2025:DHC:761

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Pronounced on: 04th February 2025*

\+ **MAC.APP. 306/2022 & CM APPL. 43036/2022**

NATIONAL INSURANCE CO. LTD. ..... Appellant

2E/9 Jhandewalan Extension,
New Delhi-110055

Through: Ms. Hetu Arora Sethi & Mr. Arjun Basra, Advocates.

versus

1. **MAMTA KUMARI**

W/o Late N.K. Jha ..... Respondent No. 1

2. **UDIT**

S/o Late N.K. Jha ..... Respondent No. 2

3. **INDU DEVI**

W/o Khela Nand Jha ..... Respondent No. 3

All R/o 441, Block 30,
Old Trilokpuri, Delhi

4. **ARJUN SHARMA (DRIVER)**

S/o Shri Shiv Dutt,
R/o H. No. 665, Village Shahpur,
Bamheta, District, Ghaziabad,
Uttar Pradesh ..... Respondent No. 4

5. **MAHENDRA YADAV (OWNER)**

S/o Shri Chirjee Lal,
R/o H. No. 649, Village Shahpur,

Bamheta, District, Ghaziabad,
Uttar Pradesh ..... Respondent No. 5

Through: Mr. Anshuman Bal, Advocate for R-1 to 3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as* "M.V. Act, 1988") has been filed on behalf of the Appellant/Insurance Company to challenge the Award dated 26.05.2022 *vide* which the learned Claim Tribunal has granted a compensation of Rs. 90,26,424/- along with interest @ 9% per annum to the Claimants/Respondent Nos. 1 to 3 on account of demise of Shri N.K. Jha @ Noolendu Kumar *(hereinafter referred to as* "deceased"*)* in a road accident on 09.01.2013.

2. *Briefly stated,* on 09.01.2013 at about 04:00 P.M., an accident took place between the Motorcycle bearing No. DL-7S-AX-4146 and Cab bearing No. UP-14-CT-0844 in front of Sher-E-Punjab Hotel, near Hosiery Complex, Noida Sector-1, Uttar Pradesh. FIR No. 11/2013 was registered at the Police Station Phase-II, Gautam Budh Nagar, Uttar Pradesh against the Respondent No. 4/Arjun Sharma, Driver of the offending Cab.

3. The Claim Petition under Section 166 of the M.V. Act, 1988 was filed by the Respondent Nos. 1 to 3, the wife, son and mother of deceased respectively.

4. The learned Claim Tribunal *vide* impugned Award has granted compensation in the sum of Rs. 90,26,424/- along with interest @ 9% per annum to the Claimants/Respondent Nos. 1 to 3.

5. Aggrieved by the impugned Award, the Appeal has been filed on behalf of the ***Appellant/Insurance Company*** on the ground that the income of the deceased has been assessed as Rs. 6,34,316/-p.a. after deducting the Income Tax of Rs. 45,567/-, which is on the higher side.

6. It is argued on behalf of the Appellant/Insurance Company that the wife of the deceased had continued the same business and in fact, the income from the business has increased over a period of time and therefore, there was no loss of income to the family of the deceased.

7. ***Learned counsel for the Respondent Nos. 1 to 3/Claimants,*** on the other hand, has contended that the income of the deceased has been rightly assessed by the learned Claim Tribunal and the Award does not merit any interference.

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

9. The *sole ground of challenge* is the assessment of the annual income of the deceased by the learned Tribunal.

10. The first material witness examined was PW3/Mamta Kumari, who in her Affidavit of Evidence, Ex.PW3/A, deposed that deceased was a Graduate and was doing the business from which he was having an earning of Rs. 6,79,883/- per annum. She also produced the Income Tax Returns for the Assessment Years 2011 to 2014 which reflected as under: -

> *"Income Tax for the Assessment Year 2011-12 reflected a total sum of Rs. 1,89,086/-,*

Income Tax for the Assessment Year 2012-13 reflected a total sum of Rs. 4,66,056/-,

Income Tax for the Assessment Year 2013-14 reflected a total sum of Rs. 6,79,883/-., Ex. PW1/2 Colly."

11. PW3/Mamta Kumari in her Cross-Examination denied the suggestion that she was working or earning handsome amount, or was not dependent upon the income of her deceased husband. She stated that the Firm was not operational since the demise of her husband. There were 20 persons working the Firm. She also denied that her brothers-in-law are operating the said Firm. She clarified that she along with her only son, aged 10 years, is residing separately in Sector-14, Noida, Uttar Pradesh.

12. PW3/Mamta Kumari in her cross-examination by the Appellant/Insurance Company admitted that she was a housewife prior to the demise of her husband and that she has continued the business of the Firm i.e., KNBIG Industries as a Proprietor, from a rented premises after the demise of her husband. She further explained that after the demise of her husband, she got registered the business of the Firm in her name with Ministry of Micro Small and Medium Enterprises *vide* Certificate Ex.PW3/R3-2. She also admitted having got the Firm registered with the GST Department *vide* Certificate Ex.PW3/R-3.

13. PW3/Mamta Kumari denied that at the time of demise of her husband, she was not dependent upon her husband or that she has the earnings from the business and the assets left behind by her husband though she admitted that the business being done by her is the same as was being done by her husband. She also admitted having filed the Income Tax Returns for the

Assessment Years 2018-19, 2019-20 and 2020-21 which are collectively Ex. PW3/R3-1.

14. The Respondent Nos. 1 to 3/Claimants had also examined ***PW1/Kumar Keshav, Inspector of Income Tax,*** Ward No. 1(2), Noida, who produced the Income Tax Returns of the deceased for the Assessment Years 2011-12 till 2013-14, Ex. PW1/2 Colly.

15. ***PW5 Sanjeev Kumar, Inspector of Income Tax, Office of the Income Tax Officer*** Ward-2(3), A-2D, 4th Floor, Sector-24, Noida, Uttar Pradesh, who provided the Income Tax Returns for the Assessment Year 2013-14, Ex.PW5/2, according to which the gross total income of the deceased was Rs. 6,79,883/- and the taxable income was Rs. 5,71,200/- on which the deceased had paid the Income Tax of Rs. 47,769/- for the said Annual year.

16. ***PW6 Namam Malhan, Chartered Accountant,*** has further corroborated and proved the Income Tax Returns along with the Computation Chart, Profit and Loss Account, Balance Sheet, Ex. PW6/2 Colly.

17. From the Income Tax Returns of the deceased for the Assessment Years 2011-12 to 2013-14, it is evident that his income was. Rs. 6,34,316/- which has been rightly taken by the learned Claim Tribunal as the income of the deceased.

18. It may be observed that the Income Tax Returns of the previous years reflect that the business of the deceased was flourishing and he had made marked improvement in the earnings from his business.

19. The main grievance of the Appellant/Insurance Company is that the

business had been continued by the PW3/Mamta Kumar, after demise of her husband and actually she suffered no loss of income; rather her business has flourished much more.

20. However, it is significant to note that as per her testimony, the business came to a standstill and was not continued by her or by the brothers-in-law. PW3/Mamta Kumar explained in her cross-examination that she subsequently got the business registered with the Ministry of Micro Small and Medium Enterprises ('MSME') and also registered the Firm with the Goods and Service Tax ('GST') Department and continued the business and the same has prospered. Merely because PW3/Mamta Kumar with her own personal efforts and hard work was able to make the business flourish and earn, does not mean that she has not suffered any financial loss.

21. In these circumstances, it cannot be held that PW3/Mamta Kumar did not suffer any loss of dependency on account of demise of her husband, especially when she was not working during his lifetime and was solely dependent upon his earnings. Whatever may have been subsequently achieved by PW3/Mamta Kumari by her own efforts, cannot be used as a ground to defeat her *bona fide* claim of loss of dependency.

22. The learned Claim Tribunal has, therefore, rightly calculated the income of the deceased as Rs. 6,34,316/- on the basis of his last Income Tax Returns for the Assessment Year 2013-14.

23. The Appellant/Insurance Company has placed reliance on the decision in *State of Haryana vs. Jasbir Kaur*,(2003) 7 SCC 484, wherein there was no evidence placed on record to prove the income of the deceased.

24. In the present case, the Respondent Nos. 1 to 3/Claimants have led the

voluminous evidence to prove the business and the income of the deceased.

25. In the end, it has been contended on behalf of the Appellant/Insurance Company that the personal and living expenses, application of Multiplier, Future Prospects, etc., have not been considered in the light of the decision of the Apex Court in *National Insurance Company vs. Pranay Sethi* (2017) 16 SCC 680, decided on 31.10.2017.

26. However, the Future Prospects have been granted @ 40% in the light of the observations of the Apex Court in *Pranay Sethi* (supra). The multiplier of 15 has been applied as defined in *Sarla Verma v. DTC* (2009) 6 SCC 121.

27. The 1/3rd income towards personal expenses has been correctly deducted as per *Sarla Verma* (supra) since there are three dependents of the deceased.

28. In view of the foregoing discussion, there is no infirmity in the impugned Award dated 26.05.2022. The statutory amount be returned to the Appellant/Insurance company in accordance with law.

29. There is no merit in the present Appeal, which is hereby dismissed along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 04, 2025
S.Sharma