



2025:DHC:308



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Pronounced on: 20th January, 2025

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MAC.APP. 83/2015 & CM APPL. 1380/2015 (stay),
CM APPL.12689/2015 (under Order 41 Rule 22 CPC)

UNITED INDIA INSURANCE CO. LTD.

.....Appellant

Through: Ms. Neerja Sachdeva, Advocate
through VC.

versus

1. **KUSUM DEVI**
W/o Dinesh KumarRespondent No.1
2. **DINESH KUMAR**
S/o RamRespondent No. 2
3. **SHAHID ALI**
S/o I. AliRespondent No. 3
4. **DELHI TRANSPORT CORPORATION**
...Respondent No. 4

Through: Mr. Pankaj Gupta, Advocate for R-1
& 2.

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MAC.APP. 232/2016

1. **KUSUM DEVI**
W/o Sh. Dinesh KumarAppellant No.1
2. **DINESH KUMAR**
S/o Sh. RamAppellant No. 2
3. **SHAHID ALI**
S/o Sh. I AliAppellant No. 3



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4. **DELHI TRANSPORT CORPORATION**Appellant No.4
Through: Mr. Pankaj Gupta, Advocate.

versus

UNITED INDIA INSURANCE CO. LTD.Respondent

Through: Ms. Neerja Sachdeva, Advocate for
R-1 through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

MAC.APP. 83/2015 & MAC.APP. 232/2016

1. By this Order, the aforesaid two Cross-Appeals bearing MAC. APP. 83/2015 under Section 173 of the Motor Vehicle Act, 1988 (*hereinafter referred to as 'M.V. Act'*) and MAC. APP. 232/2016 under Order 41 Rule 22 of the *Code of Civil Procedure, 1908* (*hereinafter referred to as 'IPC'*) preferred by the Insurance Company and the Claimants respectively, have challenged the Award dated 28.10.2014 whereby compensation in the sum of Rs.32,53,500/- along with the interest @9% p.a., has been granted to the Claimants, on account of demise of Mr. Ashish Kumar Garg, aged about 23 years in a road accident on 28.05.2013.

MAC. APP. No. 83/2015 By the Insurance Company:

2. The Insurance Company in its Appeal bearing MAC. APP. No. 83/2015, has challenged the impugned Award on the following grounds:-



- (i) that the *deceased himself was negligent* in boarding the bus from the front side from where the passengers were getting down;
- (ii) that the deceased was not working and his potential income has been wrongly assessed to grant future loss of income;
- (iii) that the deceased was a unmarried son and *the multiplier should have been taken as per the age of the mother* and not the deceased; and
- (iv) that *Future Prospects* are payable in the cases of potential income as provided in the case of *HDFC vs. Lalita Devi* in MACA No. 189/2014.

MAC. APP. 232/2016: By the Claimants:

3. The parents of the deceased, who in their Cross-Appeal, have challenged the Award on the following grounds:-

- (i) that potential monthly income of the deceased has been assessed as Rs.20,000/- per month, while he could have earned at least Rs.50,000/- per month, after completing his studies and becoming Chartered Accountant for calculating the Future Loss of Income;
- (ii) that the deceased was also taking the tuitions along with his studies and was helping the family financially and the potential income should have been assessed accordingly; and
- (iii) that the compensation under Non-Pecuniary Heads, needs to be enhanced.



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

Negligence of the Deceased:

5. The *first ground* of challenge is that the accident occurred due to the negligence of the deceased and thereby no compensation could have been granted.

6. The Claimants in support of their case had examined PW-3, Head Constable Mr. Rajbeer Singh, the eye witness, who deposed that on 28.05.2013, he was on duty at Police Station Nand Nagri from 5:00 p.m to 11:00 p.m. At around 9/9:30 P.M., he was standing near the gate of Sarvodaya Kanya Vidyalaya, E-Block, Nand Nagri, when he saw some passengers boarding and others de-boarding from DTC Bus bearing No. DL-IPC-7170 Route No. 33. All of a sudden, the driver started moving the Bus carelessly and one person fell and came under the wheel of the Bus. The injured was taken to GTB Hospital where he was declared "*Brought Dead*". The driver of the Bus fled from the spot.

7. He further deposed that the accident occurred due to sheer negligence of the driver of the DTC Bus. He clarified that due to rush hours and being on the other side of the road, he could not see whether the deceased was boarding or de-boarding the Bus. The Site Plan was prepared by the Investigating Officer, at his instance. He on hearing the commotion had rushed to the spot and crossed the road and saw the Bus with the boy lying under the middle of the Bus.

8. Though, PW-3, the eye witness had been cross-examined but no material contradiction could be brought forth in his cross-examination. He was an eye-witness who was present on the spot and had seen the accident



happen from the opposite side. His testimony is categorical that there were passengers boarding and de-boarding from the Bus, which defies the defence of the driver/owner taken in the Written Statement that the deceased had tried to get into the running Bus had slipped and came under the Bus and that the accident occurred due to the sole negligence of the deceased. Moreover, the driver and the owner failed to step into the witness box in support of their defence.

9. Admittedly, FIR No. 274/2013 was registered against the Bus Driver at Police Station Nand Nagri and after investigations, Charge Sheet has been filed. 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.

10. ***The learned Tribunal has rightly concluded that the accident occurred due to the sole negligence of the DTC Bus Driver.***

Prospective Income of the deceased and the Multiplier applied:

11. The *second ground* on which the compensation has been challenged both by the Insurance Company and the Claimants, is in regard to the assessment of Prospective Income of the deceased. The learned Tribunal considering that the deceased was a young boy of 23 years, who was studying Chartered Accountancy, took the Prospective Income of the deceased as Rs.20,000/-.The Insurance Company asserted that since the deceased was not working, his prospective Income has been wrongly assessed. On the other hand, the claimants have asserted that it should have been taken as Rs.50,000/-p.m.



12. It is well settled that when there is no evidence available on record to determine the income of the deceased who was pursuing a professional course, then the potential income or potential to earn can be taken into account while determining the loss of dependency.

13. The Supreme Court, in Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr. (2015) 2 SCC 180, referred to the decision in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr. (2010) 10 SCC 254, and assessed the potential income of the deceased 19-year-old medical student, who was pursuing his MBBS course at the time of his demise in the accident which had occurred in the year 2002, as Rs. 25,000/- p.m. by observing that medical practice is one of the most sought after and rewarding professions; there is tremendous increase in demand for medical professionals which would lead to a rise in the salary of the doctors and that the deceased could have pursued his M.D. after his graduation.

14. The Hon'ble Supreme Court of India has observed that in such like cases where there are young students who are perusing professional courses, Prospective Income considering the branch of studies, can must be considered and the Prospective Income of the deceased has been taken from Rs.20,000/- to even Rs.40,000/- per month. *The Insurance Company, therefore, is unjustified in questioning the Prospective Income of Rs.20,000/- per month as assessed by the learned Tribunal*

15. The Claimants had examined PW-2, Sh. Rajesh Bharija, Section Officer, The Institute of Chartered Account of India, who in addition to proving the documents of registration and taking the Entrance Test (CPT



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Exam), had deposed that after passing the C.A. Final Year Examination, the student can earn approximately Rs.45,000/- to Rs.50,000/- as salary.

16. The Claimants had also examined *PW-4, Krishan Kaushal (Chartered Accountant), Proprietor of K. Kaushal and Associates*, who deposed that the deceased Ashish Kumar Garg had joined his Firm for training w.e.f. 23.07.2012 and worked till 28.05.2013. During his Articleship Training, he was getting a sum of Rs.3,000/- per month as stipend. On qualifying as Chartered Accountant, his estimated salary would have been nearly Rs.50,000/- per month. He also deposed that as per his knowledge, the deceased had obtained 83.75% marks in Class XII. The witness clarified in his cross-examination that there are four Groups, two for Intermediate and two for final of Chartered Accountant Examination and the deceased had cleared the first Group of Intermediate.

17. Though PW-2 and PW-4 had deposed that a qualified Chartered Accountant may be able to earn Rs.50,000/- per month but pertinently, despite PW-4 running his own Firm, failed to produce any documentary evidence to show that the salary of Rs.50,000/- was being paid to a qualified Chartered Accountant. *The testimony of both PW-2 and PW-4, was based on their estimate without there being any documentary basis.*

18. It cannot be overlooked that the deceased was a student of Chartered Accountancy. *The learned Tribunal after considering the entire circumstances and also that this is a Case of 2013, has rightly made an assessment of the Prospective Income of the deceased as Rs.20,000/-, which does not merit any interference.*

Future Prospects: -



19. *The Insurance Company had also taken a plea that no Future Prospects on the potential income, could have been granted.* However, in the cases a referred above, even if the income has been assessed on potential income, the Future Prospects have been considered and granted.

20. Similarly, various Judgments now state that the multiplier has to be adopted as per the age of the deceased and not the parents; ***the grounds taken by the Insurance Company do not merit any indulgence.***

Compensation under Non-Pecuniary Heads:

21. In the end, the Claimants have sought the enhancement of compensation under the *Non-Pecuniary Heads*.

22. The compensation of Rs.1,00,000/- for Loss of Love and Affection, Rs.10,000/- towards the Loss of Estate and Rs.25,000/- towards Funeral Expenses, has been granted to the Claimants.

23. As per the Judgment of National Insurance Co. Ltd. vs. Pranay Sethi, & Ors., (2017) 16 SCC 680 the compensation now payable is @Rs.40,000/- per month towards the Loss of Consortium to each Claimant and the Loss of Estate and Funeral Charges have been kept at Rs.15,000/- each with a enhancement by 10% after every three years.

24. In the present Case, the Award is dated 28.10.2014 that is much prior to the Judgment of *Pranay Sethi* (supra). ***The compensation granted under these Heads, is fair and reasonable and does not warrant any interference.***

Conclusion:

25. In view of the aforesaid discussion, there is no merit in both the Appeals, which are accordingly dismissed.



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26. Both the Appeals are disposed of along with the pending Applications.
27. Statutory amount deposited be refunded to the Insurance Company.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 20, 2025/RS