



2025:DHC:263



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

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*Reserved on: 25th October, 2024
Pronounced on: 17th January, 2025*

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MAC APP. 635/2019

1. **SMT. GUDDI**
S/o Late Sh. Suresh Chand
2. **SMT. LAXMI**
W/o Sh. Tuhi Ram
3. **SH. TUHI RAM**
S/o Sh. Mohan Lal

All R/o House No.324, Jatav Basti,
Bhukaravali, Tehsil Hindaun,
Distt. Karpouli, Rajasthan.

..... Appellant

Through: Mr. Manish Jain and Ms. Anjali
Singh, Advocates.

versus

1. **MOHAN SHARMA**
S/o Sh. Jagdamba Sharma
R/o H.No.1750, Gali No.50,
Bengali Colony,
Sant Nagar, Burari, Delhi.
2. **HARI RAM**
S/o Sh. Shyam Lal
R/o Khasra No.10/15, Harit Vihar,
Uttranchal Colony, Kamal Pur, Burari,
Delhi.
3. **IFFCO TOKIO GENERAL INSURANCE CO. LTD.**
4 & 5 Floor, IFFCO Tower, Plot No.3

Signature Not Verified

Digitally Signed By: RAHIL
SHARMA

Signing Date: 18.01.2025
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Sector 29, Gurgaon, Haryana-122001,

.....Respondents

Through: Mr. Brijesh Bagga, Advocate for R3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under *Section 173* of the *Motor Vehicles Act, 1973* has been filed by the Claimants to seek *enhancement of compensation* granted in the sum of Rs.7,49,000/- along with interest @9% per annum, *vide* the impugned Award dated 24.12.2018 *on account of demise of Shri Suresh Kumar on 04.10.2011*, on account of the injuries suffered by him in a road accident on 27.07.2008.

2. *Learned counsel on behalf of the Claimants* has submitted that initially Late Shri Suresh Kumar had filed a Claim Petition No.743/2008 under *Section 166/140* of the *Motor Vehicles Act* for compensation for the injuries suffered by him, which was allowed *vide Award dated 20.03.2012* and a compensation of Rs.18,05,141/- on account of the injuries suffered by him in the accident, was granted.

3. An Appeal against the said Award was preferred by the Insurance Company since the injured had already died at the time of the Award, which factor had not been taken into consideration while passing the Award. The matter was remanded back *vide* Order dated 02.02.2016 to learned MACT for fresh adjudication of the compensation on account of the death of the injured on 04.10.2011.



4. The learned Tribunal *vide* Judgment dated 24.12.2018 granted a compensation of Rs.7,49,000/- along with interest @ 9% per annum. Aggrieved by the said Award, the present Appeal has been preferred by the Claimants on the *following grounds* :-

- (i) that the income of the deceased has been assessed as per the Minimum Wages for Semi-Skilled Workmen prevalent in Rajasthan @ Rs.2,782/- even though in the previous judgment dated 30.03.2012, the income of the deceased was assessed as Rs.4,081/- since he was a matriculate as per his Matriculation Certificate Ex.PW1/25;
- (ii) that the accident took place in Delhi, while the Minimum Wages of Rajasthan have been taken;
- (iii) that the compensation under *Non-Pecuniary Heads* is liable to be enhanced considering that the deceased remained under treatment for about 3 years and 2 months before he died on account of the injuries;
- (iv) that the multiplier applied was 16 while 17 is the correct multiplier;
- (v) that 1/3rd income of the deceased has been wrongly deducted towards his personal expenses; and
- (vi) that interest of 9% p.a.be enhanced to 18% per annum.

5. Learned counsel on behalf of the *Respondent/Insurance Company* has claimed that the compensation has been assessed fairly on the basis of



evidence on record. There is no infirmity and the Appeal is liable to be dismissed.

6. **Submissions heard and record perused.**

7. ***Briefly stated***, on 27.07.2008 Shri Suresh Chand was paddling his bicycle while his cousin Ram Dayal sitting on the carrier, was proceeding towards BU Block, Pitampura from Prashant Vihar *via* Outer Ring Road, Delhi. At about 3:30 P.M., when they reached near Income Tax Colony, Red Light, Pitampura, Shri Ram Dayal alighted from the bicycle while Shri Suresh Chand continued to paddle his bicycle. A Tempo bearing registration No.DI 1LJ 1733 (offending vehicle) driven by Respondent No.1 Mohan Sharma in a rash and negligent manner, hit the bicycle of the deceased with such force that it overturned. Suresh Chand came under the wheels of Tempo and suffered grievous injuries. He was taken to Dr. Baba Saheb Ambedkar Hospital, Rohini, Delhi, where he remained admitted for treatment. His treatment continued for the injuries suffered by him till 04.10.2011, when he eventually died. These facts are essentially not disputed by the parties. The Claimants have challenged the quantum of compensation.

Loss of Dependency:

8. The *main ground of challenge* is that the deceased, aged 27 years, was a Matriculate as established by his Matriculation Certificate Ex.PW1/25. He was working as a Stone Mechanic in Delhi and therefore, his Minimum Wages should have been assessed as per Delhi which were taken in the first Award dated 2008. However, in the present case, a contrary view has been



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taken by the learned Tribunal in taking the Minimum Wages of Rajasthan to assess the income of the deceased.

9. The deceased Suresh Chand had appeared in the first round of litigation as PW1 and tendered his affidavit of evidence as PW1/A. He had deposed that at the time of accident he was working as Dhaulpur Stone Mechanic (Mistri) and was earning Rs.7,500/- per month. However, no document whatsoever was produced in support of his vocation. Moreover, he did not depose that he was employed in Delhi. Rather, while deposing that he was working as Dhaulpur Stone Mechanic and earning Rs.7,500/- per month, he did not disclose his place of vocation or name of the employer in addition to not furnishing any proof of his monthly earnings.

10. Pertinently, in the Death Certificate of the deceased Ex.PW4/1, his present as well as permanent address was shown as of Rajasthan. Though the accident took place in Delhi and initially he was taken to Dr. Ambedkar Hospital, Rohini, but thereafter his entire treatment has continued in Hindaun City, Karpouli, Rajasthan. Pertinently, the Voter's Identity Card of wife Smt. Guddi, Aadhar Cards of mother Smt. Laxmi and father Sh. Tuhi Ram has been placed on record, wherein her address is shown as that of District Karpouli, Rajasthan. The Matriculation Certificate of the deceased is also of Rajasthan. There is not a single document placed on record to show that the deceased was working in Delhi.

11. *In the absence of any evidence whatsoever of the deceased working in Delhi, the income cannot be assessed on the basis of Delhi Minimum Wages merely because the accident took place in Delhi. Learned Tribunal has*



rightly assessed the income of the deceased on the basis of Minimum Wages prescribed by the State of Rajasthan. Even in the earlier Award it is the Minimum Wages as prescribed by the State of Rajasthan, which had been taken.

12. However, since the Matriculation Certificate Ex.PW1/25 of the deceased has been proved, the income of the deceased has to be taken as Minimum Wages prescribed for a Matriculate in Rajasthan. It is accordingly taken as **Rs.4,081/- per month** instead of Rs.2782/- per month.

13. The Appellants have claimed that 1/3rd deduction has been erroneously made as the deceased was barely spending Rs.200-300/- per month towards his personal expenses. However, the deceased is survived by his wife and parents. ***The learned Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased.***

14. ***The Loss of Dependency*** is accordingly recalculated as under:-

Rs.4,081/- X 140/100 X 2/3 X 12 X 16 = **Rs.7,31,315.2/-**.

Multiplier:

15. The *second challenge* is that the multiplier to be applied was 17 and not 16. As per the Matriculation Certificate, his date of birth is 05.08.1980. The deceased was aged 27 years at the time of accident, while he was about 31 years 2 months at the time of his demise on 04.10.2011 and, therefore, the appropriate multiplier is 16 and not 17, as taken by the learned Tribunal. ***The multiplier is, therefore, rightly taken by the learned Tribunal.***

Loss of Income:



16. Having taken the date of death as 04.10.2011 pertinently, the deceased is entitled to the Loss of Income for the three years that he remained under treatment. *Therefore, he is granted **Loss of Income** for 38 months @ Rs.4081/- per month which comes to **Rs.1,55,078/-**.*

Non-Pecuniary Heads:

17. The *next ground* of challenge is that the compensation under the *Non-Pecuniary Heads* is liable to be enhanced.

18. It is pertinent to observe that since the deceased suffered for three years before his demise, he is entitled to compensation towards Pain and Suffering which he had to undergo for a period of about 38 months before his demise. He had suffered 100% Permanent Disability and his entire body from waist down had been paralyzed and he suffered from '**Traumatic Paraplegia Neurogenic Bladder and Bowel**'.

19. *Considering his sufferings for a period of three years before his demise, he is granted compensation of **Rs.1,00,000/-** for the **Pain and Sufferings** during his lifetime.*

20. The Appellants have been granted Rs.15,000/- each towards Loss of Estate and Rs.15,000/- towards Funeral Expenses, while Rs.40,000/- has been awarded towards Loss of Consortium.

21. While no modification is warranted in the compensation granted on account of Loss of Estate and Funeral Expenses, but the deceased is survived by three legal heirs i.e. his wife and parents and each is entitled to a



compensation of Rs.40,000/- on account of Loss of Consortium. *The amount under Loss of Consortium is enhanced to Rs.1,20,000/- (40,000 X 3).*

22. Once, the compensation has been awarded on the ground of Loss of Consortium, no further compensation is merited towards Love and Affection.

23. A lump sum amount has been awarded towards *Special Diet and Conveyance* in the sum of Rs.50,000 which also does not merit any expansion.

Relief:-

24. The amount of compensation is thus, recalculated as under :

Sr. No.	Heads of Compensation	Compensation awarded by the Tribunal	Compensation Awarded/Modified by this Court
1.	Loss of Financial Dependency	Rs.4,98,432/-	Rs.7,31,315.2/-
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Consortium	Rs.40,000/-	Rs.1,20,000/-
5.	Medical Expenses	Rs.35,404/-	Rs.35,404/-
6.	Attendant Charges	Rs.95,000/-	Rs.95,000/-
7.	Special Diet & Conveyance	Rs.50,000/-	Rs.50,000/-
8.	Loss of Income	NIL	Rs.1,55,078
9.	Pain & Sufferings	NIL	Rs.1,00,000/-
TOTAL COMPENSATION		Rs.7,48,866/-	Rs.13,17,000/-



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		(rounded off)
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25. Hence, the **total Compensation** awarded to the Appellant is enhanced to **Rs.13,17,000/-** along with interest @ 9% per annum as per the terms prescribed in the Award dated 24.12.2018. The enhanced compensation be deposited by Respondent No.3/ Insurance Company within four weeks, which be disbursed in terms of the Award.

26. The Appeal is accordingly allowed and disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 17, 2025
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