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

% ***Pronounced on: 4th February, 2025***

\+ **MAC.APP. 450/2023**

NATIONAL INSURANCE COMPANY LIMITED ...Appellant
Through: Mr. Zorawar Singh, Mr. Jayant Rastogi & Ms Peehu Singh, Advocates

versus

1. **Sh. AMRESH RANA**
W/o Sh. Bijendra Rana (Mother of the deceased)
R/o TC-66, Phase-1,
Ashiyana, Harthala,
Thakurdwara, Dist. Moradabad
UP-244001 .....Respondent No.1

2. Sh. Bijendra Pal Rana
S/o Sh. Babu Ram Rana (Father of the deceased)
R/o TC-66, Phase-I,
Ashiyana, Harthala,
Thakurdwara, Dist. Moradabad
UP-244001 ...Respondent No. 2

3. Sh. Umesh Singh
S/o Sh. Mahesh Singh (Driver of Offending Vehicle)
R/o H.No. 25, Lal Garhi,
Post: Jagpura,
PS: Jagpura, Distt. Etah, UP ....Respondent No. 3

4. Sh. Pramod Kumar
S/o Sh.Anand Prasad Singh (Owner of Offending Vehicle)

R/o H.No. 155, Ambedkar Gali Pehladpur,
Bangar, North Delhi-110042
PS: Shahbad Dairy ....Respondent No. 4

Through: Mr. S.N. Parashar, Advocate for respondents No.1 & 2.
Mr. Kailash Ray, Advocate for respondents No.3 & 4

\+ **MAC.APP. 48/2024**

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

Through: Mr. Zorawar Singh, Mr. Jayant Rastogi & Ms Peehu Singh, Advocates

versus

1. SH KRISHAN LAL DHINGRA
S/o Sh. Sant Ram Dhingra (Father of the deceased)
R/o B-34-5619/A, 05
Raghubir Park, Haibowal, Kalan,
Ludhiana, Punjab-141001 ....Respondent No. 1

2. Chaman Jyoti Dhingra
S/o Sh. Babu Ram Rana (Father of the deceased)
R/o B-34-5619/A, 05
Raghuir Park, Haibowal, Kalan,
Ludhiana, Punjab-141001 ....Respondent No. 2

3. Sh. Umesh Singh
S/o Sh. Mahesh Singh (Driver of Offending Vehicle)
R/o H. No. 25, Lal Garhi,
Post: Jagpura,
PS: Jagpura, Distt. Etah, UP ....Respondent No. 3

4. Sh. Pramod Kumar

S/o Sh. Anand Prasad Singh (Owner of Offending Vehicle)
R/o H.No. 155, Ambedkar Gali Pehladpur,
Bangar, North Delhi110042
PS: Shahbad Dairy ...Respondent No. 4

Through: Mr. Kailash Ray, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

MAC.APP. 450/2023 & MAC.APP. 48/2024

1. These Appeals under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as 'M.V. Act'*) have been filed by the Appellant/Insurance Company, to challenge the two Awards dated 05.06.2023, in regard to the demise of ***Ms. Anchal Rana and Mr. Kant Dhingra,*** both students of 3rd Year MBBS, from Private College i.e. Sharda University, in a road accident on 21.05.2019.

2. ***Briefly stated,*** on 21.05.2019, Ms. Anchal Rana along with her friends, Ms. Karishma, Mr. Soaib and Mr. Abhishek Soni was travelling to Greater Noida from Kundli Sonipat, Haryana in a Swift Car No. DL 9C AK 0903, which was being driven by Mr. Kant Dhingra. The Offending Truck bearing No. DL 1 GC 0972 driven by Mr. Umesh Singh, suddenly applied breaks resulting in the Swift car, ramming into the backside of the Truck, resulting in death of Ms. Anchal and Mr. Kant Dhingra due to the injuries sustained in the accident.

3. *FIR No. 81/2019* under Section 279/34A/427 of the IPC, was

registered at Police Station Chandinagar, against Mr. Umesh Singh/Respondent No.3, the driver of the Truck. After investigations, the Charge-Sheet was filed in the Court of learned Metropolitan Magistrate on 31.07.2019.

4. Claim Petitions *MACT 471/2019 and MACT 574/2019* under Section 166/140 of the M.V. Act 1988, were filed before the learned Tribunal, by the parents of the deceased Ms. Anchal Rana and Mr. Kant Dhingra, respectively.

5. *Vide* the Impugned Awards dated 05.06.2023. the total Compensation in the sum of Rs. 76,98,950/- along with interest @9% p.a. has been awarded to the parents of Ms. Anchal Rana and in a sum of Rs.76,00,000/- along with interest @9% p.a. to the parents of Mr. Kant Dhingra.

6. ***Aggrieved by the said Impugned Awards, the Appellant/Insurance Company has challenged the same on the following grounds***:

(i) The deceased Kant Dhingra was driving the Swift Car at a very high speed and it hit in the back of offending Truck driven by *Respondent No.3* and he was responsible for causing the accident. It being a case of contributory negligence, the compensation is liable to be reduced accordingly;

(ii) that the deceased Kant Dhingra was not having a valid Driving License;

(iii) The deceased were the medical students of Third Year, who were studying in Sharda Medical College; therefore, their notional income assessed @Rs.50,000/- per month is on the higher side; and

(iv) Interest awarded at the rate of 9% p.a. is on the higher side.

7. ***Learned Counsel appearing on behalf of the Claimants*** has controverted the submissions and has asserted that in a Decision back in the year 2009, notional income of the medical students of fourth year, who had died in the an accident, was taken as Rs. 20,000/- per month. This accident is of the year 2019 and the Tribunal has correctly assessed the potential income of the deceased as Rs.50,000/- per month.

8. It is further contended that there can be no contributory negligence attributable to the death of driver of the Swift car since it was the truck which attempted to overtake the car and consequently, caused the accident. There is no interference warranted in the Impugned Award and the Appeals are liable to be dismissed

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

Contributory Negligence: **-**

10. The *first challenge* to the Award is that the accident was caused due to contributory negligence of the deceased, Mr. Kant Dhingra, who was driving the Car, as he rammed into the offending Truck from behind. Also, the Swift Car was being driven at a very high speed and Mr. Kant Dhingra was not having a valid driving license. Therefore, it is a case of contributory negligence on the part of the deceased and the compensation needs to be reduced accordingly.

11. In order to prove the manner of accident, the Claimants had examined *PW-2, Mr. Gaurav Verma,* eye witness, in both the Claim Petitions. He

deposed that on the date of accident while he along with his friends, was travelling in the car being driven by Mr. Kant Dhingra, at about 08:30 a.m., the offending Truck which was being driven at a high speed and in a rash and negligent manner, without overlooking the oncoming traffic, in violation of Traffic Rules, suddenly took a sharp turn towards the right side and entered into the lane in which the car was being driven. Mr. Kant Dhingra applied emergency breaks despite which it rammed into the backside of the Truck and the accident occurred in which four passengers died on the spot.

12. The witness was duly cross-examined at length and in answer to a specific question, as to by whose mistake the accident had taken place, *he had replied that it was mistake of the driver of the Truck.* He further explained in his cross-examination that the accident took place on 6 lane highway with three-lane on each side.

13. The Truck was driven in the middle lane and was about 100 meters behind the car. The road was straight and the Truck was trailing the car but suddenly he ingressed into the lane of the car and despite having applied emergency brakes, the care rammed into the backside of the Truck. Nothing material could be elucidated in his cross-examination.

14. *The Respondent No. 1, Mr. Umesh Singh, the driver of the Truck, examined himself as R1W-1* and he admitted that he was arrested by the Police and a Charge-Sheet Ex.PW-1/7, under Section 279/304A/427 of the IPC, 1860, was filed against him. In his cross-examination, he also admitted that he was released on bail in the FIR and admitted the involvement of the Truck in the accident. However, he denied that he was driving his vehicle in a rash and negligent manner, without following the traffic rules.

15. He deposed that the Truck was halted on the side of the road as its tyre had got punctured. He had marked the red colour tape on the side and also put the indicators on the vehicle and put some stones near the Truck, as an indication regarding the disabled vehicle so that there was no negligence on his part. It was the deceased driver, who was under the influence of liquor and due to his own negligence, rammed into the backside of the Truck, which such force. It is further deposed that false allegations have been levelled against him only with an intent to extort the money.

16. This defense of the Truck being parked in the middle of the road with proper indicators, was never suggested to PW-2 in his cross-examination and this story has emerged for the first time in the testimony of R1W1, Mr. Umesh Singh. Neither in the Charge-Sheet nor in the Site Plan, is there any indication that the Truck was parked in the middle of the road when the accident occurred; *rather the testimony of PW-2 is categorical that the Truck suddenly changed its lane and came into the lane of the car, without any indication, which resulted in the accident.*

17. Thus, in light of the criminal investigations and the accompanying documents coupled with the testimony of the eyewitness, it is clearly established that it was the sole negligence of the offending truck which caused the accident.

18. *Another plea has been taken by the Appellant/ Insurance Company* that the deceased Kant Dhingra was not holding a valid driving license on the date of the accident and thus, the Tribunal has failed to make deductions towards contributory negligence.

19. At the outset, it is apposite to note that the validity or invalidity of driving license held by Late Mr. Kant Dhingra would have no bearing on the compensation, to be granted on account of death of to Ms. Anchal Rana, as she was merely a passenger in the accidental/victim car, and there can be no contributory negligence attributable to her.

20. Now, coming to the facts of the case of Sh. Kant Dhingra, *in MACT 574/2019, PW-1/Sh. Krishan Lal Dhingra,* has placed on record the driving licence of the deceased Kant Dhingra *Ex. PW1/8,* who was driving the victim/accidental vehicle. A bare perusal of the same shows the date of issuance as 09.09.2013 and date of expiry as 08.09.2013. Since the date of accident is of 21.05.2019, the Driving license was valid at the time of the accident.

21. Even if it is presumed that the Driving Licence of the deceased was not valid, then too he maybe held liable to be prosecuted under the penal provisions of the Motor Vehicles Act, 1988, but the same does not *ipso facto* attribute contributory negligence in driving the vehicle. There is nothing to suggest that the deceased lacked the skill to drive the vehicle or that he in any manner, contributed to the accident.

22. In Sudhir Kumar Rana vs. Surinder Singh, (2008) 12 SCC 436, the Apex Court has considered the similar case where the injured who was 17 years old, was not having Driving License. It was observed that the injured must be guilty of an act or omission which materially contributed to the accident and consequent injury. Where the person injured is not shown to have contributed in any manner in the happening of the accident, it cannot be said that it is a case of contributory negligence. It is only when the

vehicle was being driven by the injured in a rash and negligent manner, can be held guilty of negligence. Merely because the injured does not have a License, is not sufficient to attribute contributory negligence.

23. Similar observations have been made by the Apex Court in *Saraswati Palariya & Ors. vs. The New India Assurance Company Ltd. & Ors.*, Civil Appeal No. 9114/2018, wherein it was observed that merely because a vehicle was being driven by the deceased without a Driving License, would not automatically make him liable for contributory negligence.

24. Thus, there cannot be any inevitable conclusion of there being rashness or negligence on the part of the deceased if he was underage at the time of issuance of the driving license unless there is some independent evidence to show that the victim did not know how to drive the vehicle or had committed any act attributable to his lack of skill of driving of vehicle. Mere invalidity of Driving License cannot be a ground to conclude that the deceased was negligent in causing the accident.

25. ***The manner in which the accident has taken place does not reflect that not holding of a valid driving license, has in any manner contributed to the accident.***

26. Therefore, the learned Tribunal has rightly held the Truck driver has responsible solely for the accident and has consequently, granted compensation to Mr. Kant Dhingra and Ms. Anchal, who have died in this road accident.

27. *Thus, no contributory negligence is attributable to the Deceased and this ground of challenge by the Insurance Company has no merit.*

Quantum of Compensation: -

28. The Quantum of Compensation has also been challenged on the following grounds: -

Income of the Deceased Persons: -

29. *The first ground of challenge is that the potential income of the both the deceased students has not been calculated correctly.*

30. In ***MACT 471/2019,*** *PW-1Smt. Amresh Rana,* mother of deceased/Ms. Anchal Rana has deposed that at the time of accident, her daughter aged about 22 years, was a 3rd Year MBBS Student in Sharda University and has produced the ID-Card of the victim Ex. PW1/2 in support thereof. She has further deposed that she has paid Rs.14,00,000/- as fee amount for first year, Rs.20,00,000/- for in second year and Rs.13,50,000/- for third year and the deceased was a promising person with budding career as a doctor, having been admitted in the Medical College after clearing the highly competitive Examination. The career and future of the deceased was completely secured and the expected monthly income of the deceased was set to be more than Rs. 2,00,000/- per month. She was also expected to have a future income much more than the initial monthly income.

31. In ***MACT 574/2019,*** *PW-1/Sh. Krishan Lal Dhingra,* father of deceased Kant Dhingra has deposed that the deceased, aged about 23 years, was a medical student pursuing MBBS from Sharda University and was currently in his 3rd year. He has produced the College Certificate of the Deceased as Ex. PW1/7. He has further deposed that the deceased had a promising future and was a brilliant student and thus, the parents have lost

the future meal earner and the only son who could have supported them during their old age.

32. Admittedly, both the deceased are students, pursuing a professional course and thus, no proof of income could have been filed.

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

34. 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 student who was pursuing his MBBS as Rs. 25,000/- p.m. in the year 2002, 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.

35. Similar view was taken in the case of *Raj Bala & Anr vs Sumit Dahiya & Ors,* AIRONLINE 2018 DEL 1918, that the prospective income/earning capacity of a 21-years-old deceased, who was a final year student of B.Tech. at Maharshi Dayanand University, Rohtak, would be Rs.26,660/- per month, by observing: -

> *"8. In the present case, the deceased was a final year student of B.Tech., at Maharshi Dayanand University, Rohtak. The deceased had successfully completed three years of his four years degree programme. On successful*

*completion of B.Tech., the deceased would have had a successful career. M/s Tech Indira IT Solutions Pvt. Ltd. had given placement offer of Rs.3,20,000/- per annum to the deceased. T**his Court is of the view that the deceased would have certainly earned higher amount in his lifetime** but the earning capacity of the deceased is taken as Rs.26,660/- per month (Rs.3,20,000/- per annum) since the claimants have restricted their claim to the above amount. This case is squarely covered by the well-settled principles of law laid down by Supreme Court and this Court in the aforesaid cases. The earning capacity of the deceased is taken as Rs.26,660/- per month (Rs.3,20,000/- per annum). The Claims Tribunal has taken future prospects of 40% which is fair and reasonable and is upheld."*

36. Similarly, in *New India Assurance Co. Ltd. v. Ganga Devi* decided on 23.11.2009, a coordinate bench of this Court has taken the notional income of a 4^{TH} Year MBBS Student as Rs. 18,000/- per month.

37. In the case of *Ram Rati & Anr vs United India Ins Co Ltd & Ors*, *MAC. APP. 881/2019,* decided on 04.08.2023, the parents had challenged the assessment of the income of deceased by the Ld. Tribunal on the basis of Minimum Wages in Haryana for a Graduate (Technical) by claiming that the deceased had completed his B. Tech. (Mechanical Engineering) from Maharishi Dayanand University and would have earning much more than the Minimum Wages. The Coordinate Bench of this Court, relying upon *Raj Bala (Supra),* allowed the Appeal of the Claimants by observing that the deceased had already completed his Bachelor of Engineering in Mechanical Engineering from the University and thus, a notional income of Rs. 30,000/- per month was considered as potential income for calculating compensation.

38. In the case of *Ramesh Chand Joshi & Anr. v. New India Assurance*

Co.Ltd., MAC. APP. No. 212-13/2006 decided on 20.01.2010, Coordinate Bench of this Court ascertained the potential income of the 19-year-old deceased, who was a First-Year student of the Bachelor of Engineering in Delhi College of Engineering, as Rs. 4.6 lacs p.a. i.e. Rs. 38,333/- p.m. on the premise that he would have eventually started earning and supporting his family.

39. In the present case, it is not in dispute that both the deceased were students of 3rd year MBBS. In the light of above cited judgments, the Ld. Tribunal has rightly observed that the possibility of victims getting a higher salary in future cannot be negated. Considering that they had a promising career ahead, the Tribunal has rightly assessed the income of both the deceased, as Rs. 50,000/- p.m.

40. ***The same does not warrant any interference.***

Rate of Interest: -

41. The *last ground of challenge* relates to the interest @ 9% p.a. awarded by the ld. Tribunal, which is claimed to be on the higher side.

42. While relying upon the judgment of the Apex Court in *Erudhaya Priya v. State Express Transport Corporation Ltd.,* 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in *Reena Raghav* (Supra) refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal and also observed that the Appellant/Insurance Company had only orally made a submission claiming the prevalent rate of interest to be 7.5% p.a. that too, on the basis of Google search while no document had been placed to support the plea of

interest being too high.

43. The Appellant has not produced any document to show the given rate of interest was not prevailing in the year 2019-20. In the absence of any evidence, ***there is no reason to interfere with the rate of interest awarded, @ 9% p.a. by the learned Tribunal.***

Conclusion: -

44. ***There is no infirmity in the Impugned Awards dated 05.06.2023.***

45. The present Appeals, filed by the Insurance Company are hereby dismissed along with the pending Application(s), if any.

46. The Statutory deposit be returned to the Insurance Company in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 04, 2025/RS