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

% ***Pronounced on: 7th February, 2025***

\+ **MAC.APP.223/2019, CM APPL. 6204/2019**

HDFC ERGO GENERAL INSURANCE CO. LTD.
Through its Regional Office
5th Floor, Tower I, Stellar I T Park, C-25, Sector-62,
Noida-201301.

.... Petitioner

Through: Mr. A.K. Soni, Advocate.

versus

1. **SMT. RAJNI (Wife)**
W/o Late Sh. Pardeep

2. **BABU KHUSHI (Minor Daughter)**
D/o Sh. Pardeep

3. **SMT. MAYA DEVI (Mother)**
W/o Sh. Ramesh Chander

4. **SH. RAMESH CHANDER (Father)**
S/o Sh. Chandan Lal

All R/o VPO Ladpur,
Delhi.

5. **SH. SUMER SINGH (Driver)**
S/o Ladu Ram
R/o Garma Gaus Pura, Baliyan,
Police Station Hajeera,
District Gwalior Madhya Pardesh.

6. **SH. TEHSIL DAR SINGH (Owner)**
S/o Sh. Devi Singh
R/o New HB Colony,
Morena, District Morena, M.P.

..... Respondents

Through: Mr. Manish Maini and Ms. Anjali Singh, Advocates for R-1 to R-4.

\+ **MAC.APP.797/2019**

1. **SMT. RAJNI (Wife)**
W/o Late Sh. Pardeep

2. **BABU KHUSHI (Minor Daughter)**
D/o Sh. Pardeep

3. **SMT. MAYA DEVI (Mother)**
W/o Sh. Ramesh Chander

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5th Floor, Tower I, Stellar I T Park, C-25, Sector-62,
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..... Respondents

Through: Mr. A.K. Soni, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J.

MAC.APP.223/2019 & MAC.APP.797/2019

1. The present Appeals have been filed by the Insurance Company and the Claimants respectively in respect of Award dated 01.09.2018 *vide* which compensation in the sum of Rs.68,55,856/- along with interest @ 9% per annum, on account of demise of Shri Pardeep in the road accident on 28.05.2012.

2. ***Briefly stated,*** on 28.05.2012 at about 12:00 midnight, Pardeep and his friends were going to Haridwar in a Swift Car bearing No.HR-14P-5681 when suddenly a Truck bearing No.MP-06HC-0831 which was being driven by Shri Sumer Singh in a rash and negligent manner, overtook the Swift Car and applied the brakes because of which the Swift Car crashed against the Truck. Shri Pardeep who was sitting next to the driver seat, died on the spot.

3. The *FIR No.218/2012 under Section 279/337/304-A of the Indian Penal Code, 1860* was registered against Shri Sumer Singh, the driver of the offending Truck.

4. The Claimants/legal heirs of deceased Pardeep filed a Claim Petition under Section 166 and 140 Motor Vehicle Act, 1988 *(hereinafter referred to as* "MV Act"*)* wherein the learned Tribunal after due appreciation of the

evidence, granted compensation in the sum of Rs.68,55,856/- along with interest @ 9% per annum.

MAC.APP.223/2019:

5. *The Insurance Company has challenged the impugned Award dated 01.09.2018 on the following grounds:*

(i) the negligence was solely of the driver of the Swift Car, but the Tribunal has erroneously held the Truck driver to be rash and negligent. Reliance has been placed on *Nishan Singh & Ors. vs. The Oriental Insurance Co. Ltd. & Ors*. decided by three Judge Bench of the Apex Court on 27.04.2018;

(ii) the gross monthly income of the deceased has been taken as Rs.31,680/- without any cogent and reliable evidence. Moreover, no permissible deductions and Income Tax applicable to the income of the deceased has been taken into consideration; and

(iii) the interest has been granted @ 9% per annum which is arbitrary, baseless and unjust and should be reduced to 7% per annum.

6. It is, therefore submitted that the compensation may be reduced.

MAC.APP.797/2019:

7. *The cross-Appeal has been filed by the Claimants who have sought enhancement of Compensation on the following grounds:*

(i) the Future Prospects should have been granted at 50% instead of 40% as the deceased was a permanent employee in his Organization;

(ii) the compensation under *Non-Pecuniary Heads* has been granted in conservative amounts; and

(iii) No compensation towards Love and Affection has been granted.

8. It is, therefore submitted that the compensation may be enhanced.

MAC.APP.223/2019 & MAC.APP.797/2019

9. **Submissions heard and record perused.**

Negligence of the Swift Car:-

10. The Claimants in order to prove the accident, had examined *PW4-Shri Harander,* who in his evidence by way of Affidavit Ex.PW4/A, deposed that he was driving the Swift Car in which his friends including deceased, Shri Pardeep were travelling towards Haridwar. When they reached Devband Tiraha, P.S. Kasba Manglori, Rudki at about 12:00 midnight, suddenly the offending Truck which was being driven by its driver, Sumer Singh in a rash and negligent manner over took the Swift Car and applied sudden breaks, consequent to which the Swift Car dashed into the Truck and that the accident occurred due to the sole negligence of the truck driver.

11. PW-4, in his cross-examination clarified that as the truck over took his car and applied sudden brakes without giving any indication; he also applied the brakes of his car despite which he hit into the truck. He explained that the left portion of his vehicle hit the right portion of the offending Truck. He deposed that he was driving the Car at the speed of 60 kmph and the offending Truck after overtaking him was around 300-400 metres ahead of his Car and was visible to him. He denied the suggestion that he had failed to apply the brakes and the accident occurred to his negligence.

12. The Site Plan prepared during the investigations, indicates the point of accident on the extreme left side of the road which corroborates the testimony of the PW4 in regard to the manner of accident.

13. It is pertinent to observe that the other material witness who could have countered the testimony of PW4 was Shri Sumer Singh, the driver of the offending Truck, but for the reasons best known to him, he has chosen not to step into the witness box.

14. Essentially, there is no contradiction brought forth in the testimony of PW4 which clearly establishes that it was the Truck which had negligently overtaken the Car and Harander Singh, the driver of the Swift Car had applied the brakes and tried to avoid the accident despite which the left part of his Car hit into the right portion of the truck.

15. It is pertinent to observe that PW4 had deposed that the distance between the Truck and the Car was about 300-400 metres which shows that the Car driver had been maintaining a safe distance from the offending Truck.

16. In this regard, reference is made to Regulation 23 of the Rules of the Road Regulations, 1989 which reads as under:

> *"23. Distance from vehicles in front.- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*

17. In the case of _Nishan Singh & Ors._ (supra), the Apex Court clarified Regulation 23 and observed that the expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient

distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance between the two vehicles was about 10-15 feet was to be certainly not a safe distance, for which the driver of the Car (which was behind) must take the blame. The Maruti car was following the truck and no fault can be attributed to the truck driver; the blame must rest on the driver of the Maruti car for having driven his vehicle rashly and negligently.

18. The facts in the present case are completely distinguishable from the *Nishan Singh* case, as in the present case, it has been proved that the driver of Swift car was maintaining safe distance of about 300-400 meters and no negligence is attributable to the car driver, in this regard.

19. *The learned Tribunal has, therefore, rightly concluded that the accident occurred due to the sole negligence of the driver of the offending Truck and does not merit any interference.*

Compensation under non-pecuniary heads:-

Loss of Income:-

20. The second aspect under challenge is the salary of the deceased.

21. *PW1-Shri Ramesh Chander,* father of the deceased in his evidence by way of Affidavit, had deposed that his son was 26 years old, enjoying excellent health and was working as CCE in Home Land Survey Centre Pvt. Ltd and was earning Rs.31,260/- per month. The Salary Slip of the deceased has been exhibited as Ex.PW1/1. The copy of the Appointment Letter dated 04.09.2011 and January, 2012 are Ex.PW1/6. PW1 has not been cross-examined by any of the Respondents.

22. *PW2-Smt. Rajni, wife of the deceased, Shri Pardeep*, has corroborated

the testimony of PW1 the father in respect of the employment and the income of the deceased. She also has not been cross-examined on any material aspects except that she in cross-examination by the Insurance Company explained that her husband had completed Teacher's Training (JBT) and was working in CCE Company.

23. The most material witness in this regard is *PW3-Shri Rajender Singh* who was working as an Administrator with Safeguard India Home Pvt. Ltd. He produced the Appointment Letter dated 04.09.2011 Ex.PW3/D of the deceased. He also produced the Promotion Letter dated 01.03.2012 Ex.PW3/E. The Office copy of the Salary Slip is Ex.PW3/F and the Certificate under Section 65B of the Indian Evidence Act is Ex.PW3/F.

24. He further explained that Pardeep was working as Tele Caller in their Company. If he had continued working regularly in the Company, he would have been promoted after one and half years and would have been entitled to enhancement of salary of Rs.10,000/- per month. In his cross-examination he admitted that personal file of every employee was maintained, but was unable to state if there was any personal file of the deceased being maintained in the office. He also admitted that the Attendance Register of the employees is also maintained, though the same was not produced in his evident. He also did not produce the salary vouchers since 2011 till his death. He again explained that because the record was old and the Company had shifted their office, the records have got mis-placed. He further stated that the Company closed in the end of 2012 or beginning of 2013. He denied the suggestion that neither he nor the deceased was an employee of the Company.

25. The Letter of Appointment dated 04.09.2011, Ex.PW3/D mentions that the gross salary would Rs.16,000/- per month. The Promotion Letter dated 01.03.2012, Ex.PW3/E reflects that he was promoted as Sr. CCE in the Company at a salary of Rs.20,000/- plus other allowances. ***The Salary Slip for April, 2012, Ex.PW3/E*** *reflects that he was getting a fixed salary of Rs.20,000/- with Rs.1500/- as Attendance Allowance and Rs.10,180/- as Target Incentives. His total salary thus being Rs.31,680/-.*

26. However, the Target Incentive is not a fixed income, but is dependent upon the performance of the deceased. Moreover, the Salary Slips of the previous months have not even been placed on record, wherein it could be inferred that if there was any minimum Target Incentive which the deceased was earning. However, it can reasonably accepted that if the deceased had continued to work, he would have been able to earn at least Rs.5,000/- per month towards Target Incentives. In the facts and circumstances of the present case, *the average Targe Incentives can be estimated to a minimum of Rs. 5000 per month.*

27. Moreover, Rs.1500/- as Attendance Allowance which is a perk attached to the employment of the deceased, is also necessarily, required to be deducted.

28. The **Net Salary of the deceased**, therefore, comes to **Rs.25,000/- per month** [Rs.31,680 *(total salary)* – Rs.1500 *(attendance allowance)* + Rs.5,000 (estimate Target Incentive)] or **Rs.3,00,000/- per annum** (Rs.25,000 X 12). The annual income of the deceased does not come in the Income Tax bracket, if the compulsory savings which are permitted, are also taken into account.

Future Prospects:-

29. The other aspect for consideration is that whether the Claimants are entitled to 50% Future Prospects.

30. Though the Claimants had asserted that the deceased, Shri Pardeep was in permanent job, but from the testimony of PW3-Shri Rajender Singh as well as from the Appointment Letter and the Salary Slip, it is evident that he was not in a regular job but was getting a *lump sum* salary per month.

31. He was entitled to 40% addition towards Future Prospects as has been held in the case of *National Insurance Co. Ltd. vs. Pranay Sethi,* (2017) 16 SCC 680 decided on 31.10.2017 by the Apex Court.

32. The **learned Tribunal has rightly granted 40% as Future Prospects**.

Multiplier:-

33. Furthermore, considering the age of the deceased which was 26 years at the time of accident, the **multiplier of 17 has also been rightly applied**.

Deduction towards personal expenses:-

34. What now remains to be considered is the amount that is liable to be deducted towards his personal expenses. The deceased is survived by his wife, minor daughter, mother and father. There is nothing to show that the father was not dependent upon the deceased and no such suggestion has been given by the Insurance Company to the father or to the wife who had appeared as witnesses in the Claim Petition. Therefore, **the learned Tribunal has rightly taken four dependents and made a deduction of 1/4th from the monthly income of the deceased towards his personal income**.

Compensation under Non-Pecuniary Heads:-

35. It has been further contended by the Claimants that only a sum of Rs.40,000/- has been awarded towards Loss of Consortium, even though there were four Claimants/legal heirs.

36. Each Claimant was entitled to Rs.40,000/- towards Loss of Consortium, in terms of judgment of *Pranay Sethi* (supra).

37. Therefore, the **Loss of Consortium** which has been awarded in the sum of Rs.40,000/- **is enhanced to Rs.1,60,000/-** (Rs.40,000 X 4).

38. *The **just and fair Compensation** awarded to the Claimants thus, comes to **Rs.53,55,000/-** [25,000 + 10,000 (40% towards Future Prospects) = 35,000 X 12 X 17 X 3/4].*

Rate of Interest:-

39. In the end, it is contended by the Insurance Company that the interest which has been granted @ 9% per annum be reduced to 7% per annum.

40. In the case of *National Insurance Co. Ltd. vs. Yad Ram,* 2023 SCC OnLine Del 1849, this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

41. The Tribunal in its discretion has granted interest on the compensation @ 9% per annum. There is nothing to show that there exists any justifiable ground for reducing the interest. Therefore, **the rate of interest needs no modification**.

Conclusion:-

42. The total amount of Compensation is thus, modified as under :

Sr. No.	Head under which Compensation is Awarded	Amount of Compensation awarded by the Tribunal	Amount of Compensation awarded/modified by this Court
1.	Income of Deceased (A)	Rs.31,680	**Rs.25,000**
2.	Add-Future Prospects (B) assuming 40%	Rs.12,672	**Rs.10,000**
3.	Less-Personal Expenses of Deceased (C)	1/4th deduction	**1/4th deduction**
4.	Monthly loss of Dependency [(A+B)-C=D]	Rs.33,264	**Rs.26,250**
5.	Annual loss of Dependency (Dx12)	Rs.3,99,168/-	**Rs.3,15,000**
6.	Multiplier (E)	17	17
7.	Total loss of Dependency	Rs.67,85,856	**Rs.53,55,000/-**
8.	Funeral Expenses	Rs.15,000	Rs.15,000
9.	Loss of Estate	Rs.15,000	Rs.15,000
10.	**Loss of Consortium**	Rs.40,000	Rs.40,000X4= **Rs.1,60,000**
	TOTAL COMPENSATION	Rs.68,55,856/-	**Rs.55,45,000/-**

Relief:-

43. The **total amount of Compensation awarded to the Claimants is**

Rs.55,45,000/- along with interest @ 9% per annum from the date of filing of the Claim Petition till the date of its deposit by the Insurance Company, which be disbursed in terms of the Award dated 01.09.2018.

44. The aforesaid two Appeals are accordingly disposed of.

45. The Statutory amount deposited be returned to the Insurance Company.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 07, 2025
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