



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

% **Judgment reserved on : 29 May 2024**
Judgment pronounced on : 13 August 2024

+ **MAC. APP. 951/2015 & CM APPL. 29746/2015**

ORIENTAL INSURANCE CO. LTD Appellant
Through: **Mr. Pankaj Seth, Advocate.**

versus

TASLIM PARVIN & ORS Respondents
Through: **Mr. Pankaj Gupta, Advocate,**
Ms. Mehak Nakra, ASC with
Ms. Aditi Kapoor and Mr.
Devansh Solanki, Advocates
for R2 to R6.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgement-cum-award dated 28.09.2015 passed by the learned Presiding Office, Motor Accident Claims Tribunal, Shahdara, Karkardooma Court, Delhi², whereby the claim petition³ filed by the respondents No. 1 and 2/claimants under Section 166 read with Section 140 of the M.V. Act was allowed and respondents No. 1 and 2/claimants were awarded a sum of Rs. 6,12,430/- as compensation.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, suffice it to state that the respondents No. 1 and 2/claimants are the mother and sister of the

¹ M. V. Act

² Tribunal



deceased, Sarfaraz, who was 19 years old at the time of the accident and was engaged in the business of scrap dealing. On 10.04.2012, at approximately around 08.20 p.m., the deceased was travelling on a motorcycle bearing registration No. UP-17C-8817, as a pillion rider along with one Sallu. When they reached in front of the residence of the District Magistrate, Baghpat, the offending truck bearing registration No. HR-38J-0335, driven recklessly and negligently driven by Jugendra Singh/respondent No. 3, came at a high speed and collided with the motorcycle. As a resultant, the deceased and Sallu fell down and sustained grave injuries, to which they ultimately succumbed on the spot of the accident. The respondents No. 1 and 2/claimants subsequently filed a claim petition seeking compensation of Rs. 20 lakhs under various heads. This resulted in the registration of FIR⁴ No. 150/2012 under Sections 279, 304-A and 427 of the IPC⁵ with Police Station, Baghpat, Uttar Pradesh. The offending truck was being driven by respondent No. 3, owned by respondent No. 4 and admittedly insured by the appellant/Insurance Company.

3. Based on the pleadings of the parties, the learned Tribunal on 25.11.2013, framed the following issues were framed: -

“Issue No. 1

Whether Sh. Sarfaraz suffered fatal injuries in the accident occurred on 10.04.2012 due to rash and negligent driving of vehicle no. HR-38J-0335 (Truck) being driven by respondent no. 1?

Issue No. 2

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

³ MAC No. 94/2013

⁴ First Information Report

⁵ Indian Penal Code, 1860



Issue No. 3
Relief.”

4. During the course of proceedings/trial before the learned Tribunal, the mother of the deceased/respondent No. 1 was examined as PW-2 and the eye-witness/Usman was examined as PW-3 and it would be apposite to refer to the observations made by the learned Tribunal while deciding the Issue No. 1, which go as under: -

“11. This issue is common in both the petitions and taken up together for disposal. PW-1 is wife of deceased Sallu. PW-2 Tasleem Parveen is mother of deceased Sarfaraz. Both of them have their affidavits and stated that deceased Sallu and Sarfaraz have expired in an accident. Their postmortem was conducted at General Hospital, Baghpat.

12. PW-3 Usman is an eye witness. He has filed his affidavit Ex.PW-3/A wherein he has categorically stated that on 10.04.2012 at 8.20 p.m Sallu and Sarfaraz were going to Goripur Mor from Mohalla Qureshian, Baghpat on a motorcycle bearing no. UP-17 - 8817 and reached in front of the residence of District Magistrate, Baghpat. A truck bearing registration no. HR-38J-0335 being driven by driver came in a high speed and in a rash and negligent manner and hit the motorcycle as a result both of them fell down and sustained injuries and succumbed to the injuries. FIR no: 150/12, Crime No.-301/12 U/s 279/304A/427 IPG PS, Baghpat was registered against respondent no. 1. The accident has taken place due to rash and negligent driving of respondent no. 1. Ex.PW-3/1 is his voter I card.

13. During cross-examination by respondent no. 1 and 2, he stated that he was riding his motorcycle. The motorcycle of deceased was at the distance of 30-35 yards from his motorcycle. The offending truck was coming from the opposite side. The suggestion is denied that he was not present at the time of accident or did not witness the accident or deposing falsely as one of deceased is his nephew.

14. During cross-examination by insurance company, the suggestion is denied that he did not witness the accident.

15. R1W1 Jugendra Singh is respondent no. 1. He stated that he is a professional driver having valid driving licence Ex.RW1/A bearing no. 50890/PK/PROF issued by DTO, Phek, Nagaland which is valid from 23.03.211 till 15.11.2016. The copy of licence was provided to the police. The vehicle is insured with the



insurance company. He is not responsible for the accident. During cross-examination by the petitioner, it is admitted that FIR. no. 150/12 has been registered against him in which charge sheet has been filed. It is correct that he himself went to police station after the accident by leaving the truck at the spot.

16. I have **heard** Id. Counsel for the parties and perused the record. The testimony of PW-3 shows that on 10.04.2012 at 8.20 p.m he was going on his motorcycle. Deceased were also going on their motorcycle bearing no. UP-17C-8817. They reached in front of the residence of District Magistrate, Baghpat. Nothing has brought on record to controvert this part of testimony. His testimony further shows that driver was driving the truck bearing registration no. HR-38J-0335. Respondent no 1 has appeared as R1W1 and admitted that he was driving the truck in question. The testimony of PW-3 further shows that respondent no. 1 was driving the truck in a rash and negligent manner and hit against the motorcycle of the deceased as a result both of them fell down and sustained injuries and succumbed to the injuries. R1W1 is the best person to controvert this fact but he has nowhere deposed in his testimony that he was neither rash nor negligent or his truck did not hit the motorcycle. R1W1 is silent on this material aspect of the case. PW-3 has not been cross-examined on these vital aspects of the case. PW-3 will not falsely implicate the respondents no. 1 and 2 as there is nothing on the record that he is having ill will against them. It is admitted fact that FIR No. 150/12 u/s 279/304AIPC PS, Baghpat has been registered against the respondent no.1. The petitioners have placed reliance on the charge sheet. Postmortem report is on record which shows that deceased have expired in an accident. In **National insurance Co. Ltd. Vs Pushpa Rana and ors., 2009 ACJ 287**, was held by their lordship that certified copies of criminal case such as FIR, recovery memo and mechanical inspection report of vehicle are sufficient proof to reach to the conclusion that driver was negligent. The testimony of PW-1 coupled with the FIR, site plan and mechanical inspection reports clearly shows that the accident has taken place due to. the rash and negligent driving of respondent no. 1. The issue no. 1 is decided against the respondents in both the petitions.”

5. As regards decision on issue No. 2 is concerned, the learned Tribunal applied the multiplier of ‘15’ as per the age of the mother of the deceased. It was submitted by the respondents No. 1 and 2/claimants before the learned Tribunal that the deceased was working



as a scrap dealer and was earning Rs. 10,000/- per month, however, since no documentary proof of the same was placed on the record, hence the minimum wages for an unskilled worker in Uttar Pradesh as on the date of the accident was applied by the learned Tribunal and 50% of the income was deducted towards personal expenses and living. Accordingly, the annual income of the deceased was reckoned to be Rs. 27,162/- (Rs.4,527 x 12 x ½). It would be apposite to reproduce the finding of the learned Tribunal in regard to the compensation awarded to the claimants: -

“28. PW-2 Smt. Tasiema Parveen is mother of deceased Sarfaraz. She has filed her affidavit Ex.PW-2/A, which shows that deceased was 19 years old at the time of accident who was a scrap dealer and earning Rs. 10,000/- per month. The petitioners are the legal heirs of the deceased. She has spent Rs. 50,000/- on transportation and funeral. They were dependent upon the deceased. Ex.PW-2/1 is the copy of her Aadhar card and mark A is the copy of birth certificate of Sarfaraz.

29. During cross-examination by insurance company, she stated that she does not have any documentary evidence with respect to the employment and income of the deceased. She has not filed any other proof with respect to residence and her relationship with the deceased. Her son was riding pillion on motorcycle being driven by deceased Sallu. She has not filed any proof to show the relationship of petitioners with deceased.

30. Heard and perused the record. The petitioners have filed the petition in Delhi though the accident has taken place at Baghpat, U.P. They have shown that they are residents of Delhi. Ex.PW-2/1 is the Aadhar card of PW-2. It shows that she is resident of Delhi. The petition can be filed at a place where accident has taken place or where petitioners are residing. The Aadhar card of PW-2 shows that she is resident of Delhi. There is nothing on the record to show that she was not residing in Delhi. No evidence is led by the respondents that petitioner no. 1 has never resided at Delhi. In the absence of the evidence to the contrary, the testimony of PW-2 is relied upon that she is also resident of Delhi. The petition is maintainable in the courts at Delhi.

31. The deceased was a Scrap dealer who was allegedly earning Rs. 10,000/- per month. No income proof is placed on record. In



the absence of any income proof, the deceased can be put into the category of unskilled worker. There is no evidence that deceased was a Scrap dealer at Delhi. The address of deceased shown in photocopy of birth certificate is of Baghpath, U.P.- There is no evidence that deceased was working in Delhi. In the absence of any evidence, it can be safely held that he might have been working at Baghpat. The minimum wages for unskilled worker in Uttar Pradesh on 10.04.2012 was Rs.4527/- per month so his monthly income is taken as Rs. 4527/-.

32. No evidence is led by the petitioner with regard to his good future prospects. In the absence of any evidence of good future prospects, no addition towards future prospects is granted to the petitioners. Reliance is placed upon MAC App. No. 79/2014 and 413/2015 titled as "Bharti Axa General Ins. Co. Ltd. Vs Poonam and ors." decided on 27.05.2015 by Hon'ble Mr. Justice G.P. Mittal of our own High Court.

33. The monthly income is Rs.4527/-. The deceased was bachelor at the time of his death. 50% income is deducted towards personal expenses and living. The annual income after deductions comes to Rs. 27162/- (Rs.4527 x 12 x 1/2). The deceased was bachelor and multiplier to be selected for the purpose of awarding compensation has to be as per the age of mother of deceased. Reliance is placed upon MAC App. No. 79/2014 and 413/2015 titled as "Bharti Axa General Ins. Co. Ltd. Vs Poonam and ors." decided on 27.05.2015 by Hon'ble Mr. Justice G.P. Mittal of our own High Court and MAC App No. 1188/2012 titled as 'Smt. Sarbari and anr. Vs The New India Assurance Co. Ltd.' decided on 08.09.2015 by Hon'ble Ms. Justice Pratibha Rani of our own High Court. Ex.PW-2/1 is the Aadhar card of the mother of deceased which shows that her year of birth

is 1973. The accident has taken place on 10.04.2012. She was 39 years old but less than 40 years. Keeping in view the law laid down in "Sarla Verma vs DTC", 2009 ACJ 1298 the multiplier of 15 is applicable. The total compensation on account of loss of dependency comes to Rs. 4,07,430/-(Rs. 27162/- x 15).

34. The petitioners are also entitled for non-pecuniary claim. The petitioner no. 1 is mother of deceased. She has lost her son. She has suffered irreparable loss. No amount of compensation is enough to cover this loss. She could have showered her love and affection on the deceased in case he remained alive. The petitioner no. 2 has lost her brother. In these circumstances, petitioners are entitled for claim for the loss of love and affection of Rs. 50,000/- each. Reliance is placed upon "Rajesh vs Rajbir Singh". 2013 ACJ 1403 SC.



35. The petitioners are also entitled for loss of estate of Rs. 40,000/-, Rs. 40,000/- towards of expectancy of life of the deceased, Rs. 25,000/- for funeral expenses.

36. The petitioners are entitled for the following compensation under the following heads: -

S. No.	Name of heads	Amount
1.	Loss of dependency/contribution to the family	Rs. 4,07,430/-
2.	Loss of love and affection	Rs. 1,00,000/-
3.	Loss of estate	Rs. 40,000/-
4.	Loss of expectancy of life	Rs. 40,000/-
5.	Funeral and transportation expenses	Rs. 25,000/-
TOTAL		Rs. 6,12,430/-

6. Lastly, regarding the apportionment of liability, the learned Tribunal observed that the driving license of respondent No. 3, which was issued by the Licensing Authority, Muzaffar Nagar, was valid from 29.12.2008 to 28.12.2011 for the HMT category. Respondent No. 3 subsequently renewed this driving license from 05.11.2012 to 04.11.2015. Additionally, on 16.11.2010, respondent No. 3 obtained a second driving license from the DTO, Phek, Nagaland, valid from 23.03.2011 to 15.11.2016. The respondent No. 3 received a notice under Order 12 Rule 8 of the CPC from the appellant/Insurance Company to produce all the relevant documents, but only produced the driving license issued by the DTO, Phek, Nagaland. The appellant/Insurance Company argued before the learned Tribunal that respondent No. 3 was in possession of two licenses for the same category of vehicles, which is prohibited under the M.V. Act. The learned Tribunal noted that, according to Section 6(1) of the M.V. Act, holding two driving licenses is prohibited. Furthermore, the second proviso to Section 9 of the M.V. Act prohibits a Licensing Authority from issuing a new driving license if the applicant is already holding a



driving license unless a good and sufficient reason is provided for the inability to obtain a duplicate copy of the previous driving license. Section 11 of the M.V. Act permits the upgradation of a driving license from one category to another, with the format prescribed under Rule 17 of the Central Motor Vehicle Rules, 1989.

7. The respondent No. 3 was unable to specify under which provision he could have two driving licenses simultaneously. The learned Tribunal observed that the earlier driving license, which was issued by the Licensing Authority, Muzzafar Nagar was concealed from the second Licensing Authority for reasons best known to the respondent No. 3, rendering the second driving license of no assistance to him. The driving license issued by Licensing Authority, Muzzafar Nagar was not renewed from 29.12.2011 to 04.11.2012, and the accident in question occurred on 10.04.2012. This indicates that the respondent No. 3 did not possess a valid driving license on the date of the accident. The learned Tribunal noted that the offending vehicle was insured with appellant/insurance company and in accordance with the precedents established in **New India Assurance Co. v. Kamla**⁶ and **National India Insurance Co. Ltd. v. Swaran Singh**⁷, the liability shall fall upon the appellant/insurance company pursuant to Sections 149(4) and 149(5) of the M.V. Act. Consequently, the appellant/insurance company was required to pay the compensation to respondents No. 1 to 2/claimants and the appellant/insurance company

⁶ 2001 ACJ 843 SC

⁷ 2004 ACJ 1 SC



is entitled to recover the same from the driver and owner i.e., respondents no. 3 and 4, respectively.

GROUND OF THE APPEAL:

8. The learned counsel for the appellant/Insurance Company has assailed the impugned judgement-cum-award on the grounds that the learned Tribunal has erred in awarding interest @ 12% per annum, which is contrary to the decision laid down by the Supreme Court in **Amrit Bhanu Shali v. National Insurance Co. Ltd.**⁸. Furthermore, it is asserted that the mere testimonies of PW1, PW2 and PW3 did not sufficiently prove that the accident was caused solely due to the negligence of respondent No.3. It is submitted that respondent No.3 appeared as R1W1 and categorically denied the accident. The appellant/insurance company submits that the accident was a result of a contributory negligence.

9. Reliance was placed on a decision by the Supreme Court in **Minu B Mehta v. Balakrishna Ramachandra Nayan**⁹, wherein it was held that it is incumbent upon the claimant to prove negligence on the part of the driver of the offending vehicle to hold the owner of the vehicle vicariously liable for the act of a driver, and that proof of negligence remains the lynchpin to recover compensation.

10. For the aspect when two vehicles are involved in an accident, there exists a presumption of 50 % contributory negligence for each vehicle. The learned counsel for the appellant/insurance company has

⁸ 2012 (11) SCC 738

⁹ (1977) 2 SCC 441



relied on **Raj Rani & Ors. v. Oriental Insurance Co. Ltd.**¹⁰, **Mrs. Updesh Kaur & Ors. V. Jagram & Ors.**¹¹, **Renukadevi H. v. Bangalore Metropolitan Transport Corporation & Anr.**¹², **Managing Director v. Amudha Sivapraksham**¹³ and **National Insurance Co. Ltd. v. Santosh Khandelwal & Ors.**¹⁴

11. It is contended that the compensation awarded is on the higher scale and that the learned Tribunal has erred in awarding Rs.25,000/- for funeral expenses. It is submitted that the said amount is highly excessive, without any basis and contrary to the laws laid down.

ANALYSIS & DECISION:

12. 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 the present appeal.

13. It is pertinent to mention that learned Tribunal decided MAC No. 93/2013 and also the MAC No. 94/2013 titled as '*Khushanuma & Ors. v. Jugendra Singh & Ors.*' and '*Taslim Parvin & Anr. v. Jugendra Singh & Ors.*' respectively, *vide* common Award dated 28.09.2015, against which the appellant/insurance company has preferred MAC. APP No. 954/2015, which is also being disposed of by a separate judgment and the learned Tribunal recorded the following findings on issue No.1:

¹⁰ 2009 ACJ 2003

¹¹ III (2004) ACC 106

¹² 2008 ACJ 1188

¹³ 2012 ACJ 393



“I have heard Id. Counsel for the parties and perused the record. The testimony of PW-3 shows that on 10.04.2012 at 8.20 p.m he was going on his motorcycle. Deceased were also going on their motorcycle bearing no. UP-17C-8817. They reached in front of the residence of District Magistrate, Baghpat. Nothing has brought on record to controvert this part of testimony. His testimony further shows that driver vWas driving the truck bearing registration no. HR-38J-0335. Respondent no 1 has appeared as RIWI and admitted that he was driving the truck in qestion. The testimony of PW-3 further shows that respondent no. 1 was driving the truck in a rash and negligent manner and hit against the motorcycle of the deceased as a result both of them fell down and sustained injuries and succumbed to the injuries. RIWI is the best person to controvert this fact but he has nowhere deposed in his testimony that he was neither rash nor negligent or his truck did not hit the motorcycle. RIWI is silent on this material aspect of the case. PW-3 has not been cross-examined on these vital aspects of the case. PW-3 will not falsely implicate the respondents no. 1 and 2 as there is nothing on the record that he is having ill will against them. It is admitted fact that FIR No.150/12 u/s 279/304AIPC PS, Baghpat has been registered against the respondent no.1. The petitioners have placed reliance on the charge sheet. Postmortem report is on record which shows that deceased have expired in an accident. In National insurance Co. Ltd. Vs Pushoa Rana and ors.. 2009 ACJ 287, it was held by their lordship that certified copies of criminal case such as FIR, recovery memo and mechanical inspection report of vehicle are sufficient proof to reach to the conclusion that driver was negligent. The testimony of PW-1 coupled with the FIR, site plan and mechanical inspection reports clearly shows that the accident has taken place due to. the rash and negligent driving of respondent no. 1. The issue no. 1 is decided against the respondents in both the petitions.

14. The aforesaid findings *per se* are sound and based on the evidence presented by the parties. However, regarding the quantum of compensation, the only necessary correction is that the learned Tribunal has awarded Rs. 1,00,000/- to the respondents No.1 and 2/claimant towards loss of love and affection, Rs. 25,000/- towards funeral expenses, Rs. 40,000/- loss of estate, and Rs. 40,000/- loss of

¹⁴ CA No. 19803/2012



expectancy of life. The compensation awarded by the learned Tribunal, as above goes contrary to the decision by the Supreme Court in the case of **National Insurance Company v. Pranay Sethi**¹⁵. The compensation is therefore revised to Rs. 40,000/- each to respondents No. 1 and 2/claimants for loss of consortium and Rs. 15,000/- each for funeral expenses and loss of estate. Accordingly, the total compensation is worked out as under:

S. No.	Heads	Amount
1.	Loss of financial dependency	Rs. 4,07,430/-
2.	Loss of consortium [Rs. 40,000 x 2]	Rs. 80,000/-
3.	Funeral expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
TOTAL		Rs. 5,17,430/-

15. The present appeal is accordingly disposed of with direction that respondents No.1 and 2 shall be entitled to the total compensation of **Rs. 5,17,430/-**, which shall be payable to them with interest @ 7.5% from the date of filing of the claim petition i.e. 02.07.2013 till realization.

16. The statutory amount of Rs. 25,000/- deposited by the appellant/insurance company be released to them with accrued interest.

17. The pending application also stands disposed of.

DHARMESH SHARMA, J.

AUGUST 13, 2024/*Sadiq*

¹⁵ (2017) 16 SCC 680.