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

% ***Date of Pronouncement: 23rd January, 2025***

\+ **MAC. APP. 244/2021, CM APPL. 28601/2021 (stay)**

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.

Plot No.39, 2nd Floor, Samyak Tower,
Opposite Metro Pillar No. 120,
Pusa Road, New Delhi-110005 .....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

1. **SMT. DEEPIKA TALWAR**
W/o Late Sh. Himanshu Talwar ...Respondent No.1

2. **BANI TALWAR**
D/o Late Sh. Himanshu Talwar ....Respondent No.2

3. **TANYA TALWAR**
D/o Late Sh. Himanshu Talwar .....Respondent No. 3

4. **SH. SURINDER SINGH TALWAR**
S/o Late Sh. C.S. Talwar ....Respondent No. 4

5. **SMT. SUDESH TALWAR**
W/o Sh. Surinder Talwar ...Respondent No. 5

All R/o K-42, Krishna Park Extension,
Tilak Nagar, New Delhi-110018

6. **SANJAY KUMAR** (Driver)

S/o Sh. Raghubir Singh

R/o 54A, A Block, Chanakya Place Part-1,
New Delhi-110059

7. **RAJAT MAURYA** (Owner)

S/o Sh. Mithun Singh
R/o 50, Block No. 27, IInd Floor,
Old Rajinder Nagar, New Delhi …..Respondents

Through: Mr. Navneet Goyal, Advocate for R1 to R5. Mr. Rupendra Kumar, Advocate for R7.

MAC. APP. 124/2022

1. **SMT. DEEPIKA TALWAR**
W/o Late Sh. Himanshu Talwar .....Appellant No.1

2. **BANI TALWAR**
D/o Late Sh. Himanshu Talwar ....Appellant No. 2

3. **TANYA TALWAR**
D/o Late Sh. Himanshu Talwar ....Appellant No. 3

4. **SH. SURINDER SINGH TALWAR**
S/o Late Sh. C.S. Talwar ....Appellant No. 4

5. **SMT. SUDESH TALWAR**
W/o Surinder Talwar ....Appellant No. 5

All at:
K-42, Krishna Park Extension,
Tilak Nagar,
New Delhi-110018 ....Appellants

Through: Mr. Navneet Goyal, Advocate.

versus

1. **CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.**
Plot No. 39, 2nd Floor, Samyak Tower,
Opposite Metro Pillar No. 120,
Pusa Road, New Delhi-110005 .....Respondent No.1

2. **SANJAY KUMAR** (Driver)
S/o Sh. Raghubir Singh,
R/o 54A, A Block,
Chanakya Place, Part-I,
New Delhi-110059 ....Respondent No. 2

3. **RAJAT MAURYA** (Owner)
S/o Sh. Mithun Singh,
R/o 50, Block No. 27, IInd Floor,
Old Rajinder Nagar, New Delhi ....Respondent No.3

Through: Ms. Suman Bagga, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 19237/2022 in MAC. APP. 124/2022

1. An Application under *Section 5* of the *Limitation Act* read with *Section 173* of the *M.V. Act* has been filed on behalf of the Appellants for condoning the delay of 218 days in filing the accompanying Appeal.

2. For the reasons stated in the Application and in the interest of justice, the delay of 218 days in filing the accompanying Appeal is condoned and the same is allowed.

3. The Application is disposed of accordingly.

MAC. APP. 244/2021

4. The Appeal bearing **MAC. APP. 244/2021** under *Section 173* of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Insurance Company, against the Award dated 04.06.2021, *vide* which the compensation in the sum of Rs.1,48,91,717/- along with the interest @6% p.a., has been granted, on account of demise of Mr. Himanshu Talwar, aged about 32 years 11 months, in a road accident on 20.02.2018.

5. ***The main ground on which the Award has been challenged by the Insurance Company, Appellant,*** is that there is no evidence led to prove either *the factum of accident or the involvement of alleged offending vehicle in the accident*.

6. ***Learned counsel on behalf of the Respondents***, however, has submitted that there was enough evidence to prove the involvement and the negligence of the offending vehicle and the learned Tribunal has rightly granted the compensation.

7. The ***Cross-Objections vide the Appeal bearing*** **MAC. APP. 124/2022**, have also been filed on behalf of the Claimants, who have sought ***enhanced compensation***, on the following grounds:-

(i) that the Future Prospects should have been 50% instead of 40%;

(ii) that the Group Personal Insurance in the sum of Rs.10,00,000/-, should not have been deducted from the compensation amount; and

(iii) that the rate of interest granted @6% p.a. is on the lower side.

8. **Submissions heard and the record perused.**

9. ***Briefly stated***, that on 20.02.2018 at about 02:50 a.m., the deceased

was driving a Ford Figo Car bearing Registration No. DL 8CZ 8167, from the Airport towards his residence. When he reached near Bus Stand Gurdwara Dusshera Ground Cut, Sadar Bazar Road, Delhi Cantt., New Delhi, the bus bearing registration No. DL 1PC 5687, which was being driven by the Respondent Mr. Sanjay Kumar, in a rash and negligent manner, hit the Figo Car because of which he suffered injuries. He was taken to DDU Hospital where he was declared "***Brought Dead***" by the hospital.

10. FIR No. 0032/2018 under Section 279/304A of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) was registered at Police Station Delhi Cantt. After investigations, Chargesheet was filed against the driver, Mr. Sanjay Kumar. The Detailed Accident Report was also filed before the learned Tribunal.

Involvement and Negligence of the Offending Vehicle:

11. The main ground of challenge raised by the Insurance Company is that there was no involvement of the alleged offending vehicle in the accident and the testimony of PW-2, Mr. Jasmeet Singh, the alleged eye witness was not reliable as it suffers from inherent contradictions.

12. The first contention of the Appellant is *about the involvement of the vehicle itself since no Number of the offending vehicle was mentioned initially, in the FIR.*

13. The investigations were initiated on DD No. 10A whereby information was recorded in regard to the accident on the basis of information received from PCR and the number of offending Bus had not been disclosed therein. The first information essentially is about commission of offence and necessarily, all details of the offence may not be available in

the first instance. The entire objective of the investigations is only to establish the complete facts and also to identify the culprit, who has committed the offence. Merely because the number of the offending vehicle was not mentioned in the FIR, cannot be a ground to assert that the Bus was not involved in the accident. The due investigations have been conducted and the offending Bus was identified and the driver of the Bus has been Charge-sheeted.

14. It is also pertinent to note that no Reply has been filed by the Driver and Owner. They have also not contested the Petition or challenged the involvement of the offending vehicle in the accident.

15. In the case of *National Insurance Co.,vs Pushpa Rana* 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of *United India Insurance Co. Ltd. v. Deepak Goel and Ors.,* 2014 (2) TAC 846 Del, that if the claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of Chargesheet under Sections 279/304-A IPC against the driver have been proved, then the same is sufficient to establish the fact that the driver was negligent in causing the accident.

16. Similar observations have been made in the cases of *Jamanti Devi and Ors. v. Maheshwar Rai,* MAC Appeal no. 831/2015 decided on 19.11.2022

17. ***Therefore the involvement of the offending Vehicle is fully established.***

18. *The other aspect is the rashness and negligence of the offending*

vehicle.

19. To appreciate this contention, it would be pertinent to refer to the testimony of PW-2 Mr. Jasmeet Singh, who deposed that he was a summoned witness. On 19.02.2018 at about 02:30 a.m., he was going to see off his guests to nearby Bus Stand, Gurdwara when he saw the offending bus come from wrong side, without giving any indicator and hit the Figo Car in which the deceased was travelling. The driver of the Bus ran away from the scene of the accident. The witness further deposed that he does not know the number of the Bus, though "Krishav" was written on its backside.

20. He further deposed that he had called the PCR at Number 100. The Police reached the spot after 7 to 9 minutes of his call. The Ambulance also reached. His statement was recorded after 3-4 days of the accident. He came to know that the offending bus had been seized by the Police, in connection with the aforesaid accident. He admitted that he did not remember the registration number of the bus.

21. In his cross-examination, he admitted that he came to know about the accident after hearing the loud noise while he was present in his balcony. He further admitted that the place of accident is a four lane road and the Headlights of the bus, was on and it was on the right side. He further deposed that without giving an indicator, the driver of the Bus, turned towards the right side at the T-Point.

22. He further deposed that the Site Plan was prepared by the Investigating Officer in his presence. He also admitted that there were skid marks of the Car on the road, though he was unable to tell the speed of the Bus or where it was going. It is pertinent to observe that the Site Plan bears the signatures of eye witness, PW-2/Mr. Jasmeet Singh, as has been deposed

by him. The testimony of PW-2 stands fully corroborated by the Police Investigations.

23. Also, PW-2 clarified in his cross examination that the family of the deceased was not known to him personally but it is purely on the humanitarian ground that he informed the Police about the accident and had come to depose before the learned Tribunal.

24. From the consistent testimony of PW-2 and the Site Plan that was prepared by the Investigating Officer during the investigations, it is evident that the offending Bus and the deceased in his car from the opposite directions and the accident has occurred at T-Point while the offending Bus took a right turn without any indicator and the car which was being driven in its own Lane on the main road, got hit by the offending Bus at the T-Point. It was the bounden duty of the Bus driver, to have taken care of the traffic which was plying on the road, while taking the right turn. Pertinently, the car driver had applied the brakes to avoid the accident, which is established by the skid marks on the road. Furthermore, it cannot be ignored that the accident occurred at about 02:50 a.m. i.e. in the middle of night and due care and caution should have been exercised by the Bus Driver while taking the right turn.

25. The other best witness to refute or to prove the accident was Mr. Sanjay Kumar, the driver of the Bus, who has chosen neither to file any Reply nor contest the testimony of PW-2. He has also chosen to not step into the witness-box thereby leading to an adverse inference against him.

26. ***The learned Tribunal has, therefore, rightly held that the accident was caused due to rash and negligent driving of the offending Bus by the driver, Mr. Sanjay Kumar.***

Future Prospects:

27. The *first ground* on which the Claimants have sought the enhancement of compensation, is that since the deceased was in a Permanent job, the Future Prospects should have been calculated @50% and not @40%.

28. PW-1, Smt. Deepika Talwar, wife of deceased, had deposed that her husband was working as Assistant Manager with Bridgestone India Pvt. Ltd. and was earning around Rs.1,34,719/- per month. She proved the salary slip of her husband with the month of January, 2018 as Mark 'X'. The copy of Income-Tax Returns for the Assessment year 2017-2018 was Mark 'A'.

29. PW-3/Mr. Subash Chillar, Senior Administration Officer, *M/s Bridgestone India Pvt. Ltd.* produced the Appointment Letter of the deceased, Ex.PW-3/B, the Copy of transfer Letter dated 29.02.2012 Ex.PW3/C and the attested copy of Annual Increment Letter dated 28.03.2017 Ex.PW-3/D issued along with the Salary Slip for the month of January, 2018. The witness further deposed that as per the record, deceased was getting Rs.1,05,690/- as Fixed Bonus annually, and an Annual Salary of Rs.10,67,658/-.

30. The learned Tribunal on the basis of the salary record, took the gross salary of deceased as Rs. 10,67,658/- from which the Income-Tax in the sum of Rs.1,36,781/- was deductable. ***The Net Annual Income was taken as Rs.9,30,877/- p.a.***

31. The *question for determination is whether the employment of the deceased, was permanent in nature*. The evidence of the Claimant, PW-1, Ms. Deepika Talwar, which is fully corroborated by the Service and Salary record by the testimony of PW-3/Mr. Subash Chillar, clearly establishes that

the deceased was in a regular Permanent job and was entitled to Future Prospects @50% and not for 40%. Therefore, ***the compensation is re-calculated by taking the Future Prospects as 50%.***

32. ***Thus, the loss of dependency comes to Rs. 1,67,55,768/-*** *(Rs.77,573/- X ¾ X 150/100 X 16 X 12)* ***and the same is revised accordingly.***

Deduction of amount Received under Group Personal Accident:

33. The *second ground* of challenge is that the Claimants had received Rs.10,00,000/- from the Group Personal Accident which has been wrongly deducted.

34. In the case of *Helen C. Rebello Vs. Maharashtra State Road Transport,* 1999 (1) SCC 90, the issue before the Apex Court was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, cash, bank balance, shares, fixed deposits etc. are pecuniary advantages received by the heirs on account of death of deceased and liable to be deducted from the compensation. The Apex Court held that none of these amounts have any correlation with the compensation receivable by the dependants under the Motor Vehicles Act, which is on account of injury or death without making any contributions towards it. The fruits of the amount received through contribution of the insured, cannot be deducted out of the amount receivable under the Motor Vehicles Act. Only the amount under the Motor Vehicle Act which are those which are payable without any contribution, as it is statutory in the nature. However, the amount receivable under the Insurance Policy and such like documents is contractual.

35. Similarly, the Apex Court in *Union of India Insurance Company Limited Vs. Petricia Jean Mahajan,* 2002 (6) SCC 281, it was observed that

such gains may be on account of savings or other investment made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken any insurance policy or had not made investments for future returns. It has been held that if there is any compensation received on account of demise of a person for which he has paid a premium, then the same cannot be deducted from the compensation claimed in the Motor Vehicle Accident compensation.

36. ***Thus, the amount of Rs.10,00,000/- could not have been deducted and the Claimants are entitled to this amount.***

Rate of Interest:

37. The *last ground* of challenge is that the interest @6% has been granted on the lower side. The interest awarded by the learned Tribunal has been granted at 6%, there is no cogent explanation given for seeking enhancement of the rate of interest and, ***therefore, it does not merit any interference.***

38. The compensation amount is re-calculated as under:-

S. No.	Heads	Amount granted by the Tribunal	Amount granted by this Court
1.	Income of the deceased (A)	Rs.77,573/-	Rs.77,573/-
2.	Add-Future Prospects (B)	Rs.31,029.2	**Rs. 38,786.5/-**
3.	Less-Personal expenses of the deceased (C)	Rs.27,150.55	**Rs.29,089.875/-**
4.	Monthly loss of dependency [(A+B) – C =D]	Rs.81,451.65	**Rs.87,270/-**
5.	Annual loss of dependency (D X 12)	Rs.9,77,419.8	**Rs.10,47,246/-**
6.	Multiplier (E)	16	16
7.	Total loss of dependency (D x 12 x E = F)	Rs.1,56,38,717/- (An amount of Rs. 10 lakhs is	**Rs. 1,67,55,768** (No deduction of Group Personal

		being deducted and hence, it comes to Rs.1,46,38,717/-)	Accident)
8.	Medical Expenses (G)	Nil	Nil
9.	Compensation for loss of love and affection (H)	Nil	Nil
10.	Compensation for loss of consortium (I)	Rs.2,20,000/-	Rs.2,20,000/-
11.	Compensation for loss of estate (J)	Rs.16,500/-	Rs.16,500/-
12.	Compensation towards funeral expenses (K)	Rs.16,500/-	Rs.16,500/-
13.	TOTAL COMPENSATION (F + G + H + I + J + K =L)	**Rs.1,48,91,717/-**	**Rs.1,70,10,000/- (rounded off)**

RELIEF:

39. ***There is no merit in the MAC. APP. No. 244/2021 filed on behalf of the Insurance Company, which is hereby dismissed.***

40. The statutory deposit be refunded to the Insurance Company.

41. ***The Appeal in MAC. APP. No. 124/2022 filed on behalf of the Claimants, is hereby allowed*** and the enhanced amount is granted in the sum of **Rs.1,70,10,000/- along with interest @6%.** The balance compensation be deposited by the Insurance Company within four weeks, to be disbursed in terms of the Award dated 04.06.2021

42. Both the Appeals are disposed of accordingly along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 23, 2025/RS