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

% **Judgment reserved on : 27 May 2024**
Judgment pronounced on : 13 August 2024

\+ MAC.APP. 790/2017 & CM APPL. 10744/2022

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
…Appellant

Through: Mr. Danish Aftab Chauhan, Mr. Suhail Malik and Mr. Saharul Alam Laskar, Advs.

versus

SMT. LEELA DEVI & ORS ..... Respondents

Through: Mr. Panna Lal Sharma, Adv. for R-1 to R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The instant appeal has been preferred by the appellant/Insurance Company in terms of Section 173 of the Motor Vehicles Act, 1988[1], assailing the impugned judgment-cum-award dated 29.05.2017 passed by the learned Additional District Judge-1, Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi[2] in MACT case No. 449229/16 (Old case No. 207/15), whereby, the learned Tribunal awarded a total compensation of Rs. 10,11,000/- to the claimants along with interest @ 9% per annum from the date of filing of the petition i.e. 20.04.2010 till realization and the liability to pay the compensation has been fastened upon the insurance company.

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[1] Act

FACTUAL BACKGROUND:

2. Succinctly put, on 23.04.2008 at about 9:30 PM near Kela Godown, Shalimar Bagh, Delhi, when the deceased-Sh.Raghubir Shah, along with his colleague Sh.Ram, was returning to his home after work, a truck bearing registration No. DL-1GB-6127[3] came from behind and hit the deceased and his colleague and as a result, the deceased sustained grievous injuries and was admitted to the hospital where he remained till 05.08.2008 but later, succumbed to injuries. Consequently, the wife of the deceased i.e., Smt. Leela devi, filed a complaint case under Section 200 of the Cr.P.C[4] before the learned M.M.[5] and after taking cognizance, respondent No.1/driver[6]-Irshad was booked under Section 279/304A IPC[7].

3. Upon the service of notice of the claim petition and the DAR[8], respondent No.1/driver did not appear before the learned Tribunal and was proceeded *ex-parte vide* order dated 05.06.2010. Respondent No.2/Shyam Lal Khatana i.e., the registered owner[9], initially contested the claim petition and averred that the said offending vehicle was falsely implicated in the present case. Respondent No.3/Insurance company, now the appellant, repudiated its liability to pay the

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[2] Tribunal
[3] Offending vehicle
[4] Code of Criminal Procedure, 1973
[5] Metropolitan Magistrate
[6] Section 2(9) of MV Act: "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;
[7] Indian Penal Code, 1860
[8] Detailed Accident Report
[9] Section 2(30) of MV Act: "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

compensation asserting that the driver did not possess a valid Driving Licence[10] and that the same was issued from Assam, whereas the address of the driver-Irshad was of Bihar.

IMPUGNED JUDGMENT-CUM-AWARD:

4. Suffice to state that the learned Tribunal *vide* the impugned judgment-cum-award dated 29.05.2017 rendered a finding that the accident took place due to rash and negligent driving of respondent No.1/driver, a fact, which was further validated by the report filed by the Investigating Officer (IO). It was further held that the insurance company had miserably failed to elucidate upon the aspect of fake driving licence and no witness was examined in this regard. Ergo, the liability to pay the compensation was fastened upon respondent No.3/insurance company.

5. The learned Tribunal after reckoning the minimum wages pegged @ Rs. 3,633/- per month and considering all the pecuniary as well as non-pecuniary heads of compensation, awarded a total compensation of Rs. 10,11,000/- to the claimants/dependents i.e., the wife and two children of the deceased, along with interest @ 9% per annum from the date of filing of the DAR till realisation.

GROUNDS OF APPEAL:

6. The impugned judgment-cum-award has been assailed *inter alia* on the grounds that the said offending vehicle was not involved in the accident and that PW-1/Ram is a planted witness, which fact has been

[10] Section 2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

established by the MLC[11] on record. Lastly, it was urged that the interest rate of 9% awarded by the learned Tribunal is on the higher side.

ANALYSIS AND DECISION:

7. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the bar and on perusal of the record including the digitized Trial Court Record, this Court finds that the present appeal is devoid of any merits, but on the other hand, the learned Tribunal has not assessed the compensation towards loss of financial dependency correctly, as would be discussed hereinafter.

8. First things first, the plea by the learned counsel for the appellant that PW-1/Ram was a planted witness is completely belied from the evidence on record. PW-1/Ram in his evidence categorically deposed that he was an eye witness to the accident so much so that he had also removed the deceased to Babu Jagjivan Ram Memorial Hospital. He further deposed that he informed the wife of the deceased and remained in the Hospital up to 10 or 10.30 p.m. during which time, the police officials questioned him about the accident and thereafter, he went back to his home. The said evidence was corroborated by PW-2/Leela Devi-claimant and there is nothing in the cross-examination of PW-1 or even PW-2 which would suggest that PW-1/Ram was a planted witness and therefore, the findings rendered by the learned Tribunal on issue No.1, attributing gross rashness and

[11] Medico-Legal Case

negligence on the part of the driver of the offending vehicle, cannot be questioned in any manner.

9. Insofar as the quantum of compensation is concerned, it would be relevant to reproduce the findings recorded by the learned Tribunal while determining the quantum of compensation, which read as under:-

> "(10) That, the petitioner has not able to place on record any documentary proof in respect of the earning of the deceased as mentioned in the claim petition however, the compensation is to be awarded at least on the minimum wages as earning of the deceased per month was Rs. 3633/-.
> (11) That, the petitioner has not been able to place on record any documents to show the age of the deceased and the deceased was an illiterate person and as per "the post mortem report his age has been mentioned as 40 years and the same is to be compared with the age of the petitioner no.l who is his wife and here age is mentioned 33 years of age, therefore, this tribunal is inclined to consider the age of the deceased at the time of the accident as 40 years and the multiplier to be applied of 15 accordingly. Reliance is placed upon **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors.**
> (12) That, the deceased survive his wife and two children and there are three dependents upon the deceased and there shall be deduction of 1/3 of the income of the deceased and the calculation of just compensation is:- Rs. 3633 plus 30% is Rs. 1,211/-, 3633+1211= 4744/- minus l/3rd i.e. 1211/- i.e. Rs. 3,533/- X12X15 = 6,35,940/-.
> (13) Moreover, as per judgement of Hon'ble High Court of Delhi titled as Shri Ram General Insurance Co. Ltd. Vs. Usha and Ors. dated 05.05.2016 passed in MAC Appeal No. 160/2015, the petitioners are entitled for the additional compensation under different heads i.e. the compensation towards loss of consortium w.r.t. widow of deceased is awarded in the sum of Rs. One Lakh fifty thousand Only and compensation of Rs. One Lakh fifty thousand Only is awarded for loss of love and affection. A sum of Rs. 50,000/- is awarded towards loss of estate to the petitioners. As the accident took place in Rajasthan and at the time of the accident, the petitioner were residing at Karnal, Haryana and it is presumed that the petitioner would have to bear the expenses of transportation of the dead body to bring from Rajasthan to Karnal

(Haryana), therefore, a sum of Rs. 25,000/- is awarded towards funeral expenses and last rites of the deceased.

Thus, the total compensation is assessed as under:-

Compensation	Rs. 6,35,940/-
loss of consortium	Rs. 1,50,000/-
loss of love and affection	Rs. 1,50,000/-
loss of estate	Rs. 50,000/-
Funeral expenses	Rs. 25,000/-
Total	Rs. 10,10,940/-
Round off	Rs. 10,11,000/-

Issue no.2 is decided accordingly."

10. There is no gainsaying that this Court has *suo moto* powers to correct any patent error of facts and law if the same is brought on the record in the present appeal. This Court finds that the learned Tribunal completely overlooked the testimony of PW-2/claimant, who testified that her deceased husband was gainfully employed as a 'daily wager' and was earning about Rs. 10,000/- per month. The said fact was corroborated by PW-3/Rajeev, Proprietor of M/s. Gordhan Dass Rajeev Kumar, New Subzi Mandi, Azadpur, Delhi, who testified that the deceased was working with him as 'contract labour' for loading and unloading of goods and he was earning Rs. 400/- per day. He proved the certificate in this regard, which is Ex.PW-3/A. Although PW-3 was cross-examined at length, there is nothing in his evidence so as to disbelieve his testimony. PW-3 had no motive to depose falsely in favour of the claimant party and his testimony that the deceased was getting about Rs. 400/- per day for the aforesaid task cannot be said to be unfathomable.

11. That being the case, the learned Tribunal's assessment of notional income of the deceased based on the minimum wages at a meagre sum of Rs. 3,633/- per month is certainly unconscionable.

This Court has time and again reiterated that minimum wages apply universally to workmen of all ages but then, as one gains experience and becomes more proficient in one's occupation, it is reasonably expected that one would be earning more than what is prescribed as the minimum wage. After all, the deceased was maintaining his wife and two children. In this regard, reference can be invited to a decision of this Court in the case of **National Insurance Co. Ltd. v. Hema Devi**[12].

12. Thus, it would be fair to assume that the deceased was in all probabilities earning at least double the amount of minimum wages provided for an unskilled workman i.e., Rs. 7,500/- per month, which annually comes to Rs. 90,000/-; and to that, we shall add 25% towards increase in future income, which brings the notional income of the deceased to Rs. 1,12,500/-. Further, 1/3rd is deducted towards personal use and living expenses and after applying the multiplier of '15' as per **Sarla Verma v. DTC**[13], the total financial loss of dependency comes to Rs. 11,25,000/-. *Ex facie*, the learned Tribunal has wrongly awarded Rs. 1,50,000/- under the head of loss of love and affection, which now is to be comprehended in the nature of loss of consortium and accordingly, has to be done away with in terms of the decision in the case of **United India Insurance Co. Ltd. v. Satinder Kaur**[14].

13. Likewise, compensation towards loss of estate and funeral expenses at Rs. 50,000/- and Rs. 25,000/- respectively is contrary to the directions passed by the Supreme Court in the case of **National**

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[12] 2024 SCC OnLine Del 1464
[13] (2009) 6 SCC 121

Insurance Company v. Pranay Sethi[15]. Accordingly, the appropriate amount of compensation under the aforementioned heads would be Rs. 40,000/- towards loss of consortium, payable to each of the legal heirs i.e., the wife and two children, which comes to Rs. 1,20,000/- and Rs. 15,000/- each towards funeral expenses and loss of estate. Accordingly, the total compensation comes to Rs. 12,75,000/-, which is tabulated hereunder:

S.No.	**Heads of Compensation**	**Amount**
1	Annual Income	Rs. 90,000/- (7,500 x 12)
2	Addition towards Future Prospects	Rs. 22,500/- (25% of 90,000)
	Notional Income	Rs. 1,12,500/-
3	1/3rd deduction towards personal use and living expenses	Rs. 75,000/- (1/3rd of 1,12,500)
4	Multiplier	15
	Total loss of financial dependency	**Rs. 11,25,000/-**
5	Loss of Consortium	Rs. 1,20,000/-
6	Loss of Estate	Rs. 15,000/-
7	Funeral Expenses	Rs. 15,000/-
	Total	**Rs. 12,75,000/-**

14. In view of the foregoing discussion, the present appeal is dismissed. The respondents/claimants No. 1 to 3 are made entitled to a total compensation of Rs. 12,75,000/- (Rupees Twelve Lacs Seventy Five Thousand Only) with interest @ 7.5 % per annum from the date

[14] 2020 SCC OnLine SC 410
[15] (2017) 16 SCC 680

of filing of the claim petition i.e. 20.04.2010 till realization. The amount of compensation be paid to the respondents/claimants No.1 to 3 within one month from the date of this judgment, failing which the appellant/insurance company shall be liable to pay penal interest @ 12% per annum from the date of this judgment till realization.

15. The amount of statutory deposit of Rs. 25,000/- deposited by the appellant/insurance company is hereby forfeited to the State.

16. The pending application also stands disposed of.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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