied upon by the petitioners. It is SARAL Form. According to it the total income is reflected as Rs. 96,477/- and the net tax payable is Nil. The monthly income of deceased comes out to Rs, 96,477/12 i.e. Rs, 8040/- approximately. During arguments the counsel for the petitioners argued that the income of the deceased just before the death was Rs. 12,000/- to Rs. 13,000/- per month approximately. The 'Franchisee agreement continued for about 3 months i.e. from 15.12.2007 to 31.3.2008. Deceased Rishi expired on 15.2.2008. It means that deceased was in business terms with Bikanerwala for only two months during his life time. The 20% margin calculated on the sum of Rs, 1,94,757/- comes out to be Rs. 38,951.40 (say Rs. 38,952/-). As per the deposition of CW-2, the sum of Rs. 1,94,757/- was the total distributor value during the continuation of Franchisee of M/s. Madhushree Foods. It continued for three months. Deceased did business for two months. Two-third of the margin calculated above comes to Rs. 25,708/- approximately. Therefore, one month's margin come to Rs. 12,854/-. The counsel for petitioners also relied upon the judgement of the Hon'ble Supreme Court of India titled as **Rajesh & Ors. Vs. Rajbir Singh & Ors. cited as (2013) 9 SCC 54**. The counsel for insurance company submitted that income tax return may be considered which reflects less monthly income of deceased. The certificate of High School in the name of Rishi Kumar is also on record which mentions his date of birth as 21.10.1979. In my considered opinion and considering the totality of facts and circumstances and the evidence on record, a sum of



Rs. 12,500/- per month is taken to be monthly income of the deceased at the time of accident in question. Now the calculations are to be made by taking the said monthly income into consideration. The multiplier of 17 is attracted in this case as deceased was in the age group of 26 to 30 years at the time of accident. Moreover, half of the income is to be deducted towards personal expenses of the deceased since he was bachelor at the time of accident. Moreover, future prospects of 50% are to be taken into account since the deceased was below the age of 40 years at the time of accident. The income of deceased would have certainly increased by the passage of time had he been alive. Now monthly income is Rs. 12,500/-. 50% future prospects makes it Rs.12,500 + Rs. 6250 = Rs. 18,750/- per month. The annual income comes out to be Rs. 18750 X12 = Rs. 2,25,000/-. Now $\frac{1}{2}$ deduction towards personal expenses of the deceased comes to Rs. 2,25,000/2= Rs. 1,12,500/- (This is annual deduction). Now the total compensation is to be calculated after applying the multiplier of 17. it comes to Rs. 1,12,500 X 17 = **Rs. 19,12,500/- (Rupees Nineteen Lacs Twelve Thousand and Five Hundred Only).**

Since deceased was bachelor at the time of accident, therefore, no compensation is to be awarded towards loss of consortium. Rs. 25,000/- is awarded towards funeral expenses and Rs. 50,000/- only is awarded towards loss of love and affection. Now the total compensation awarded is Rs. 19,12,500 + Rs. 25,000 + Rs. 50,000= Rs. 19,87,500/- (Rupees Nineteen Lacs Eighty Seven Thousand and Five Hundred only).

Since the offending vehicle was insured on the date of accident and there was no breach of terms and conditions of the insurance policy, therefore, the liability to pay the award amount to the petitioners is of R-3 i.e. insurance company. The present issue stands disposed off accordingly.

12. Issue No. 5. Relief:- In view of my findings given on issue no. 1 to 4 as detailed above I award a compensation of **Rs. 19,87,500/- (Rupees Nineteen Lacs Eighty Seven Thousand and Five Hundred only) including interim award** (date of interim award is 27.08.2008), alongwith simple interest (a) 9% per annum from the date of filing of the present petition i.e. 28.02.2008 till the date of actual deposit of the said amount, in favour of the petitioners and against the respondents. The offending vehicle was insured on the date of accident, hence, R-3 i.e. insurance company is directed to deposit the award amount with up to date interest @9% per annum as detailed above, with n 30 days from today, It is further ordered that in case of failure of the insurance company to deposit the award amount with interest within 30 days from today, simple,



interest @12% per annum shall be paid by the insurance company for the period of delay.”

8. A conspectus of the evidence brought by the parties on the record *vis-a-vis* the reasoning rendered by the learned Tribunal would go on to show that the deceased was 28 years of age at the time of his death and was the proprietor of M/s. Madhushree Foods and there is nothing to discern that PW-3/Sh. Ashish Gupta, Area Manager, Bikanerwala Foods Pvt. Ltd., had any reason to depose falsely in favour of the claimants inasmuch as he deposed that a Franchisee Contract had been executed by their company in favour of the aforesaid firm of the deceased on 15.12.2007 and his testimony was corroborated by CW-2/ Sh. Deepak Gupta, Senior Account Executive, Bikanerwala Foods Pvt. Ltd. to the effect that the Franchisee Agreement continued till 31.03.2008.

9. It is in the testimony of PW-3/Ashish Gupta that the profit margin in such business was about 20-25% of the turnover and the said aspect was corroborated by CW-2/Deepak Gupta to the effect that during the relevant time, the total turnover was Rs. 1,94,757/-, which had left a profit margin of 20% to the Franchisee Beneficiary. The Income Tax Returns produced on the record for the year 2005-2006 and 2006-2007 would show that the monthly income of the deceased was arrived at Rs. 96,477/12, which comes to Rs. 8,040/- per month.

10. To my mind, although, it appears that the deceased was a promising boy having just commenced a new start-up business and probably, had good prospectus of expanding his business, however, to reckon 20% margin over and above the monthly income/earnings and



thereby, reckoning the same at Rs. 12,854/- per month, cannot be sustained in law. Thus, having regard to the fact that the future prospects @ 50% was also reckoned by the learned Tribunal, therefore, reckoning the monthly income/earnings of the deceased @ Rs. 8,500/- per month and adding 50% towards future prospects, the annual notional income comes to Rs. 1,53,000/-. Further, 1/2 is to be deducted towards personal use and living expenses of the deceased. Lastly, applying the multiplier of '17' as per the decision in the case of **Sarla Verma v. DTC**³, the total loss of financial dependency comes to Rs. 13,00,500/-.

11. Further, in view of the decision in the case of **National Insurance Company Ltd. v. Pranay Sethi**⁴, Rs. 15,000/- each is to be awarded towards funeral expenses and loss of estate besides Rs. 40,000/- to each of the claimants towards loss of consortium. Accordingly, the total amount of compensation is tabulated hereunder:-

S. No.	HEADS	AMOUNT
1.	Income	Rs. 1,02,000/- per annum (8,500 x 12)
2.	Addition towards Future Prospects	Rs. 51,000 (i.e. 50% of the income)
	Annual notional income	Rs. 1,53,000/-
3.	1/2 nd deducted towards personal use and living expenses	Rs. 76,500/- (1,53,000 – 76,500)
4.	Multiplier	17
	Total loss of dependency	Rs. 13,00,500/-

³ (2009) 6 SCC 121

⁴ (2017) 16 SCC 680



5.	Funeral expenses	Rs. 15,000/-
6.	Loss of estate	Rs. 15,000/-
7.	Loss of consortium	Rs. 1,20,000/- (40,000 x 3)
	Total	Rs. 14,50,500/-

12. Accordingly, the total compensation comes to Rs. 14,50,500/- (Rupees Fourteen Lacs Fifty Thousand Five Hundred Only), which shall be awarded to the respondents No.1 to 3/claimants @ 7.5%, which should be a nominal rate of interest from the date of filing of the petition i.e. 28.02.2008 till realization.

13. Further, in view of the fact that the mother of the deceased died during the course of the proceedings and she was entitled to claim the compensation as on the date of institution of the present complaint, the claimant/father shall be entitled to 1/2nd of the total amount of compensation plus 1/3rd from the amount of compensation awarded to the deceased mother. The remaining 1/3rd each from the share of the deceased mother, is hereby awarded to the brother and sister of the deceased.

14. The amount of Rs. 25,000/- towards the statutory deposit for filing of the present appeal be returned to the appellant/insurance company.

15. The aforesaid appeal is allowed and disposed of accordingly.

DHARMESH SHARMA, J.

MAY 31, 2024/sp