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

% ***Date of decision:24th October, 2024***

\+ **MAC.APP. 725/2017 & CM APPL. 29216/2017 (stay) & 41960/2018 (under Order 41 Rule 22 read with Section 151 CPC filed on behalf of the R1 to R4)**

IFFCO TOKIO GENERAL INSURANCE CO LTD.....Appellant
Through: Mr. A.K.Soni, Advocate.

versus

POONAM SHARMA & ORS .....Respondents
Through: Mr. Rajeshwar Prasad Gupta, Advocate for R-1 to R-4.

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\+ **MAC.APP. 553/2024**

POONAM SHARMA AND ORS .....Appellants
Through: Mr. Rajeshwar Prasad Gupta, Advocate for R-1 to R-4.

versus

RAVINDER KUMAR AND ORS (IFFCO TOKIO GENERAL INSURANCE CO LTD) .....Respondent
Through: Mr. A.K.Soni, Advocate for R-3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. The ***Main Appeal bearing MAC. APP. 725/2017,*** *under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'M.V. Act')* has

been filed on behalf of the *Insurance Company/ IFFCO Tokio General Insurance Co Ltd,* to challenge the Award dated 09.06.2017 of the learned Tribunal whereby a total compensation of Rs.25,60,600/- along with the interest @9% p.a. has been granted to the Claimants/*Respondent No. 1- 4 i.e. the wife/Sh. Poonam Sharma, two minor daughters/ Kanak Sharma & Divya Sharma and the father/ Shri Sharma Nand Sharma,* of the deceased Sh. *Alok Sharma*.

2. The ***main grounds of challenge*** are that the learned Tribunal has relied upon the Testimony of PW-2 Manish Sharma, the brother of the deceased, who was not an eye-witness to the accident since the vehicle was hit from behind and he could not have possibly observed the manner in which accident took place. This is further corroborated by the fact that in the MLC, it is recorded that an unknown person was brought by the Police. This would not have been so, had the injured been accompanying the deceased at the time of the accident. This is pertinent in the light of testimony of *R1W1, Mr. Ravinder Kumar*, the driver of offending vehicle, who has denied the happening of the accident. Thus, there is no negligence proved of the offending vehicle and it was rather the deceased who was negligent as he was crossing the road without observing the traffic rules. Moreover, the post-mortem of the deceased was conducted prior to registration of FIR on 01.10.2014.

3. The *next ground* of challenge is that the salary of the deceased has been taken as Rs.15,200/- per month, even though there was no proof of the monthly income. The income should have been determined as per the Minimum Wages.

4. Thirdly, the age of the deceased was more than 30 years at the time of

the accident and a lower multiplier should have been taken for calculation of the compensation.

5. The ***Cross-Objections - MAC.APP. 553/2024,*** have been filed by the *Claimants/Respondent No. 1-4* and they have refuted all these assertions made by the Insurance Company.

6. It has been explained that the FIR was registered against the driver and subsequently, the *Charge-Sheet* was also admittedly filed against him. The finding in regard to the negligence of the Driver, has been sufficiently explained in the *Impugned Award dated 09.06.2017* and this ground is liable to be rejected.

7. It is further asserted that the salary of the deceased has been taken correctly and it cannot be ignored that merely because he was in a private job, his salary should be calculated as per Minimum Wages, when *PW-3, Mr. Dharmender Kumar* has appeared and proved the income of the deceased.

8. However, the Impugned Award is *challenged by the claimants on the ground* that the learned Tribunal while calculating the loss of income, has overlooked granting of ***Future Prospects*** to which the Claimants were entitled.

9. It is further submitted that the deceased was 27 year old at the time of death as established from his Class 10th Examination Admit Card. He is survived by his wife, two daughters and parents. Considering the number of legal heirs of the deceased, the ***compensation amount is liable to be enhanced as it is on the lower side.***

10. **Submissions heard and record perused.**

Contributory Negligence Of Deceased:

11. The *first aspect* on which the Award has been challenged is that there was no negligence proved of *R1W1/Mr. Ravinder Kumar*, the Driver of the alleged Offending Vehicle - RTV bearing No. DL-1VC-0646 and it was the deceased who was crossing the road without following the traffic rules.

12. The *first material witness* examined on behalf of the Claimants/Respondents, was *PW-2/Mr. Manish Sharma*, brother of the deceased and the eye witness to the accident. He had deposed that on 30.09.2014 at about 10:00 a.m., he along with his brother, *Mr. Alok Sharma (deceased)* had gone for some work to Balram Nagar, Ghaziabad and as his brother/Mr. Alok Sharma was crossing the road, the RTV i.e. the offending vehicle, which was being driven in a rash and negligent manner, hit his brother. He further explained that his brother had crossed over the divider and was on the side of the road when he was hit by the vehicle and the distance between the spot of the accident and where he was standing was about 15 meter. As the result of accident, Alok Sharma suffered grave injuries sand was taken to GTB Hospital by the Police officials and he had accompanied them, however, the doctors declared him "*Brought Dead*."

13. *PW-2/Mr. Manish Sharma* admitted that there was no crossing or red light near the spot of the accident and there is a bus stand on both the sides of the road where the accident took place and also there is a cut in the divider near the spot of accident. However, there is cogent evidence led that the pedestrian was hit while crossing the road. It cannot be overlooked that there were Bus Stop on both sides of the road and the driver of offending vehicle should have exercised due care about the pedestrian who was crossing the road.

14. The Appellants/ Driver and Owner had questioned the very presence

of PW-2 on the spot as in the MLC, it was recorded that an unknoun person has been brought to the Hospital, but it cannot be overlooked that when such unfortunate incident involving a family member happens, there may be disorder that would have prevailed in giving the name of the deceased. Pertinently, it was on the Statement of *PW-2, Mr. Manish Sharma* that the *FIR No. 1668/2014* under *Section 279/338/304A* of the Indian Penal Code (hereinafter referred to as 'IPC), dated 01.10.2014, was registered at Police Station Loni, District Ghaziabad.

15. The *Respondent No. 1/Driver in his Written Statement* had claimed that his vehicle has been wrongly impleaded in the accident. He further explained that he had stopped his vehicle at the Bus Stand to deboard the passenger when a Santro Car came from the Loni Side at a high speed and hit the deceased because of which he fell in front of the right side of the tyre of his vehicle. He claimed that he came down from the RTV, to seek help but in the meanwhile, Police arrived and took the deceased with him.

16. In the light of his defence, it is now pertinent to refer to his testimony as *R1W-1,* wherein he deposed that no accident was caused by the RTV vehicle and further explained that while he was deboarding the passengers at the Bus Stop, he heard a large noise and noticed that the motorcycle of the deceased was hit by the Santro Car. In his Affidavit *Ex. RW1/A,* he has deposed on similar lines as the defence taken in the Written Statement. However, he admitted in his *cross-examination* that the Charge-Sheet after investigation, had been filed against him.

17. It is pertinent to observe that in his cross-examination conducted on behalf of the Claimants, he had tried to prove his case by claiming that the Santro Car had hit the RTV from the backside but thereafter, volunteered

that in fact, the Santro Car had hit the motorcycle from its backside and that his vehicle was not involved in the accident. He claimed that he had told the Police Officials about the involvement of the Santro Car in the accident but had made no complaint to any Police, about his alleged false implication. He further admitted that he is facing trial before the learned Metropolitan Magistrate wherein also he has not made any objection claiming his false implication in this case.

18. From the testimony of *RW-1/Mr. Ravinder Kumar* what emerges is that he was admittedly present on the scene of the crime at the time of the accident. He himself has admitted that the injured fell in front of the right tyre of his vehicle. The *Site Plan* shows that the place where the accident took place was right in the middle of crossing of four roads. Thus, the defence has sought to be projected by the driver, was not only contradictory but also is not supported either by the *Site Plan* or during the investigations, after which the *Charge-Sheet* has been filed. Pertinently, this alleged defence has nowhere been disclosed during the trial before the learned Metropolitan Magistrate.

19. Therefore, the learned Tribunal was right in concluding that the record of the Charge-Sheet along with the documents, *Ex.PW-1/2* collectively along with the testimony of PW-2/Mr. Manish Sharma, the eye witness, proves that the accident was caused due to rash and negligent driving of the RTV by the Respondent No. 1/Driver. There is no infirmity in the conclusion of the learned Tribunal, on this ground.

<u>Ascertaining The Multiplier:</u>

20. The *second aspect* on which the Award has been challenged, is that the deceased was more than 30 years but his age has been taken as 27 years

10 months, to apply the multiplier of 17.

21. The learned Tribunal has referred to the *Admit Card of the deceased, for the examination of Class X*, which is *Ex.PW-1/10* where his date of birth has been stated as *21.10.1986.*

22. Though the Insurance Company has asserted that the deceased was more than 30 years on the date of accident, but has failed to produce any cogent evidence in this regard. The Insurance Company has merely made a reference to Aadhar Card, *Ex.PW-1/9* where the year of the birth of the deceased is reflected as 1984.

23. In this regard, it becomes apposite to refer to the recent judgment of the Apex Court in <u>*Saroj v. Iffco Tokio General Insurance Co.*</u> 2024 INSC 816, wherein the Two-Judge Bench referred to the *Unique Identification Authority of India - Circular No.08 of 2023* and observed that that an Aadhar Card, while can be used to establish identity, it is not conclusive or definitive proof of date of birth. Thus, the Tribunal's determination of age based on the *Examination Admit Card of the deceased* is upheld.

24. In light of the above, the Aadhar Card, not being the authentic source, has not been rightly taken as the basis for calculating the age and the date of birth has been rightly assessed as 27 years 10 months on the basis of the *Examination Ticket of Class X* and the multiplier of 17 has been correctly adopted.

<u>Loss Of Dependancy:</u>

Income/Salary of Deceased:

25. The *next ground* on which the Impugned Award has been challenged by the Insurance Company, is that the income of the deceased has been calculated as *Rs.15,200/- per* month without there being any proof of income

and the same should have been ascertained on the basis of the prevalent Minimum Wages.

26. In this regard, the Claimants had examined *PW-3/Mr. Dharmender Kumar Sharma,* who was a co-employee of the Company where the deceased was working who brought the summoned record pertaining to the deceased i.e. the Original Payment Voucher, *Ex.PW-3/1 (Colly 6 sheets)* and also the Photocopy of the Attendance Register, *Ex.PW-3/2 (Colly 13 sheets)* and Salary-cum-Working Certificate of the deceased, *Ex.PW-1/8.*

27. He clarified that the deceased had been working with him since 2013 till September, 2014. Though he admitted that the Original Payment Voucher, *Ex.PW-3/1* does not bear the voucher number, but he denied that the voucher was a fabricated document.

28. The learned Tribunal, thus relied on the Attendance Register, as well as, the Voucher, to conclude that the salary of the deceased was *Rs.15,200/-* per month.

29. The factum of employment of the deceased with the Company is fully established by the Attendance Register and the Voucher reflects the Salary of the deceased as 15,200/- per month.

30. The claim of the Insurance Company that these are all false and fabricated documents, cannot be accepted especially when no evidence to the contrary, has been produced nor any inherent contradictions have been brought forth in the testimony of *PW-3.*

31. Thus, it cannot be said that the conclusion of the learned Tribunal that the monthly income of the deceased was Rs.15,200/- per month, is incorrect.

Future Prospects:

32. The *Claimants/Respondent No. 1-4* on the other hand, have asserted

that the *Future Prospects* were liable to be granted to the deceased for calculating the compensation, which has not been done.

33. It is held in the case of *National Insurance Co. Letd. Vs. Pranay Sethi & Ors.,* AIR 2017 SC 5157 that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.

34. Thus, the deceased was entitled to Future Prospects @40% of his annual income, which has not been granted while calculating the compensation.

35. Thus, the ***Total Loss of Dependency*** is re-calculated are as under:-

i. Rs.15,200 + 40% (i.e. towards future prospects) of Rs.15,200 = Rs. 21280/-

ii. Rs. 21,280 – Rs. 5320 (i.e. ¼ deductions towards personal expenses) = Rs. 15,960

iii. Rs. 15,960 X 12 X 17 = **Rs. 32,55,840/-**

36. Hence, a sum of **Rs. 32,55,840/-** is revised as compensation towards **Total Loss of Dependency.**

CONCLUSION

37. In view of the above observations, the modified and enhanced final amount of compensation, is encapsulated in the tabular chart as under:-

S. No.	**Heads**	**Awarded By Ld. Tribunal**	**Modified by this Court**
1.	Income	Rs. 15,200/- p.m.	Rs. 15,200/- p.m.
2.	Add-Future Prospects		**40% (i.e. 6080)**
3.	Less–Personal expenses	1/4th	1/4rd (i.e. 5320)
4.	Monthly Loss of Dependency	Rs. 11,400/-	Rs. 15,960
5.	Multiplier	17	17
6.	Total Loss of Dependency	Rs. 23, 25,600/-	**Rs. 32,55,840/-**

	(12 x17 x Monthly loss)		
7.	Medical Expenses	-	-
8.	Compensation for Loss of Love and Affection	Rs. 1,00,000/-	Rs. 1,00,000/-
9.	Compensation for Loss of Consortium	Rs. 1,00,000/-	Rs. 1,00,000/-
10.	Compensation for loss of estate	Rs. 10,000/-	Rs. 10,000/-
11.	Compensation towards funeral expenses	Rs. 25,000/-	Rs. 25,000/-
12.	Total Compensation	Rs. 23,60,600	**Rs. 34,90,840**
13.	Interest Awarded	9% p.a.	9% p.a.

38. The Award is hereby modified and the Compensation amount is re-calculated as **Rs. 34,90,840/- along with interest 9% p.a. from the date of filing the Claim till the date of payment, with all other terms of the Award being the same.**

39. The Appeals are therefore, accordingly disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 24, 2024/RS