



2025:DHC:146



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

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Reserved on: 05th November, 2024

Pronounced on: 13th January, 2025

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MAC.APP. 26/2020, CM APPL. 2415/2020

ORIENTAL INSURANCE CO. LTD.

Delhi Regional Office-1

T.P. HUB, F-14,

Connaught Place, New Delhi

.....Appellant

Through: Mr. R.K. Tripathi, Advocate.

Versus

1. VIJENDER SINGH @ BIJENDER SINGH

S/o Late Shri Ved Ram,

R/o H. No. 118, VPO Bankner,

Narela, New Delhi – 110040

2. SMT. NIRMALA

W/o Late Shri Vijender Singh,

R/o H. No. 118, VPO Bankner,

Narela, New Delhi – 110040

3. NARENDER KUMAR (DRIVER)

S/o Mool Chand

R/o 988/21 Baba Colony,

Sonipat, Haryana

4. RAGHBIR (OWNER)

R/o H. No. 116, VPO Pichola,

District Kamal, Haryana

.....Respondents

Through: Mr. Navneet Goyal, Advocate for R-1
& R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *An Appeal under Section 173 Motor Vehicle Act, 1988* has been filed by the Insurance Company to challenge the *Impugned Award dated 03.10.2019, vide which the compensation in the sum of Rs. Rs. 15,92,000/- along with interest @ 9% per annum* has been awarded to the parents of deceased Sh. Ritesh Khatri who expired in a road accident on 28.01.2014.

2. The **Appellant/Insurance Company** has challenged the Impugned Award on the **following grounds** :

(i) The deceased was not holding a valid Driving License and since it was a head-on-collision, the Ld. Tribunal has erred in not deducting any amount towards *Contributory Negligence*.

(ii) The amount of Compensation granted for the *Loss of Consortium* is not in accordance with the law laid in the judgment of *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680.

(iii) The *Rate of Interest* is also on a higher side as the prevailing rate of interest for the Schedule Banks, was not more than 6% p.a.

3. *In the Short Synopsis filed on behalf of the Respondents/Claimants*, it is submitted that without any specific evidence to prove contributory negligence, mere non-holding of driving license by the deceased, is not sufficient to prove *contributory negligence* on the part of deceased. Reliance is placed upon *Civil Appeal no.3321/2008, Sudhir Kumar Rana Vs. Surinder*



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Singh & other, decided by Hon'ble Supreme Court on 06.05.2008; Civil Appeal No. 5764/2008, Meera Devi & another Vs. H.R. T. C. & others, decided by Full Bench Hon'ble Supreme Court on 10.03.2014; MAC APP No. 429/2004, Oriental Ins. Co. Ltd. Vs. Amit Kumar & others, decided vide Judgment dated 02.12.2009.

4. It is further submitted that the Impugned Award dated 03.10.2019 is well reasoned and the Appeal is liable to be dismissed.

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

6. *Briefly stated*, on 28.01.2014, at about 12:15 P.M the Deceased/Ritesh Khatri, was driving his motorcycle bearing No. DL 4SA 0877 and was going towards Narela. When he reached Baba Peer, Rathdhana, Sonipat, a *Jeep bearing registration No. HR-45A-6243* which was being driven at a high speed in a rash and negligent manner by Respondent No. 3/ Narender Kumar, came from the side of Barotha and hit the motorcycle of deceased with great force, because of which the victim sustained grievous injuries. He succumbed to the injuries during the course of treatment.

7. *FIR No. 24/2014 dated 28.01.2014* under Section 279/304A IPC, 1860 P.S. Sonipat Sadar, Haryana was registered against the driver/Narender.

8. After investigations, Charge Sheet was filed against Respondent No. 3 /Narender Kumar. The *Detailed Accident Report* was filed before the Tribunal on the basis of the Chargesheet.

9. No Written Statement was filed on behalf of the Driver and the owner and they were proceeded *ex-parte*. *Vide* the Impugned Award dated 03.10.2019 compensation in the sum of Rs. 15,92,000/- along with interest @ 9% per annum has been awarded to the Claimants.



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Contributory Negligence:

10. The Appellant/ Insurance Company has claimed contributory negligence on the part of deceased.

11. The first material Witness is *PW2/Sh. Sultan Singh*, the eye-witness, who had tendered his Affidavit of Evidence *Ex. PW2/A* and had deposed that that on 28.01.2014, when he was going on his Motorcycle and reached near Rathdhana, Near Baba Peer, Sonipat, he saw the motorcycle going ahead of him, was struck by the *Jeep bearing No. FIR-45A-6243*, driven in a rash and negligent manner by its Driver. In the cross-examination on behalf of Insurance Company, he further clarified that it was a Head-On collision between the two vehicles. Thus, the manner of accident clearly points to the sole negligence of the driver of the offending vehicle with no circumstance attributable to the deceased.

12. *The first ground to claim contributory negligence is that it was a Head On collision.*

13. Pertinently, the *driver/owner* of the offending Vehicle had not contested the Petition or challenged the testimony of the eye-witness, to assert that there was any negligence on the part of the deceased. The eyewitnesses had been examined *in extenso* by the Appellant, but no material contradiction could be brought forth. There is nothing on record to show that there was any negligence of the deceased-driver in causing the head-on-collision.

14. The evidence of the eyewitnesses is also supported by the Chargesheet filed u/s. 279/304A IPC 1860 against the driver/Narender Kumar of the Offending Jeep, which also points towards the sole negligence



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of the Driver.

15. 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.

16. The argument of the Appellant/Insurance Company, that it is a case of contributory negligence, is not tenable in light of the overwhelming evidence which highlights the sole negligence of the Driver of the offending vehicle. There cannot be an inevitable conclusion in every head-on Collision that it is a case of contributory negligence. The surrounding circumstances have to be necessarily considered to ascertain if it is a case of contributory negligence.

17. In the present case, it has clearly come on record from the testimony of the eyewitnesses and from the criminal investigations conducted by the Police, that it was the offending Jeep coming from the opposite lane, which was solely responsible for the head on collision. Consequently, no negligence whatsoever can be attributed to the deceased driver of the Motorcycle.

18. *The Appellant has further sought to attribute negligence to the deceased by asserting that the deceased who was 17 years 10 months old, was not having a Driving License. However, merely because deceased was not having a Driving License, cannot lead to any inevitable conclusion of there being rashness or negligence on his part. It must not be overlooked that*



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unless there is some independent evidence to show that the victim did not know how to drive the motorcycle or had committed any act attributable to his lack of skill of driving of motorcycle, it cannot be concluded that he contributed in any manner, in causing the accident. Mere absence of Driving License cannot be a ground to conclude that the Appellant was negligent in causing the accident.

19. In Sudhir Kumar Rana vs. Surinder Singh, (2008) 12 SCC 436, the Apex Court has considered the similar case where the injured who was 17 years old, was not having Driving License. It was observed that the composite negligence refers to the negligence on the part of the two or more persons. The injured must be guilty of an act or omission which materially contributed to the accident and consequent injury. Where the person injured is not shown to have contributed in any manner in the happening of the accident, it cannot be said that it is a case of contributory negligence. It is only that the vehicle was being driven by the injured in a rash and negligent manner, can be held guilty of negligence. Merely because the injured does not have a Licence, is not sufficient to attribute contributory negligence.

20. Similar observations have been made by the Apex Court in Saraswati Palariya & Ors. vs. The New India Assurance Company Ltd. & Ors., Civil Appeal No. 9114/2018, wherein it was observed that merely because a vehicle was being driven by the deceased without a Driving Licence, would not automatically make him liable for contributory negligence.

21. *There can be no contributory negligence attributed to the Deceased; and this ground of challenge by the Insurance Company has no merit.*

Quantum of Compensation:



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Non-Pecuniary Heads: -

22. The Appellant has challenged compensation of Rs. 80,000/- granted i.e. 40,000/- to each parent, on the ground that only Rs. 40,000/- compositely, should have been granted to the parents.

23. In Pranay Sethi (Supra), it has been held that each claimant is entitled to Rs. 40,000/- for loss of Consortium, which is to be enhanced by 10% every three years. Thus, the two legal heirs have been rightly granted a sum of Rs. 40,000/-each, towards Loss of Consortium.

24. No ground is made out to reduce the compensation granted under this Head.

Rate of Interest: -

25. The aspect of Interest has been challenged by the Appellant/Insurance Company on the grounds that the interest awarded is exorbitant and same be reduced to @6% p.a. as per the prevailing rates of interest.

26. While relying upon the judgment of the Apex Court in Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in Oriental Insurance v. Reena Raghav, 2023 SCC OnLine Del 6695 refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal by observing that the Appellant/Insurance Company had only orally made a submission claiming the prevalent rate of interest to be 7.5% p.a. that too, on the basis of Google search while no document had been placed to support the plea of interest being too high.



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27. In the present case as well, apart from making a bald claim about the prevailing rate of interest, the Appellant has not produced any document to show the rate of interest that was prevailing in the year 2014-2019. There is no reason to interfere with the rate of interest awarded, @9% p.a., by the learned Tribunal.

Conclusion : -

28. There is no infirmity in the Impugned Award dated 03.10.2019 and the Appeal is dismissed, along with the pending Application(s) if any.

29. The Statutory Deposit be returned to the Insurance Company, in accordance with law.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 13, 2025

Signature Not Verified

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