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

% ***Date of decision: 11th December, 2024***

\+ **MAC.APP. 798/2018, CM APPL. 36201/2018**

HDFC ERGO GENERAL INSURANCE CO. LTD.
Through its Regional Office
5th Floor, Tower I, Stellar IT Park, C-25, Sector-62,
Noida-201301.

.....Appellant

Through: Mr. A.K. Soni, Advocate.

versus

1. **RAJ KUMARI** (Mother)
W/o Sh. M.P. Singh

2. **M.P. SINGH** (Father)
S/o Sh. Narayan Singh
Both R/o H.No.13/1194, Vasundhra, Sector-13,
Indrapuram, Vasundhra, Ghaziabad, U.P.

3. **DIVYANSH SINGH** (Driver)
S/o Sh. Vijay Pal Singh
R/o D-32/4, Gali No.11, Gamri Extension, Shahdara,
Delhi.

4. **VIJAY PAL SINGH** (Owner)
S/o Late Sjh. Roshan Lal
R/o H.No.13/1183, Vasundhra,
Sector-13, Indrapuram, Vasundhra,
Ghaziabad, U.P.

.....Respondents

Through: Mr. Rajeev Sood, Advocate for R-1 and R-2.

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\+ **MAC.APP. 942/2018**

1. **RAJ KUMARI**
W/o Sh. M.P. Singh

2. **M.P. SINGH**
S/o Sh. Narayan Singh
Both R/o H.NO.13/1194, Vasundhra, Sector 13,
Indrapuram, Vasundhra, Ghaziabad,
U.P.-201012.

.....Appellants

Through: Mr. Rajeev Sood, Advocate.

versus

1. **DIVYANSH SINGH** (Driver)
S/o Sh. Vijay Pal Singh
R/o D-32/4, Gali No.11, Gamri Extension,
Shahdra, Delhi-110053.

2. **VIJAY PAL SINGH** (Owner)
S/o Sh. Roshan Lal
R/o H.No.13/1183, Vasundhra, Sector 13,
Indrapuram, Vasundhra, Ghaziabad,
U.P.201012.

3. **M/S HDFC ERGO GENERAL INSURANCE CO. LTD**.
Through its Manager
14, Amba Deep Building, K.G. Marg,
New Delhi-110001.

.....Respondents

Through: Mr. A.K. Soni, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>J U D G M E N T</u> ***<u>(Oral)</u>***

1. *The <u>MAC.APP. 798/2018,</u> has been filed on behalf of the* ***Insurance Company*** *under Section 173 of the Motor Vehicle Act, 1988* against the Impugned Award dated 11.07.2018 *vide* which the learned Tribunal has awarded a compensation in the sum of Rs.3 4,86,000/- along with interest @ 9% per annum to the parents of the deceased Shri Bhupesh Kumar, aged 24 years, who died in a road accident on 06.05.2017.

2. The Insurance Company has challenged the Award on the following **grounds**: -

   (i) That the prospective/potential income of the deceased been assessed as Rs. 40,000/- and after deductions of Income Tax as Rs. 32,000/-, even though the Claimants themselves have asserted the prospective income to be Rs.30,000/.

3. ***Learned counsel on behalf of the Respondent/Claimant,*** has countered the arguments of the Insurance Company by asserting that the deceased was qualified B.Tech and the prospective income has been rightly calculated.

4. **The Cross Appeal** ***MAC.APP. 942/2018*** **has been filed by the Claimants seeking enhancement of compensation** amount on the following grounds: -

   (i) the tax liability at best was 3% and not Rs.8,000/- as has been deducted by the Tribunal; and

   (ii) no future prospects to the tune of 40% have been granted in the light of the judgment of *<u>National Insurance Co. Ltd. v.</u>*

Pranay Sethi, (2017) 16 SCC 680.

5. **Submissions heard and record perused.**

6. *Briefly stated,* on 06.05.2017, Bhupesh Kumar was travelling along with his other friends Piyush, Dron, Divyansh and Ashutosh, as occupants in the *Mahindra XUV 500 No. UP 14 CKB 8145.* The Driver Divyansh was driving the vehicle in a rash and negligent manner, at a very high speed and he could not control the car which fell down in Ganda-Nala after breaking the wall and grill. Though the police took out the car from the drain/Canal however, Bhupesh Kumar could not be saved and he died on the spot.

7. The *FIR u/s. 279/304A IPC 1860* was registered against the Driver/ Divyansh at P.S. Indrapuram.

8. The Claim Petition was filed by the Claimants i.e. the parents of the deceased and *vide* the Impugned Award dated 11.07.2018 the learned Tribunal has awarded a compensation in the sum of Rs.34,86,000/- along with interest @ 9% per annum.

Loss of Dependency: -

Income of the Deceased: -

9. *The first ground of challenge is that the potential income of the deceased has not been calculated correctly. PW1- Raj Kumari*, the mother of the deceased has deposed that at the time of accident, her son aged about 23 years, was a B. Tech (Engineer) graduate and was self-employed as a consultant having income of about Rs. 30,000/- per month. She further proved the qualification documents and Degree of the deceased as *Ex. PW 1/9* and *Ex. PW 3/1*. Admittedly, no proof of income of the deceased was filed.

10. It is well settled that when there is no evidence available on record to determine the income of the deceased who has completed a professional course, then the potential income or potential to earn can be taken into account while determining the loss of dependency.

11. The Supreme Court, in *Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180, referred to the decision in *Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr.* (2010) 10 SCC 254, and assessed the potential income of the deceased 19-year-old medical student, who was pursuing his MBBS course at the time of his demise in the accident which had occurred in the year 2002, as Rs. 25,000/- p.m. by observing that medical practice is one of the most sought after and rewarding professions; there is tremendous increase in demand for medical professionals which would lead to a rise in the salary of the doctors and that the deceased could have pursued his M.D. after his graduation.

12. Similar view was taken in the case of *Raj Bala & Anr vs Sumit Dahiya & Ors,* AIRONLINE 2018 DEL 1918, that the prospective income/earning capacity of a 21-years-old deceased, who was a final year student of B.Tech. at Maharshi Dayanand University, Rohtak, would be Rs.26,660/- per month, by observing: -

> *" 8. In the present case, the deceased was a final year student of B.Tech., at Maharshi Dayanand University, Rohtak. The deceased had successfully completed three years of his four years degree programme. On successful completion of B.Tech., the deceased would have had a successful career. M/s Tech Indira IT Solutions Pvt. Ltd. had given placement offer of Rs.3,20,000/- per annum to the deceased. This Court is of the view that the deceased*

would have certainly earned higher amount in his lifetime but the earning capacity of the deceased is taken as Rs.26,660/- per month (Rs.3,20,000/- per annum) since the claimants have restricted their claim to the above amount. This case is squarely covered by the well-settled principles of law laid down by Supreme Court and this Court in the aforesaid cases. The earning capacity of the deceased is taken as Rs.26,660/- per month (Rs.3,20,000/- per annum). The Claims Tribunal has taken future prospects of 40% which is fair and reasonable and is upheld. "

13. In the case of *Ram Rati & Anr vs United India Ins Co Ltd & Ors*, *MAC. APP. 881/2019,* decided on 04.08.2023, the parents had challenged the assessment of the income of deceased by the Ld. Tribunal on the basis of Minimum Wages in Haryana for a Graduate (Technical) by alleging that the deceased had completed his B. Tech. (Mechanical Engineering) from Maharishi Dayanand University and would have earning much more than the minimum wages. The Coordinate Bench of this Court, relying upon *Raj Bala (Supra),* revised the amount of compensation and allowed the Appeal of the Claimants by observing that the appellant had already completed his Bachelor of Engineering in Mechanical Engineering from the University and thus, a notional income of Rs. 30,000/- per month should have been considered by the learned Tribunal.

14. In the case of *Ramesh Chand Joshi & Anr. v. New India Assurance Co.Ltd., MAC. APP. No. 212-13/2006* decided on 20.01.2010, Coordinate Bench of this Court ascertained the potential income of the 19-year-old deceased, who was a First-Year student of the Bachelor of Engineering in

Delhi College of Engineering, as Rs. 4.6 lacs p.a. i.e. Rs. 38,333/- p.m. on the premise that he would have eventually started earning and supporting his family.

15. Relying upon the above cited judgment, the Ld. Tribunal in the present case has rightly assessed the income of the deceased, a B.Tech. Student, as Rs. 40,000/- p.m. and after deducting the Income tax (20%), has taken the potential Income as **Rs. 32,000/- p.m.** which does not merit any interference.

Future Prospects: -

16. In light of the Judgment of *Pranay Sethi* (Supra), an addition of 40% of the established income, is to be added as the deceased was below the age of 40 years.

17. Thus, the **Total Loss of Dependency** is re-calculated as **Rs. 48,38,400** as under: -

i. Rs. 32,000 + Rs. 12,800 (i.e. 40% of 32,000) = Rs. 44,800/-;

ii. Rs. 44,800 – 1/2 of Rs. 44800 (Deduction towards personal expenses) = Rs. 22,400/-;

iii. Rs. 22,400/- X 12 X 18 (Multiplier) = **Rs. 48,38,400/-.**

Non-Pecuniary Heads: -

18. *In light of the judgment of Pranay Sethi* (Supra) the Ld. Tirbunal has rightly awarded Rs. 15,000/- each towards Funeral expenses and Loss of Estate. However, no amount has been granted towards Loss of consortium and thus, each parent is awarded **Rs. 40,000/- i.e. total Rs. 80,000/-** under

this head.

***Relief*: -**

19. Thus, the Total amount of compensation is modified as under: -

S.No.	Heads	Compensation granted by the Tribunal	Modified by this Court
1.	Total Loss of Dependency	Rs. 34,56,000/-	**Rs. 48,38,400/-**
2.	Compensation for loss of Consortium	-	**Rs. 80,000/-**
3.	Compensation for loss of Estate	Rs. 15,000/-	Rs. 15,000/-
4.	Compensation towards funeral expenses	Rs. 15,000/-	Rs. 15,000/-
5.	Total Compensation	Rs. 34,86,000/-	**Rs. 49,48,400/-**

20. Thus, the total compensation granted to the Claimants is re-calculated as Rs. 49,50,000/- along with interest @9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 11.07.2018 of the learned Tribunal.

21. The Statutory deposit be returned to the Insurance Company.

22. The Appeals stand disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024

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