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

% ***Date of decision: 22nd October, 2024***

\+ **MAC.APP. 607/2017**

NEELAM DUBEY & ORS .....Appellants

Through: Mr. Pankaj Gupta, Advocate.

versus

ASFAA ALAM & ORS (NATIONAL INS CO LTD) ....Respondents

Through: Ms. Seema Gulta, Advocate for R-3/Insurance Company through VC.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. The Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the Appellant-Claimants for enhancement of compensation amount granted *vide* Order dated 10.03.2017 by the learned Tribunal.

2. It is submitted that the deceased-Shri Krishan Kumar Dubey met with an accident on 04.07.2014 at about 09:50 A.M. while travelling on his bicycle which was hit by Maruti Eeco Car bearing No. DL 1 LS 9164 being driven by the respondent No.1-Asfaa Alam. The injuries sustained by deceased-Shri Krishan Kumar Dubey proved to be fatal and was declared dead in the hospital. The FIR No. 627/2014 under Sections 279/304A IPC was registered at Police Station New Usmanpur, Delhi against the offending vehicle/Maruti Eeco.

3. It is submitted that the deceased-Shri Krishan Kumar Dubey was 39

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years old and had studied upto Class VI. He was working as a Salesman of Motor Parts at G.B. Road Market, Delhi and earning Rs. 15,000/- per month.

4. The learned Tribunal after considering the evidence, granted compensation of Rs. 13,12,804.00/- along with interest @ 9% from the date of filing of the Claim Petition till its realisation.

5. The impugned Award dated 10.03.2017 has been challenged on the following grounds: -

(i) The date of birth of the deceased-Shri Krishan Kumar Dubey as 01.07.1975, as proved by PW1/Smt. Neelam Dubey, wife of the deceased-Shri Krishan Kumar Dubey. He was 39 years old at the time of his demise. The multiplier of 15 should have been applied instead of 14.

(ii) Minimum Wages should have been taken as per Non-Matriculate which is Rs. 9438/- per month instead of taking Rs. 8554/- per month for unskilled worker, as the deceased-Shri Krishan Kumar Dubey had studied upto Class VI and was working as a Salesman of Motor Parts at G.B. Road Market, Delhi.

(iii) No future prospects have been granted while calculating the compensation.

(iv) The loss of consortium of Rs. 1,00,000/- has been granted, when, in fact, there are four Claimants who are each entitled to Rs. 40,000/-.

6. **Learned counsel for the respondent No. 3-Insurance Company** has contested the present Appeal by submitting that, in fact, as per the Aadhar Card of deceased-Shri Krishan Kumar Dubey, his age was 42 years and the multiplier of 14 has been rightly applied while giving the Award.

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7. It is further contended that the Minimum Wages of the unskilled worker have been rightly taken into consideration by the learned Tribunal for calculating the compensation.

8. So far as the future prospects are concerned, it is submitted on behalf of the Insurance Company that the same may be granted in accordance with law.

9. It is also submitted that the loss of consortium in the sum of Rs. 1,00,000/- has been rightly granted by the learned Tribunal and does not warrant any modification.

10. **Submissions heard.**

11. The learned Tribunal has awarded a compensation of Rs.13,12,804/- which has been calculated as under:

<u>Pecuniary Damages</u>:

1.	Loss of Dependency	:	Rs.10,77,804/-

<u>Non Pecuniary Damages</u>:

1.	Loss of love and affection	:	Rs.1,00,000/-
2.	Loss of Consortium	:	Rs,1,00,000/-
3.	Loss of Estate	:	Rs.10,000/-
4.	Funeral Expenses	:	Rs.25,000/-
	TOTAL COMPENSATION	:	Rs.13,12,804/-

12. ***The first challenge*** to the Award is that the Multiplier should have been 15 and not 14. PW1 Smt. Neelam Dubey wife of the deceased Krishna Kumar Dubey had deposed that the date of birth of the deceased was 01.07.1975, which establishes that the age of the deceased was 39 years at the time of demise; therefore, multiplier of 15 instead of 14 is applicable.

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13. The learned Tribunal has referred to the School Certificate of the deceased Ex.PW1/2 which reflecting that the deceased had studied upto Class Sixth and his date of birth was reflected as 01.07.1975. However, the learned Tribunal observed that there was no evidence led on behalf of PW1 to explain the basis on which the date of birth was not indicated in the School Certificate. Instead, the learned Tribunal chose to Election Identity Card/Aadhar Card, according to which the age of the deceased was 42 years at the time of the accident.

14. As held by the apex court in *Saroj and Ors. vs. IFFCO-TOKIO General Insurance Co. and Ors.,* 2024 SCC OnLine SC 3038, Aadhar is not a definitive or conclusive proof of age or date of birth. The Apex Court held that there was no error in the Tribunal's determination of age based on the School Leaving Certificate.

15. In the present case, there was no reason for the learned Tribunal to have disbelieved the School Certificate that was proved by the wife, which holds much more authenticity than the Election Identity Card which was essentially prepared on the information provided by the Card holder. Since there was School Certificate reflecting the date of birth as 01.07.1975, it should have been accepted.

16. The age of the deceased at the time of his demise is held to be proved to be 39 years. The learned Tribunal fell in error in taking the age of the deceased as 42 years. *Consequently, the multiplier that becomes applicable in the present case is 15 and not 14, as has been applied by the learned Tribunal.*

17. ***The second ground of challenge*** is that as per the School Certificate Ex.PW1/2 the deceased had studied up to Class Sixth and therefore,

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Minimum Wages should have been taken for a *non-matriculate* which was Rs.9,438/- per month and not the Minimum Wages for an unskilled worker which is Rs.8,554/- per month.

18. However, this argument is without merit because *non-matriculate* means "*a person who had taken admission in Class Tenth, but was unable to clear the examination*" and not who had studied till any class before Class Tenth, cannot be termed as *Non-matriculate*. Therefore, merely because the deceased had studied up to Class Sixth, would not make him a non-matriculate or entitle to the Minimum Wages for a *non-matriculate*. The income of the deceased as per Minimum Wages as Rs.8,554/- per month for an Unskilled Worker, has been rightly taken by the learned Tribunal.

19. Further, PW1, petitioner had deposed that the deceased was working as a Salesman of motor partes at G.B. Road Market, Delhi. *Firstly*, there was no cogent evidence led on behalf of the claimants to prove that the deceased was working as a Salesman. *Secondly*, the exact nature of his job as a Salesman has not been defined. Moreover, there is no evidence that that the deceased had any special skills to be qualified as a Salesman. Rather, as per his School Certificate, he had studied upto Class Sixth. Therefore, his wages could not have been taken as that of a skilled worker.

20. ***The third aspect*** which has been challenged is that *no future prospects* have been granted while calculating the compensation. The deceased was 39 years old. In the case of *National Insurance Company vs. Pranay Sethi* [(2017) 16 SCC 680], it was held that a person who has died at the age of 39 years is entitled to future prospectus @ 40% of his income, which is liable to be added in his income. Since there were four dependents/claimants, 1/4th of the income has been rightly deducted towards

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personal expenses while calculating the compensation.

21. Therefore, the **Total loss of Dependency** of the deceased comes to Rs. 8,554 + Rs. 3,421 (40% of 8554) X 12 X 15 X ¾ = **Rs.16,16,625/-.**

22. ***The last ground*** of challenge is that *the Loss of Consortium has been granted to the wife in the sum of Rs.1,00,000/-*. It is claimed that in view of the judgment of *National Insurance Company vs. Pranay Sethi* (supra), each claimant was entitled to Rs.40,000/- and, therefore, this amount be enhanced to Rs.1,60,000/-.

23. This argument again is not tenable as in addition to Loss of Consortium in the sum of Rs.1,00,000/-, there is also Rs.1,00,000/- granted towards Loss of Love and Affection. In the case of *United India Insurance Co. Ltd. vs. Satinder Kaur,* 2020 SCC OnLine SC 410, it was observed that the judgment of *Pranay Sethi* (Supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. Thus, the Apex Court after taking note of the fact that several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection, directed the Tribunals and High Courts to award compensation only for loss of consortium, which is a legitimate conventional head.

24. Thus, loss of love and affection is encompassed in loss of consortium. In the present case, the claimants are the mother, wife and two minor children of the deceased. Considering that it is an accident of 2014 and the total compensation on the ground of Loss of Affection/Consortium is **Rs. 2,00,000/-,** the sufficient compensation has already been granted under this head and no further enhancement is warranted.

25. To conclude, the total compensation now awarded is as under:

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Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court
PECUNIARY LOSS			
1.	Loss of Dependency	10,77,804/-	**16,16,625/-**
NON-PECUNIARY LOSS			
2.	Loss of Love & Affection/ Consortium	2,00,000/-	2,00,000/- (Same)
3.	Loss of Estate	10,000/-	10,000/- (Same)
4.	Funeral Expenses	25,000/-	25,000/- (Same)
TOTAL COMPENSATION		Rs.13,12,804/-	**Rs.18,51,625/-**

26. The total compensation payable to the claimants is thus, enhanced to Rs.18,51,625/- along with interest @ 9% per annum, as per the terms as detailed in the Award of the learned Tribunal dated 10.03.2017.

27. The Appeal is allowed and is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 22, 2024
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