



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

% **Judgment reserved on : 29 April 2024**
Judgment pronounced on : 01 July 2024

+ **MAC. APP. 775/2015**

RELIANCE GENERAL INSURANCE CO. LTDAppellant
Through: Mr. Rajeev M. Roy, Adv.

versus

SANTOSH DEVI & ORS. Respondents
Through: Mr. Sunil Kumar Verma,
Advocate for R-1 to R-3.

+ **MAC. APP. 835/2015**

SANTOSH DEVI & ORS.Appellants
Through: Mr. Sunil Kumar Verma, Advocate

versus

RELIANCE GENERAL INS. CO. LTD. & ORS.Respondents
Through: Mr. Rajeev M. Roy, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. This common judgment shall decide the above-noted two cross-appeals preferred by the insurer as well as the claimants under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 01.07.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal², Dwarka Courts,

¹ M.V. Act

² Tribunal



New Delhi, in MACP. No. 304 of 2009, whereby the claim petition preferred by the claimants was allowed and the liability to pay compensation was fastened upon the Insurance Company. The aforesaid two cross-appeals raise common questions of law and facts and can be conveniently disposed of together. For our convenience, MAC. APP No. 775 of 2015 preferred by the Insurer will be taken as the lead case.

FACTUAL BACKGROUND

2. Shorn off unnecessary details, suffice to state that the claimants are the widow, two married daughters and two major sons of the deceased – Late Sh. Baljeet Singh aged 55 years, who was stated be working in a private company, and who sustained fatal injuries in a road accident that occurred on 20.11.2009. The claimants filed a claim petition under Section 166 read with Section 140 of the M.V. Act claiming compensation to the tune of Rs. 25 lakhs under various heads stating that the deceased was riding his motorcycle, when the offending vehicle bearing registration No. HR-38D-6787 being driven by the respondent No. 6/Sh. Rama Nand Kumar in a rash and negligent manner, hit the motorcycle of the deceased from the back and as a result of the impact, the deceased suffered grievous injuries and succumbed to the same. This resulted in the registration of FIR³ No. 424/2019 under Sections 279 and 304 A of the IPC⁴ with Police Station Najafgarh. The offending vehicle was being driven by the respondent No. 6/ Sh. Rama Nand Kumar and was owned by the

³ First Information Report

⁴ Indian Penal Code, 1860



respondent No. 7/Sh. Kailash Sharma, and admittedly, the offending vehicle was insured by the appellant/Reliance General Insurance Company Ltd./insured.

3. Based on the pleadings of the parties, the learned Tribunal framed the following issues on 21.09.2010: -

“Issue No. 1

Whether Sh. Baljeet Singh died due to rash or negligent driving of vehicle no. HR-38D-6787 on 20.11.2009 by R1?OPP

Issue No. 2

Whether the petitioners are entitled to claim compensation, if so, what amount and from whom?OPP

Issue No. 3

Relief.”

4. During the course of the proceedings/trial before the learned Tribunal, the wife of the deceased/ Smt. Santosh Devi was examined as PW-1 and one eyewitness, namely Ajay Kumar, was also examined as PW-2. It would be apposite to refer to the observations made by the learned Tribunal while deciding the Issue No. 1, which go as under: -

“6. PW-2 Sh. Ajay Kumar, S/o Sh. Rajpal Singh, R/o H. no. 359, Sector-6, Bahadurgarh, Distt. Jhajjar, Haryana, who is an eye witness of the present case stated that on 20/11/2009 at about 3.00 to 3.30 PM he was going to Bahadurgarh from Najafgarh and when he reached Kali Piyao, Najafgarh then he saw a truck bearing registration no. HR-38D-6787 came in high speed and hit the motorcyclist from its back. He further stated that the motorcyclist died at the spot. In the cross examination, he denied the suggestion that the accident had taken place due to the negligence of deceased himself. He further denied the suggestion that he was not present at the lime of accident of that he had not witnessed the accident.

7. PW-1, Smt. Santosh Devi who is wife of the deceased in her evidence has stated that on 20/11/2009, at about 2.45 PM Sh. Baljit, deceased was going home on motorcycle bearing no. HR-132B-5358 and when he reached near CRPF Camp, Kali Piyau, Najafgarh, all of sudden a truck bearing no. HR-38D-6787 came with high speed driven in very rash and negligent manner and hit her husband. As a result of which Sh. Baljit was killed on the spot.



She has proved the attested copies of criminal documents i.e. Charge sheet Ex. PA, FIR Ex. PB. Site Plan Ex. PC, postmortem report Ex. PD.

8. Both PW-1 and PW-2 have given same account of events that accident happened on 20/11/2009 due to, rash or negligent driving of R1. The testimony of eye witness Ajay Kumar is free from any contradictions. The witness is reliable, trustworthy and believable. It cannot be said that PW-2 had given the testimony out of any interests with the petitioner. His presence on the spot is also not refuted, therefore, the respondent by way of cross examination of the witnesses failed to demolish their case and they withstood the cross examination and is liable to be believed. The criminal record of the case further supports and corroborates the case of the petitioner.

9. In *Bimla Devi & Others Versus Himachal Road Transport Corporation & Others* (2009) 13 SCC 513, it has been observed that in a road accident, the strict principles of proof as in a criminal case are not attracted. Relevant portion of the judgment is reproduced as under:-

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

10. As per law in the present case the claimant need not prove her case beyond reasonable doubt and the case is to be judged on the touchstone of preponderance of probability. Thus, keeping in view the entire set of facts and circumstances of the matter, it is clear that petitioner has proved that death of deceased was caused by R1 by his rash and negligent driving. Hence, this issue is decided in favour of the petitioner and against the respondents."

5. In light of the aforesaid view, the learned Tribunal allowed the claim petition under Section 166 of the M.V. Act and awarded a total compensation of Rs. 9,66,347/- to the claimants with a direction that it



would be satisfied by the appellant/Insurance Company with the liberty to recover the same along with interest @ 9% p.a. from the date of filing of the petition i.e., 01.12.2009 till its realization. It would be apposite to reproduce the break-up of the compensation awarded and its apportionment by the learned Tribunal: -

“18. The break up of compensation that has been awarded in favour of the petitioners have been tabulated as below: -

S. No.	HEAD	AMOUNT
1	Loss of dependency (Rs. 35,577 X 11)	Rs. 3,91,347/-
2	Loss of love and affection to children	Rs. 4,00,000/-
3	For funeral expenses	Rs. 25,000/-
4	Loss of estate	Rs. 1,00,000/-
5	Loss of consortium	Rs. 1,00,000/-
TOTAL		Rs. 10,16,347/-

xxx

20. In the present case all the appellants are legally entitled for equal share from Rs. 9,66,347/- (Rupees Nine Lacs, Sixty Six Thousand, Three Hundred and Forty Seven Only). This amount is excluding of Rs. 50,000/- (Rs. Fifty Thousand Only) towards interim award. The following is the apportionment of the amount awarded towards loss of dependency of the appellants with proportionate interest: -

S. No.	Appellants	Amount in Rs.
1.	Appellant No. 1 Santosh Devi (Wife)	Rs. 3,66,347/-
2.	Appellant No. 2 Rajbala (Daughter)	Rs. 1,50,000/-
3.	Appellant No. 3 Vinod (Son)	Rs. 1,50,000/-
4.	Appellant No. 4 Geeta (Daughter)	Rs. 1,50,000/-
5.	Appellant No. 5 Surender (Son)	Rs. 1,50,000/-

SUBMISSIONS ADVANCED AT THE BAR

6. The learned counsel for the Insurance Company has assailed the impugned judgement primarily on the ground that the compensation awarded by the learned Tribunal is excessive and not in consonance with the settled legal principles and that it deserves to be reduced. It is further averred that the learned Tribunal failed to consider that except



for the respondent No. 1(Wife), respondent nos. 2 to 5 are the children of the deceased who have attained the age of majority, married and were not financially dependent upon the deceased. Thus, respondent no. 1 should have been treated as the only dependent of the deceased and the deduction towards personal expenses should have been 1/2 instead of 1/4. Reference has been made to decision in the case of **Sarla Verma v. DTC & Anr.**⁵ the following observations were made:

“31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.”

7. The learned counsel for the Insurance Company further submitted that the amounts awarded under non -pecuniary heads are also on the higher side and should be reduced as per the ratio of the judgement in **National Insurance Company Limited v. Pranay Sethi**⁶.

8. *Per contra*, learned counsel for the claimants submits that the learned Tribunal failed to consider that the deceased was earning Rs. 8,000/- per month, whereas the salary of the deceased was reckoned to be on a lower side at minimum wages of Rs. 3,953/- per month. It was

⁵ (2009) 6 SCC 121



further submitted that during the pendency of the present appeal, the respondent No. 3/Sh. Vinod expired on 18.04.2021 due to Covid-19 and the respondent No. 5/Surender expired on 10.08.2016 due to prolonged illness.

ANALYSIS & DECISION:

9. 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, at the outset, this court finds that there are sufficient grounds raised in the present appeal so as to interfere with the amount of compensation awarded by the learned Tribunal and modify the same.

10. First things first, there is a no challenge to the findings recorded by the learned Tribunal with regard to the factum of the accident, involvement of the offending vehicle in question, as also, the fact that the deceased suffered fatal injuries on account of the rash and negligent driving by the respondent No.1 in the main claim petition, namely driver Rama Nand.

11. Insofar as the quantum of the compensation is concerned, evidently the deceased was 55 years of age and the learned Tribunal rightly found that no evidence was led by PW-1/Smt. Santosh Devi that her deceased husband was employed in any private company and earning Rs. 8,000/- per month. There was no document or supporting evidence on the record corroborating the employment of the deceased and in the absence thereof, the learned Trial Court rightly reckoned the notional income to be as per the minimum wages applicable for an

⁶ (2017) 16 SCC 680



unskilled person in Delhi, which was pegged at Rs. 3,953/- per month during the relevant time. The annual notional income was rightly arrived at Rs. 47,436/-. However, the learned Tribunal has committed a grave error in not reckoning future prospects of increase in earnings of the deceased, which is contrary to the decision by the Supreme Court in the case of *National Insurance Company v. Pranay Sethi*⁷.

12. There is no gain saying that award of just compensation should be based on the foundation of fairness and reasonableness and in order to strike balanced between the two extremes i.e. avoiding compensation in nature of windfall and on the other hand mere pittance, the Supreme Court has provided that in cases where the deceased is self-employed, or, was a person from labour class, the future prospects in the increase of salary or earning in the case of deceased being 50 to 60 years of age should be at 10%. Hence, making an addition of 10% to the annual notional income i.e. Rs. 47,436 + 10% {which comes to Rs. 4,743/-}, the annual notional income comes to Rs. 51,579/-.

13. However, considering that the deceased was otherwise having a large family and he had taken care of the well-being and care of his four children, it would be fair to assume that his income would have much more than Rs. 51,579/- per year. Considering that the scales of minimum wages in whatever category have no nexus with the age and experience of the workman, it would be fair to assume that deceased was earning about Rs. 60,000/- per month. Having said that, considering that the deceased was survived by two married daughters

⁷ (2017) 6SCC 680



and two married sons, who were obviously not financially dependent upon the deceased, a deduction of 1/2 shall be warranted towards personal use and living expenses of the deceased. Thus, the notional financial dependency of claimant/widow of the deceased would come to Rs. 30,000/- per month. The multiplier of 11 has been rightly applied and thus the loss of financial dependency would work out to be Rs. 3,30,000/-.

14. *Ex-facie* the amount of compensation awarded by the learned Tribunal to the extent of Rs. 4,00,000/- towards love and affection, Rs. 25,000/- towards funeral expenses and Rs. 1,00,000/- each towards loss of estate and loss of consortium cannot be sustained in law in view of the parameters settled by the Supreme court in the case of **Pranay Sethi** (supra). The same are required to be reduced to Rs. 15000/- towards loss of estate as also ditto amount towards funeral expenses. Each of the legal heirs shall further be entitled to Rs. 40,000/- towards loss of consortium. Although two children of the deceased have since expired, they were entitled to claim compensation when the claim petition was filed.

15. To the aforesaid extent, the pleas advanced by the learned counsel for the Insurance company are hereby found to be well-made out. Accordingly, the break-up of the compensation awarded can be tabulated as under:-

S. No.	HEAD	AMOUNT
1	Loss of financially dependency	Rs. 3,30,000/-
2	For funeral expenses	Rs. 15,000/-
3	Loss of estate	Rs. 15,000/-
4	Loss of consortium (Rs. 40,000 x 5)	Rs. 2,00,000/-
TOTAL		Rs. 5,60,000/-



16. Hence, the claimants of the legal heirs of the deceased are entitled to total compensation of Rs. 5,60,000/-. Further, having regard to the fact that the accident occurred on 20.11.2009 and the claim petition was decided after almost six years and there is nothing to suggest that the claimants were guilty of prolonging the proceedings/trial before the learned Tribunal, award of compensation by way of interest @ 9% per annum does not require to be interfered with.

17. In view of the foregoing discussions, the claimants are entitled to total compensation of **Rs. 5,60,000/-** with the interest @ 9% p.a. from the date of filing of the petition i.e. 01.12.2009 till realization. The claimants have already been awarded 50% of the amount of compensation with interest based on the compensation awarded vide impugned judgment cum award dated 14.10.2015 of this Court and the balance out had been ordered to be kept in the interest-bearing fixed deposit with the UCO Bank, Delhi High Court Branch, New Delhi. It is clarified that the each of the children of the deceased shall be entitled to only Rs. 40,000/- with accrued interest and the balance amount shall be payable to the wife/widow of the deceased with accrued interest. As two of the legal heirs have died during the proceedings, their respective surviving spouses shall be entitled to their part of the compensation awarded.

18. It is directed that after deducting 50% of the amount of compensation as per the award passed by the learned Tribunal vide judgment dated 01.07.2015, the balance amount of compensation



awarded by this Court with interest be released to the claimants within four weeks from today. The balance amount remaining thereafter, if any, be adjusted accordingly, and if found surplus be refunded to the Insurance Company with accrued interest, if any. Since MAC.APPL. 775/2015 of the appellant /Insurance Company is being allowed, they shall be entitled to refund of statutory amount of Rs. 25,000/- forthwith.

19. The present two appeals are decided and disposed of accordingly.

DHARMESH SHARMA, J.

JULY 01, 2024/sp