



2025:DHC:1696



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

% *Pronounced on: 11th March, 2025*

+ **MAC.APP. 414/2022, CM APPL. 53489/2022**

NATIONAL INSURANCE CO. LTD.

National Legal Vertical,

2 E/9, Jhandewalan Extension (IV Floor)

New Delhi-110055

.....Appellant

Through: Mr. Amit Kumar Singh & Ms. K.
Enatoli Sema, Advocates.

Versus

1. **SMT. DEV KUMARI**

W/o Late Shri Shyamal

R/o Village Takeli, PS & Tehsil Powayan,

District Shahjahanpur,

Uttar Pradesh-242401

Also at:

Village Mohd. Shankarpur, Chhawani,

Kasaba & PS: Mohammadi,

District Lakhimpur, Kheri, U.P.

...Respondent No.1

2. **SMT. KUSUMA**

D/o Late Shri Shyamal,

W/o Shri Rinku,

R/o Village Takeli, PS & Tehsil Powayan,

District Shahjahanpur,

Uttar Pradesh-242401.

At present:

Village Garhi Kundli,

District Sonapat, Haryana,

...Respondent No.2



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3. **SHRI SHAHID KHAN**
S/o Shri Atiullah Khan,
R/O Village Sotha Khel, near Bhandr Kaun,
Jama Masjid, PS Sotha Khel, District Badayun,
Uttar Pradesh ...Respondent No.3
4. **SHRI KANHIA LAL**
S/o Shri Kedar Nath,
R/O Gandhi Nagar, Lal Kuan,
District Nainital, Uttarakhand - 262402 ...Respondent No.4
5. **SMT. BINDESHWARI @ URMILA @ SMT. VINDESHWARI**
W/o Shri. Virendra,
R/o Khriya Mishra Sunsuna (Mana Para),
P.S. & Tehsil – Mohammadi
District Lakhimpur Kheri, Uttar Pradesh ...Respondent No.5
6. **SMT. SUSHILA DEVI**
W/o Shri Raghunandan,
R/o Bas Klera, Khurd
P.S. Powaya, District Shahjahanpur,
Uttar Pradesh ...Respondent No.6

Through: Mr. S.K. Jha, Mr. R.R. Verma, Ms.
Meena Verma and Ms. Vanshu Sinha,
Advocates for R-5 and 6.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed by the Insurance company to challenge the Impugned Award dated



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26.08.2022, wherein a total compensation has been granted in the sum of Rs.14,52,200/- along with interest @ 9% per annum to the Legal representatives of the deceased, Sh. Shyamal.

2. ***Briefly stated***, in the early morning of 06.10.2015, at about 05:55 AM, at Road No.51, Azadpur, Delhi, a Truck bearing No. UK-04CA-0965 hit the Cyclist- Sh. Shyamal, from behind due to which he suffered fatal injuries. The injured was shifted to Babu Jagjivan Ram Memorial Hospital, where *MLC No.105989/2015* was prepared and he was declared "***brought dead***".

3. *FIR No.636/2015*, under Sections 279/337/304-A IPC, 1860 was registered at P.S. Adarsh Nagar, Delhi, against the Driver/ Sh. Shahid.

4. After completion of investigations, a *Detailed Accident Report* was filed before the learned Tribunal, which was treated as the Claim Petition u/s. 166 of Motor Vehicles Act, 1988 *vide* Order dated 22.12.2015. A separate Claim Petition under Sections 166 and 140 of the Motor Vehicle Act, 1988 was also filed by *Smt. Dev Kumari* and *Smt. Kusum*, the wife and daughter of the deceased.

5. The *Respondent No.5/Smt. Bindeshwari @ Urmila @ Vindeshwari* and *Respondent No.6/Smt. Sushila Devi*, the sisters of the deceased, were also impleaded.

6. The Tribunal, after due consideration of the evidence and material placed before it, granted compensation in the sum of Rs.14,52,200/- i.e. Rs. 6,91,000/- to *Respondent No.5/ Smt. Bindeshwari @ Urmila*; Rs. 7,11,000/- to *Respondent No.6/Smt. Sushila Devi* and only Rs.50,200/- to *Smt. Dev Kumari*, the estranged wife of the deceased, along with interest @ 9% per



annum, while the daughter was granted no Compensation as it came on record that she was not the daughter of the deceased.

7. ***Learned counsel on behalf of the Insurance Company*** has argued that as per the evidence on record, Smt. Dev Kumari, the wife of deceased Shyamal, has left the matrimonial home barely one year after the marriage. She got married to another person Sukh Lal for which sufficient evidence has been placed on record. The daughter/Smt. Kusuma was also not born from the wedlock of Smt. Dev Kumari and the deceased. Thus, the compensation has been rightly denied to the Smt. Kusuma, the daughter, while only Rs.50,200/- has been awarded to the estranged wife Smt. Dev Kumari.

8. However, the only ground of appeal is that the loss of dependency has been erroneously calculated by considering Smt. Bindeshwari and Smt. Sushila Devi, the married sisters, as dependents upon the deceased/Sh. Shyamal and making a deduction of 1/3rd towards personal and living expenses. There is no cogent evidence of their dependency on the deceased brother and therefore, the Award granting compensation is liable to be set aside.

9. **Learned counsel on behalf of Respondent No. 5 and 6** has submitted that no Appeal has been preferred by the wife and the daughter. In so far as the two married sisters are concerned, it is submitted that there is cogent evidence adduced by them to prove that the deceased along with his father, had been residing with *Respondent No.6/Smt. Sushila Devi* who has been taking care of all their requirements. Even the last rites of the father as well as of Shyamal, had been performed by the two sisters. It is, therefore,



submitted that the compensation has been rightly granted and there is no merit in the present Appeal.

10. Submissions heard and record perused.

11. The grievance of the Insurance Company is limited to the findings of the Learned Tribunal that the two married sisters of the deceased are entitled to the compensation amount under the head of “*Loss of Dependency*”.

12. Indisputably, the deceased was survived by his two married sisters, who were his only legal representatives.

13. From the *Written Statement filed by the two sisters before the Ld. Tribunal*, it emerges that Smt. Dev Kumari, had left the deceased approx. 20 years ago and had also performed the second marriage with one Sh. Sukh Lal. Even Kusuma is not the daughter of the deceased as during the stay of the estranged wife/ Dev Kumari, no child was born from their wedlock and she was not pregnant at the time of leaving the matrimonial household. It was rather the two sisters, who had been taking care of the deceased since the last 20 years and even performed the last rituals of the deceased.

14. In support thereof, *R5W1/ Smt. Sushila Devi*, the sister of the deceased, in her Affidavit of Evidence – Ex. R5W1/A, had reiterated the stand taken in the Written Statement and deposed that at the time of accident, deceased had been working as a Hawker and also used to paste posters on walls for Action Advertisement Agency, situated at A-15, Bara Bagh, Industrial Area G.T Karnal Road, Azadpur, Delhi and was earning about Rs.15,000/- per month (Rs.11,000/- per month as salary + Rs.4,000/- as overtime).

15. In her **cross-examination**, *R5W1/ Smt. Sushila Devi* categorically



stated that Smt. Dev Kumari had left the company of the deceased after about one year of her marriage with the deceased and at that time PW-2/Smt. Kusuma was not born. *She further stated that she had taken the dead body of the deceased to his native village for cremation* and stated that Smt. Dev Kumari or Smt. Kusuma never visited her even after the death of the deceased. *She further explained that the deceased had been residing with her at Delhi for the last about 15 years.*

16. To further prove that the deceased had been residing with Smt. Sushila Devi, prior to his death in the accident in question, **R5W2- Smt, Baljeeto**, landlord of Smt. Sushila Devi, had also been examined. She also deposed that the deceased had been residing with Smt. Sushila Devi from the year 2005 till 2011 at House No.159, Malikpur, Village Kingsway Camp, Delhi, i.e. her rented accommodation. She further deposed that she had never seen Smt. Dev Kumari or her daughter Smt. Kusuma ever visited her house to meet the deceased or the sister at any point of time.

17. Therefore, it is proved that the estranged Wife was not dependent or even residing with the deceased and the two sisters were the representatives who are entitled to compensation.

18. The question which now arises is what should be the principle for calculating the compensation.

19. In the landmark ruling of Gobald Motor Service v. R.M.K. Veluswami, MANU/SC/0016/1961: (1962) 1 SCR 929, the Apex Court observed that the law recognizes **two types of damages** in the event of a person's death due to an accident- first is the **“pecuniary loss to the estate of the deceased”** which is claimed on behalf of the Estate representatives, who



may not be dependent upon the deceased and when these damages are recovered, they form part of the assets of the estate. The other is the ***“pecuniary loss sustained by the members of his family”*** in distinction to ***“loss for the estate”***, which may be brought by the legal representatives as trustees for the deceased. For example, if **X** is the deceased’s income, **Y** is the amount spent on dependents, and **Z** is the savings (X-Y), the capitalized value of **Y** represents the loss suffered by the dependents, and **Z** represents the Loss to the Estate.

20. The distinction between the ***“loss to the estate of the deceased”*** and ***“Loss of Dependency”*** was also considered in detail by the Karnataka High Court in the case of A. Manavalagan v. A. Krishnamurthy, (2005) 1 ACC 304. While laying down the principles for determining compensation, where the claimant is not a dependant, it was held as under:-

“16. But, what would be the position if the claimant, though a legal heir is not a dependant of the deceased? Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the 'house hold' as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate under Section 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently what is to be awarded under the head of loss of dependency under Section 1-A would be nil, as there is no real pecuniary loss to the members of the family.”



21. While referring to the above judgments in Keith Rowe vs. Prashant Sagar and Ors, MAC.APPL.601/2007 decided on 15.01.2010 by a Coordinate Bench of this Court, it was observed that in the second category of cases, where the claim is raised by the legal representatives of the deceased, who were not dependants of the deceased, ***the basis for award of compensation is the “Loss to the Estate” i.e. the loss of savings made by the deceased.*** Further, a conventional sum for loss of expectation of life, is added.

22. ***It was further explained that the procedure for determination of “Loss to Estate” is broadly the same as the procedure for determination of “Loss of Dependency”. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But the significant difference is that in cases of Claimants who are dependents can claim “Loss of Dependency”, while those who are not dependents, can only claim “Loss to the Estate”. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate.*** The method of selection of multiplier, is however the same in both the cases. ***It was also emphasized that the quantum of savings will vary from person to person and would be subject to any specific evidence led by the Claimants.***

23. In the present case, a comprehensive reading of the evidence shows that the deceased/Shyamal had been residing with Smt. Sushila Devi, in Delhi and both the sisters had been taking care of him. While the deceased would have spent an amount on his own personal expenses but definitely



would have saved certain amounts for the future, which comprises the Estate, to be inherited by the legal heirs. Whatever would have been the future savings of the deceased/Shyamal, the sisters have suffered a loss of the same, on account of his demise. ***Therefore, though there may not be any “Loss of Dependency”, but the sisters would be entitled to compensation for “Loss to the Estate”.***

24. In the facts of the present case, it emerges that the Learned Tribunal has actually held the two married sisters entitled to the loss of savings i.e. the *loss to the estate* of their deceased brother, but erroneously applied the formula for calculating the multiplicand in the case of *Loss of Dependency*.

25. Pertinently, no specific evidence of the savings of the deceased has been placed on record, by the married sisters. The income of the deceased has been assessed as Rs. 9178/- per month, on the basis of the Minimum Wages of a Skilled worker and his age was ascertained as 45 years at the time of the accident, which has not been assailed by any party. The future prospects have been assessed as 30% by the Tribunal, which has not been challenged. Though the deceased was not having any family of his own, it can be reasonably presumed that he would have been spending about 50% of his income towards his personal and living expenses and saving the remaining amount of his income, i.e. 50%, which is assessed as benefit to his estate.

26. *Hence, the capitalized value of the multiplicand for assessing the Loss of the savings/Loss to the estate is re-assessed as under:*

- i. Rs. 9178/- + 30% (Future Prospects) - Rs. 11,932/-
- ii. Rs. 11,932 - 50% (personal expenses) = Rs. 5,966/- (savings)



iii. Rs. 5,966/- x 12 x 14 = **Rs. 10,02,288/-**

27. Hence, both the sisters are held entitled to an amount of **Rs.10,02,300/- (rounded off)** towards **Loss to the Estate of the deceased/Loss of Savings.**

28. In addition to the above, the sisters are also entitled to **Rs. 40,000/- each**, towards the Loss of Consortium, **Rs. 15,000/-** towards Loss of Estate and **Rs. 20,000/-** towards Funeral expenses, as granted by the Learned Tribunal.

29. It is also clarified that the amount of **Rs. 50,200/-**, granted to the estranged wife of the deceased, Smt. Dev Kumari, has not been challenged either by the Insurance Company, or by the Parties by way of cross-objections. Thus, in view of the fact that the Wife/Smt. Dev Kumari, had left the company of the deceased, merely after 1-2 years of marriage, she cannot be held entitled to any amount towards “*Loss of Dependency*” and **Rs.50,200/- granted to her by the Learned Tribunal are justifiable as compensation for Loss of Consortium.**

Conclusion: -

30. The amount of compensation is re-calculated as under: -

S. No.	Heads	Amount granted by this Court
1.	Loss to the Estate/Savings to Respondent No. 5 and 6 (50% each)	Rs. 10,02,300/-
2.	Loss of Consortium to Respondent No. 5 and 6 (50% each)	Rs. 80,000/-



3.	Loss of Estate to Respondent No. 5 and 6 (50% each)	Rs. 15,000/-
4.	Funeral Expenses to Respondent No. 6	Rs. 20,000/-
5.	Loss of Consortium to Respondent No. 1	Rs. 50,200/-
6.	TOTAL COMPENSATION	Rs. 11,67,500/-

31. Thus, the total compensation granted to the Claimants is re-calculated as **Rs. 11,68,000/- (rounded off)** along with interest @9% per annum from the date of the Claim till the deposit of the amount.

32. The compensation is apportioned as under:-

- i. **Respondent No. 1/Smt. Dev Kumari**, is held entitled to **Rs. 50,200/-**, which along with proportionate/up to date interest shall be immediately released to her in her **Saving Bank Account No. 000513000024954 (Customer No. 0029273), with Zila Sehkari Bank Limited, Shahjahanpur, Uttar Pradesh, having IFSC Code ICIC00SJDCB**.
- ii. **Respondent No. 6/Smt. Sushila Devi** is held entitled to **Rs. 5,68,650/-** (i.e. 50% of Rs. 10,02,300 = Rs. 5,01,150 + Rs. 40,000 + 7,500 + 20,000/-). Out of this amount of Rs. 4,68,650/-, shall be immediately released to her in her **MACT Saving Bank Account No.00770100038025, Bank of Baroda, Powayan Branch, District Shahjahanpur, Uttar Pradesh, having IFSC Code BARB0POWAYA** and the remaining amount of Rs. 1,00,000/- along with interest amount is directed to be kept in the form of FDRs in the multiples of Rs. 20,000/- each for a period of one



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month, two months, three months and so on and so forth, having cumulative interest.

iii. **Respondent No. 5/Smt. Bindeshwari @ Urmila @ Vindeshwari** is held entitled to **Rs. 5,48,650/-** (i.e. 50% of Rs. 10,02,300 = Rs. 5,01,150 + Rs. 40,000 + 7,500). As recorded by the Learned Tribunal, since her bank account are not on record, her entire share amount@ **Rs. 5,48,650/-** be kept in the form of FDR to be renewed periodically, so as to earn interest thereupon and the requisite amount shall be released/disbursed to her only after recording of her statement under Clause 29 MCTAP before the Learned Tribunal.

33. The excess amount, if any be returned to the Insurance Company, along with the Statutory deposit.

34. **The present Appeal is disposed of, along with the pending Application(s), if any.**

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 11, 2025

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