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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 26th November, 2024***+ **MAC.APP. 617/2017, CM APPL. 25484/2017 (stay)**

United India Insurance Co. Ltd.

.....Appellant

Through: Mr. Pankaj Seth and Ms. Shivani Mangla, Advocates.

versus

1. Smt. Sharda ...Respondent No. 1

2. Miss Harenderi ...Respondent No.2

3. BhawanaRespondent No.3

4. Sh. Rajender SinghRespondent No. 4

5. Sh. Baljinder AroraRespondent No. 5

6. Smt. PinkiRespondent No. 6

Through: Mr. Sagar, Advocate for R1, R2 & R3.

Mr. S.N. Parashar, Advocate for R3 & R6.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****MAC.APP. 617/2017**1. The present Appeal under Section 173 of the *Motor Vehicles Act*,



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1988 (hereinafter 'M.V.Act') has been filed on behalf of the Appellant/Insurance Company against the Award dated 03.05.2017 granting compensation in the sum of Rs.24,13,288/- along with interest @9% p.a., on account of demise of Mr. Chander Pal Singh, in a road accident on 23.01.2017.

2. *Learned counsel on behalf of the Insurance Company* has challenged the Award on the following grounds:-

- (i) Petition under Section 166 was not maintainable as *negligence of driver and involvement of offending vehicle is not established*;
- (ii) that the Petition was filed by the mother, unmarried sister and the minor child of the deceased while the wife, who is estranged, was impleaded as a Respondent and cannot be considered as a dependant;
- (iii) that the unmarried sister and the estranged wife cannot be considered as a Defendant, therefore, the deduction should have made of 1/3rd and not 1/4th looking at the number of Defendants;
- (iv) that 40% *Future Prospects* should have been granted, which has been in fact, calculated by taking it as 50%;
- (v) that the compensation under *Non-Pecuniary Heads*, is excessive and needs to be reduced;
- (vi) that the interest @9% is also excessive; and .
- (vii) that the cost of Rs.10,000/- imposed in case the award amount is not deposited within 30 days, is harsh.

3. Further, the Appellant submits that the Ld. MACT has proceeded with



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assumption that since M.V. Act is a socio-beneficial legislation, proof of negligence can be dispensed with and Claims can be decide without sufficient proof. Reliance is placed on Minu B. Mehta v. Balakrishna Ramachandra Nayan (1977) 2 SCC 441 to state that proof of negligence remains the lynchpin to recover compensation. Further reliance is placed on United India Insurance Co. Ltd. v. Meena Variyal & Ors. (2007) 5 SCC 428.

4. *Learned counsel on behalf of the Respondents/Claimants*, submits that even though the sister was unmarried, but she was dependent upon the deceased and has got recently married. The deductions have been made, in accordance with law. Insofar as, the Future Prospects are concerned, they may be calculated, in accordance with law. Also the compensation under Non-Pecuniary Heads, may be given, in accordance with law.

5. **Submissions heard.**

Involvement of Offending Vehicle and Negligence of Driver: -

6. *Briefly Stated*, On 23.01.2017 a bus No. DL 1 PB 7399 coming from Bhopura Border side being driven in a rash and negligent manner struck against the pedestrian near the end point of Loni flyover as a result of which the Deceased/Chander Pal Singh fell down on the road and sustained grievous and fatal injuries. The MLC of injured was prepared at GTB Hospital and patient was declared '*brought dead*'. An FIR was registered *vide* FIR No. 33/17 u/s 279/304A of *Indian Penal Code, 1860* at PS Gokal Puri.

7. Petition under Section 166 and 140 of the M.V. Act was subsequently filed for grant of compensation by the mother, unmarried sister and the minor child of the deceased and the wife, who is estranged, was impleaded



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as a Respondent. The DAR was also filed before the Ld. Tribunal.

8. The Ld. Tribunal *vide* impugned Order dated 03.05.2017 passed an Award granting a sum of Rs. 24,13,288/- along with interest @ 9% per annum in favour of Respondent No. 1 to 3 and 6. Further, the Ld. Tribunal directed the Appellant/Insurance Company to deposit the Award amount within 30 days failing which cost of Rs. 10,000/- was imposed.

9. *Firstly*, The Appellant/Insurance Company has challenged the Award on the ground that the Claim Petition under Section 166 of the M.V. Act is not maintainable as it was not established that the accident was caused due to rash and negligent driving of the offending vehicle and that the Ld. Tribunal did not conduct an inquiry in the factum of negligence.

10. The Ld. Tribunal in the Impugned Award while dealing with maintainability of the claim Petition under Section 166 M.V. Act, has categorically observed that the Mother of deceased was examined as PW1 and even during cross-examination there was nothing on record to disbelieve her testimony. Further, it was observed that testimony of the Respondent Witness did not rebut the testimony of Petitioner Witness to deny the Claim of the petitioner. Additionally, no witness was produced by the respondents to prove as to how accident occurred to the negligence of the deceased.

11. Ld. Tribunal made reference to United India Insurance Company Ltd. v. Deepak Goel & Ors. 2014 (2) T.A.C. 846 (Del.) wherein it was held that where the FIR is lodged and consequently the Chargesheet is filed and there is no defence available from the other side then DAR, FIR, Site plan etc. is sufficient to establish the fact that the driver of the offending vehicle was negligent. After due consideration of the DAR Ex. PW 1/12 including the FIR, Site Plan etc. *and material on record, the Ld. Tribunal has thus,*



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rightly concluded that the negligence of the driver of the Offending vehicle is established. Therefore, this ground is not made out.

Loss of Dependency :-

Deduction towards Personal and living Expenses :-

12. The *first ground* on which the Impugned Award has been challenged is that the unmarried sister/Respondent No. 2 and the separated wife/Respondent No.6 cannot be considered as a Respondents/Claimants as they are ***not financially dependent*** upon the deceased and only Respondent Nos. 1 and 3 can be considered as dependents, therefore, the deduction towards personal expenses of the deceased should have made of *1/3rd and not 1/4th*.

13. In the Impugned Award, the Ld. Tribunal observed that before the Tribunal Petitioner No. 1 was the mother of the deceased, Petitioner No. 2 was the sister of the deceased and the Petitioner No. 3 was the daughter of deceased who were all dependent on the Deceased. It was further observed that the Respondent No. 4 was the wife of the deceased/Chander Pal Singh. While the first motion of Divorce petition was allowed; however, the *second motion* was not filed and no divorce was given by the deceased to Respondent No. 4 making her dependent upon the deceased. ***The Ld. Tribunal has correctly made the deductions which does not warrant any interference.***

Future Prospects: -

14. The *Second Ground* on which the Impugned Award has been challenged is that that ***40% Future Prospects*** should have been granted, which has been in fact, calculated by taking it as 50%.

15. Notably, the constitutional Apex Court in National Insurance Co. Ltd. v. Pranay Sethi AIR 2017 SC 5157 (5-judge) has held that in case the



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deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the awarded where the deceased was below the age of 40 years. In the present case, the deceased was about 33 years on the date of accident and an addition of 40% is liable to be made instead of 50% as per Pranay Sethi (supra). Therefore, the Awarded is accordingly modified as follows:

- i. Rs. 9,668/- (monthly income) + Rs. 3,867.2 (i.e. 40%) = Rs. 13,535.2
- ii. $\frac{1}{4}^{\text{th}}$ Personal Expenses = $\frac{1}{4} \times 13,535.2 = 3,383.8/-$
- iii. **Therefore, total loss of dependency is calculated =**
 $(13,535.2 - 3,383.8) \times 12 \times 16$ (multiplier) = **Rs. 19,49,222.4/-**

Non-Pecuniary Heads :-

16. The *third ground* on which the Appellant/Insurance Company has challenged the Award is that that the compensation under ***Non-Pecuniary Heads*** i.e. Funeral Expenses, Loss of Love and Affection, Loss of Consortium and Loss of Estate, is excessive and needs to be reduced as per Pranay Sethi (Supra) wherein it is held that Reasonable figures on loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively subject to enhancement at the rate of 10% every three years.

17. The Ld. Tribunal awarded the non-pecuniary heads as follows:

<i>Love and Affection</i>	<i>Rs. 1,00,000/-</i>
<i>Loss of Consortium</i>	<i>Rs. 1,00,000/-</i>
<i>Loss of Estate</i>	<i>Rs. 1,00,000/-</i>
<i>Funeral Expenses</i>	<i>Rs. 25,000/-</i>

18. Therefore, the Ld. Tribunal has awarded the amounts under the non-



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pecuniary heads on the higher side and are modified as per the law laid down in Pranay Sethi (Supra) as following:

<i>Loss of Consortium (including Love and Affection)</i>	<i>Rs. 48,400/- (Including 10% increase every 3 year) per dependant = 48,400 X 4 = Rs. 1,93,600</i>
<i>Loss of Estate</i>	<i>Rs. 18,150/- (Including 10% increase every 3 year)</i>
<i>Funeral Expenses</i>	<i>Rs. 18,150/- (Including 10% increase every 3 year)</i>

Rate of Interest :-

19. The *fourth ground* agitated by the Appellant/Insurance Company to challenge the Award is that the ***Interest at the rate of 9% per annum*** is excessive for which reliance is placed on Amrit Bhanu Shali v. National Insurance Co. Ltd. 2012 (6) SCALE 1. Admittedly, the accident took place in 2017. Considering the prevailing rate of interest at that time, rate of interest at 9% p.a. from the date of filing the petition till the Date of payment is correctly granted by the Ld. Tribunal and warrants no interference.

20. The Appellant/Insurance Company is further aggrieved ***by the cost of Rs.10,000/-*** imposed in case the Award amount is not deposited within 30 days on the ground of it being harsh. The Ld. Tribunal referred to the judgment of this Court in New India Assurance Company Ltd. v. Kashmiri Lal 2007 ACJ 688 wherein directions were issued to all Motor Accidents Claims tribunal *inter alia* for imposition of Cost on Insurance Company in lieu of non-deposit of Award amount. In light of the facts and circumstances of the case, the direction of the Ld. Tribunal warrants no interference.



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**Relief:-**

21. In light of the above discussion, the compensation amount awarded to the Claimant is modified as under:

Sl. No.	Heads	Amount of Compensation awarded by the Tribunal	Amount of Compensation awarded/modified by this Court
1.	Loss of Dependency	Rs. 20,88,288/-	Rs. 19,49,222/-
2.	Loss of Consortium	Rs. 1,00,000/-	Rs. 1,93,600
3.	Love and Affection	Rs. 1,00,000/-	-
4.	Loss of Estate	Rs. 1,00,000/-	Rs. 18,150/-
5.	Funeral Expenses	Rs. 25,000/-	Rs. 18,150/-
6.	Interest	9% p.a.	Same
TOTAL COMPENSATION		Rs. 24,13,288/-	Rs. 21,79,122

22. In view of the above, the total amount of Compensation awarded to the Claimant is thus modified to Rs. 21,79,122/- along with interest @ 9% per annum, as per the terms of the Award dated 03.05.2017 passed by the learned Tribunal.

23. Statutory amount be returned to the Appellant, as per Law.

24. The Appeal stands disposed of accordingly along with pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER, 26, 2024/RS