



2025:DHC:1303



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

Pronounced on: 27th February, 2025

+ **MAC.APP. 43/2021 & CM APPL. 2505/2021**

UNITED INDIA INSURANCE CO. LTD.

DRO-I, 8th floor,

Kanchanjunga Building,

18, Barakhamba Road,

New Delhi.

.....Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

1. SH. SHYAM BABU

S/o Sh. Jamuna Prasad,

R/o 7A/1, Dara Ganj,

Allahabad

Uttar Pradesh-211006

Also at:-

A-116/3, Mahavir Enclave, part-II,

Gali no. 2,

Dabri,

Delhi.

.....Respondent No.1

2. SH. NEMA MAHARAT,

S/o Sh. Hajari Ji,

R/o E-217, J.J. Colony,

Shiv Vihar Hastal,

Uttam Nagar,

Delhi-110059

.....Respondent No.2

3. SH. NAIN SINGH,

S/o Sh. Durga Singh,

R/o D-77, J.J. Colony,

Shiv Vihar, Hastal,

Uttam Nagar,

Signature Not Verified

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MAC.APP. 43/2021 & 102/2024

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Delhi.

Also at :-

Permanent Addl. Village
Naka Ka Bariya, Ramawas,
Tehsil Raipur,
District Pali
Rajasthan

.....Respondent No.3

Through: Mr. Pankaj Gupta, Advocate.

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MAC.APP. 102/2024 & CM APPL. 8874/2024

UNITED INDIA INSURANCE CO.LTD

DRO-I, 8th floor,
Kanchanjunga Building,
18, Barakhamba Road,
8, Barakhamba Road,
New Delhi

.....Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

1. PREM LATA (SISTER OF DECEASED)

W/o Sh. Yamuna Prasad,
R/o 16/6077, Daraganj, Allahabad,
Uttar Pradesh-211006

.....Respondent No.1

2. HEMLATA (SISTER OF DECEASED)

W/o Sh. Rajender Kumar,
R/o Village Bajahan Mishran,
Post-Saidabad, Tehsil-Handia,
Saifbad, Allahabad,
Uttar Pradesh-221508

.....Respondent No.2

3. SH. NEMA MAHARAT,

S/o Sh. Hajari Ji,
R/o E-217, J.J. Colony,

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Shiv Vihar Hastal,
Uttam Nagar,
Delhi-110059

.....Respondent No.3

4. SH. NAIN SINGH,
S/o Sh. Durga Singh,
R/o D-77, J.J. Colony,
Shiv Vihar, Hastal,
Uttam Nagar, Delhi

Also at :-

Permanent Addl. Village
Naka Ka Bariya, Ramawas,
Tehsil Raipur,
District Pali, Rajasthan

.....Respondent No.4

Through: Mr. Pankaj Gupta, Advocate.

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *The aforesaid two Appeals shall be decided together as they arise from the same accident dated 30.04.2018.*
2. **MAC.APP.43/2021** has been filed by the Insurance Company against the Award dated 17.03.2020 *vide* which compensation in the sum of Rs. 4,39,467/- along with interest @ 9% per annum has been awarded to Respondent/Injured Sh. Shyam Babu.
3. **MAC.APP.102/2024** has been filed by the Insurance Company against the Award dated 12.04.2023 *vide* which compensation in the sum of Rs. 5,54,946/- @ 7% per annum has been awarded to the Respondent/Sisters Sh. Premlata and Sh. Hemlata, on account of demise of their brother Sh. Satish, aged 45 years, in the road accident on 30.04.2018.



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4. **Briefly stated**, on 30.04.2018 at about 9:40 AM, Sh. Satish (deceased) along with his nephew Shyam Babu (injured) were going in a battery Rickshaw towards Keshopur Mandi, Delhi. When they reached near Ganda Nala, Khyala, suddenly the offending Tractor bearing No. RJ-22RA-2972 (red Colour) along with trolley came at a high speed, in rash and negligent manner and hit the battery rickshaw. Both of them fell on the road and the offending vehicle ran over the stomach of Satish. Both injured were admitted to Guru Govind Singh Govt. Hospital Raghbir Nagar, New Delhi. Sh. Satish expired subsequently, on 15.11.2018 due to septicaemia.
5. **FIR No. 83/2018** dated 30.04.2018 under sections 279/337/338 of IPC, 1860 was registered at P.S. Khyala, Delhi against the driver/Nema Meharat.
6. Detailed Accident Report (DAR) was filled along with the documents.
7. *Vide* the Impugned Awards, the Learned Tribunal held that the accident occurred due to the sole negligence of the Tractor driver and granted compensation in the sum of Rs. 4,39,467/- along with interest @ 9% to Respondent/Injured – Sh. Shyam Babu and Rs. 5,54,946/- @ 7% per annum to the Respondent/Sisters Smt. Premlata and Smt. Hemlata, of the deceased/Satish.
8. The *Appellant/Insurance Company*, in both the Appeals, has raised the **following common grounds** to challenge the Impugned Awards: -
 - i. that the accident occurred due to the fault of the e-rickshaw, which negligently came in front of the offending tractor and no negligence on the part of the Offending tractor-trolley, has been established; and



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ii. that when the accident took place, the trolley which was attached to the Tractor was not insured with the Insurance Company and hence, it is not liable to pay the compensation.

9. In the death case i.e. **MAC.APP.102/2024**, an *additional ground* is taken that the compensation granted to the Respondents/sisters of the deceased Satish under the Loss of Estate, is not tenable in law as the married sisters were not dependants on the Deceased and cannot be termed as his legal representatives.

10. ***Learned counsel on behalf of the Respondents*** have respectively argued that the learned Tribunal in the impugned Awards has considered the entire evidence in detail to rightly conclude the sole negligence of the tractor in causing the accident. Furthermore, the trolley was attached to the tractor, which was duly insured with the Appellant/Insurance Company, and it cannot avoid its liability to pay the compensation merely by claiming that the trolley was not insured.

11. **Submissions heard and record perused.**

Negligence of the Tractor-Trolley bearing No.RJ-22RA-2972:

12. *The first aspect for consideration is that the Insurance Company has denied that there was any negligence on the part of the Tractor Trolley; rather it was the e-rickshaw which caused the accident.*

13. The Claimants, in order to prove the negligence in **MAC.APP. 43/2021** had examined the injured, **Sh. Shyam Babu as PW-1** who deposed that on 30.04.2018 at about 9.40 AM, he along with his maternal uncle, Sh. Satish (deceased), were travelling in an e-Rickshaw, from the side of Keshopur Mandi towards Raghbir Nagar. When they reached near Ganda Nala, the offending tractor **No.RJ-22RA-2972**, which was coming from the



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opposite direction and was being driven in a rash and negligent manner by its driver/Sh. Nema Maharat, struck against the e-rickshaw from the front, *resulting in a head-on-collision*, due to which the e-Rikshaw toppled and he along with his Uncle Satish, fell and suffered grievous injuries. Sh. Satish died during his treatment on 15.11.2018 on account of Septicaemia due to the injuries suffered by him.

14. PW1 in his cross examination, clarified that there was no traffic in front of the e-rickshaw and admitted that it was a head-on-collision on the road which had no divider. The speed of the e-rickshaw was claimed to be about 30-35 km/hr while that of the Tractor was about 100 km/hr. It was deposed that the driver of the Tractor failed to apply the brakes which resulted in the collision.

15. Pertinently, he denied the suggestion that seeing the tractor coming from the opposite direction, e-Rickshaw driver lost control and turned it towards the side of the Tractor resulting in collision. It was also denied that the Tractor was being driven on its own side in its own lane. It is further deposed by him that the accident occurred due to sole negligence of the driver of the Tractor.

16. In order to controvert the testimony of the injured/eye-witness, ***the Tractor driver-Nema Meharat appeared as RIWI*** and explained that he was driving the Tractor in his own lane at a normal speed in accordance with the traffic rules and norms. He also deposed that there was no traffic on the road in front of the tractor. There was no divider in between, at the spot where the accident took place. He further explained that while he was going on his side of the road, all of a sudden the car which was coming from the opposite direction at a very high speed, carelessly and was being driven in a



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negligent manner, applied power brakes. The e-rikshaw which was following the car, could not react and he suddenly turned his vehicle towards the wrong side from where he was coming and the lost its balance and collided in the Tractor. He, the tractor driver made all possible efforts to avoid the accident and turned his Tractor towards the extreme side on Kacha road, but the accident still took place. Thus, he deposed that the accident was caused due to the negligent driving of the e-rickshaw driver.

17. Pertinently, he in his cross examination admitted that there was a criminal case registered against him in which he is on bail. He also admitted that he did not make any complaint to any senior about his false implication. While he denied that he was driving the vehicle at a high speed in a zig zag manner, but admitted that he fled away from the spot after the accident.

18. The testimony of both these witnesses can be best appreciated in the light of the site plan prepared during the investigations in the FIR No.83/2018.

19. It is corroborated by the site plan that e-Rickshaw was coming from the side of the Keshopura and was being driven on its side of the road, which had no divider in between. The accident had taken place at point A of the road. The testimony of PW-1 the injured cannot be discredited in accepting that it was the Tractor Trolley which had hit into the e-Rickshaw being driven on its side, as has also been observed by the learned Tribunal in the Impugned Awards.

20. Since the factum of accident has not been disputed by the driver, the most significant fact to be considered which has emerged in the testimony of **R1W1 driver-Nema Meharat is** that there was another car in front of the e-Rickshaw which applied power brakes, leading to the e-rikshaw deflecting



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in the lane of the Tractor. PW-1 has consistently deposed that there was no vehicle plying in front of e-Rickshaw and was also not put to him in cross-examination, which demolishes the defence of R1W1-Nema Maharat, that the car ahead of e-Rickshaw suddenly applied brakes on account of which the e-Rickshaw deflected towards the opposite side in order to avoid collision and had a head on collision with the Tractor, which was being driven on its side of the road.

21. In the absence of there being any evidence that there was a car driven in front of the e-Rickshaw, the circumstances as claimed by R1W1 do not stand substantiated. Also, there was no reason for the driver to have absconded from the spot, as has been admitted by him in his testimony.

22. Further, it cannot be overlooked that admittedly the Chargesheet has been filed against the driver of the tractor in FIR No.83/2018 in which he is facing trial. It is well settled that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle, as has been held in the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that filing of Chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, Amanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022).

23. The learned Tribunal has, therefore, rightly concluded the negligence of the driver of the tractor trolley and no interreference is merited on this aspect.



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Breach of Insurance Policy/Liability: -

24. The incidental argument which has been raised on behalf of the Insurance Company is that the Trolley which was attached to the tractor was not insured and no premium has been paid for it by the Owner. Further, the accident took place with the trolley and thus, the Insurance Company has no liability to pay the compensation.

25. However, this objection of the Insurance Company is baseless, in light of the overwhelming evidence discussed above, wherein it has been admitted that the accident was a *head-on collusion* and it was the Tractor which collided into the e-Rickshaw.

26. Further, the Learned Tribunal has rightly observed that since it was a *head-on collision with the Tractor*, the Trolley has to be considered as a part and parcel of the Tractor.

27. Thus, this defence of breach of the Insurance Policy taken by the Insurance Company is therefore, not tenable.

28. ***It is, therefore, held that the learned Tribunal has rightly concluded the negligence of the driver of the Tractor Trolley in causing the accident and the Insurance Company cannot evade its liability on this ground.***

Quantum of Compensation in MAC.APP.102/2024 (Death Case): -

29. Another ground of challenge in *MAC.APP.102/2024*, is that the Respondent Nos.1 & 2, Smt. Premlata and Smt. Hemlata, are the two married sisters of deceased Sh. Satish and were not dependent upon him and the compensation granted to them on account of *Loss of Estate* is on a higher side.

30. Indisputably the deceased was not married and was survived by his two married sisters.



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31. The question which arises is the quantum of compensation that may be paid to them.

32. In the case of Francis Edwin v. Omana PK and Ors. Civ. Appl. 8964/2012 decided on 12.08.2016, the Apex Court observed that there is a distinction between “*Loss to the Estate of the deceased*” and “*Loss of Estate*”. It was observed that the prior refers to the capitalized value of the income spent on the dependents subject to relevant deductions, which is the pecuniary loss sustained by the members of the family through a person’s death. In other words, what amount the dependents would have got is the loss to the estate of the deceased, which goes to the legal heirs of the deceased. Per Contra, *the Loss of Estate* includes compensation for pain and suffering, loss of enjoyment of amenities, etc. of the deceased. That amount goes to the legal heirs by virtue of *Section 1A of the Fatal Accidents Act*.

33. This aspect was also considered in detail in the case of in Keith Rowe vs. Prashant Sagar and Ors, MAC.APPL.601/2007 decided on 15.01.2010 by a Coordinate Bench of this Court. The principles for determining the compensation in the case of dependent/independent spouse/children, etc. was defined in respect of the legal heirs who are not dependent upon the claimants as under:-

“16. But, what would be the position if the claimant, though a legal heir is not a dependant of the deceased? Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the 'house hold' as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate



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under Section 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently, what is to be awarded under the head of loss of dependency under Section 1A would be nil, as there is no real pecuniary loss to the members of the family.”

34. *It was further explained that the procedure for determination of loss of Estate is broadly the same as the procedure for determination of loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But the significant difference is in the figure arrived at as multiplicand in cases of claimants who are dependents can claim Loss of Dependency while those who are not dependents can only claim loss of estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss of estate. The method of selection of multiplier, is however the same in both the cases.*

35. In the present case, the learned Tribunal, by applying this formula, has calculated the *loss of estate* by taking the Income of the deceased as Rs. 7,613/- on the basis of the Minimum Wages of the Unskilled Worker. An addition of 25% has been made towards future prospects to assess the monthly loss of income as **Rs.9516/-** (7613 + 25%). Out of this amount, the Tribunal assessed that 1/3rd would have been the savings and 2/3rd amount would be utilized towards the personal expenses of the deceased.

36. Thus, the Learned Tribunal calculated the monthly *loss of estate* to be Rs.3172/- (after deducting 2/3rd of Rs. 9516/-) and the annual loss was



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calculated as Rs.38,064/-.

37. Thus, by applying the multiplier of 14, **the total compensation amount has been calculated as Rs.5,32,896/-.**

38. *The loss of estate, i.e. the loss of savings, has therefore, been rightly calculated by the learned Tribunal and there is no ground to interfere with the Loss of Estate so calculated.*

Conclusion:-

39. There is no infirmity in the Impugned Awards dated 17.03.2020 and 12.04.2023, which do not warrant any interference.

40. The present Appeals are dismissed accordingly, along with pending Application(s), if any.

41. The Statutory deposit be returned to the Appellant/Insurance Company, in accordance with Law.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 27, 2025

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