



2025:DHC:1493



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 03rd March, 2025

+ MAC.APP. 656/2017 & CM APPL. 26554/2017,
8077/2021, 26052/2022

NEW INDIA ASSURANCE CO LTDAppellant

Through: Mr. Ravinder Singh, Mr.
Ritvik Bhardwaj and Ms.
Raveesha Gupta,
Advocates.

versus

UNEZA BEGUM & ORSRespondents

Through: Mr. S. N. Parashar,
Advocate for R1 to 4.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present appeal is filed challenging the order dated 30.05.2017 (hereafter '**the impugned award**') passed by Motor Accidents Claims Tribunal, Karkardooma Courts, Delhi in MACT No. 82/2014.

2. By way of the present appeal, the appellant challenges the impugned award on the following grounds:

- a) Firstly, the appellant contends that the income of the deceased victim should have been notionally assessed based on the minimum wages applicable to a matriculate at the relevant time, rather than on the claim made by the wife of the deceased, who filed the claim petition;

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- b) Secondly, the appellant asserts that compensation could not have been awarded under both the heads— loss of consortium and loss of love and affection ; and
- c) Lastly, it is argued that the driver of the offending vehicle was operating the vehicle without a valid driving license, and therefore, the insurance company should have been granted recovery rights.
3. The learned counsel for the appellant submits that the claimants failed to provide sufficient evidence to substantiate the claim that the deceased was earning ₹15,500/- per month at the time of the accident. It is highlighted that the alleged employer of the deceased, when produced as a witness, admitted that there was no documentary proof of salary payments to the deceased. Further, the attendance register did not contain the name of the deceased, casting doubt on his employment status and income.
4. Conversely, Mr. Parashar, learned counsel appearing for the claimants, submits that the learned Tribunal's assessment of income is reasonable. He argues that the deceased was at least a matriculate or 12th pass, and the applicable minimum wage for such qualification at the relevant time was ₹10,500/- per month. The claimants also produced a salary certificate indicating that the deceased earned ₹12,000/- per month.
5. The employer of the deceased, Mr. Ravi Mahani, deposed as PW-2. He testified that the deceased was employed as a computer operator at his shop and was receiving a salary of ₹12,000/- per month, inclusive of all allowances. He also



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identified and confirmed the salary certificate issued to the deceased, bearing his signature. Although he stated that salary payments were made in cash and recorded in the attendance register, the attendance register did not explicitly mention the firm's name, raising some doubts.

6. During cross-examination, PW-2 stated that the deceased was engaged through a reference and denied the suggestion that the salary documents were fabricated. Similarly, the wife of the deceased, when cross-examined, refuted allegations that she had filed fabricated documents in support of her claim.

7. It is pertinent to note that, no suggestion was put to any of the witness that the salary certificate which was produced and signed by PW-2 was a false and fabricated document. Only general and vague suggestion had been put that, all documents are false and fabricated. The same in the opinion of the Court will not suffice.

8. Even otherwise, concededly, the minimum wages payable to a matriculate at the relevant time was ₹10,500/- per month. There is not much difference between the salary as assessed by the learned Tribunal @ ₹12,000/- per month and the minimum wages that would have at least been payable to the claimants. The Court cannot lose sight of the fact that the Motor Vehicles Act is a beneficial legislation and some leeway ought to be given to the family of the victim in regard to the evidence being produced pursuant to the death of the victim, especially, when the victim belongs to poor strata of the society for proving the income.

9. Many a times the family of the victim are not even aware





of the place where the victim works. Majority of the people in this strata of the society do not even work in an organized sector, which makes production of evidence a difficult task.

10. The compensation is awarded on a reasonable presumption which in the opinion of this Court in the present case is reasonable. It is not the case, that the claimants had claimed an extraordinary higher amount. The amount claimed is not much higher than the minimum wages that the victim would have been eligible to earn at the relevant time. It is not disputed that the victim was 12th pass at the time of accident and was also supporting his family consisting of his wife and three minor children. Therefore, it would be reasonable to presume that the victim was earning at least ₹12,000/- per month as salary.

11. I, therefore, find no merit in the ground taken by the appellant.

12. In regard to the grant of compensation towards loss of consortium and loss of love and affection, Mr. Parashar does not dispute that, the amount shall be paid in line with the judgment passed by the Hon'ble Apex Court in *National Insurance Company Limited v. Pranay Sethi and Others : (2017) 16 SCC 680*. In terms of the judgment, the claimant would be entitled to ₹40,000/- for each surviving dependent.

13. In the present case the deceased was survived by 5 dependents i.e., father, wife and three minor children. The claimants would thus be entitled to $(₹40,000 \times 5 = ₹2,00,000)$. The Tribunal has granted a lump sum of ₹2,00,000/- under the combined heads of loss of consortium and loss of love and



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affection. Therefore, the Court though finds merit in the insurance company's argument however, no order needs to be passed for reduction in compensation.

14. The appellant has also challenged the learned Tribunal's order refusing the right to recover the compensation amount from the driver of the offending vehicle. It is alleged that the driver did not possess a valid driving license.

15. The verification report submitted as Ex. RW1/4 from the District Transport Officer, Tuensang, Nagaland, confirms that the driver initially obtained a driving license in 2008. The report further states that the license was renewed and valid at the time of the accident. The insurance company argued that the license was later found to be invalid due to procedural lapses in its issuance, but no FIR was filed for forgery, implying that the license was not obtained fraudulently but was erroneously issued due to a lack of due diligence by the authorities.

16. Cross-examination of RW1, the driver, revealed discrepancies regarding his date of birth and eligibility for obtaining the license at the time of the issuance. The defense pointed out that the driver's date of birth was 15.08.1990, whereas his license was issued on 11.01.2008, making him underage at the time of obtaining it. The driver admitted that he was below 18 years at the time but denied any fraudulent intent in obtaining the license. The learned Tribunal observed that while such discrepancies existed, they were not sufficient to establish a deliberate violation by the driver at the time of the accident.

17. Additionally, RW2, the vehicle owner, testified that he had



thoroughly checked the driver's license before employing him and found it valid. He admitted that while he had not submitted a formal verification report, he had ensured that the license appeared genuine before engaging the driver.

18. The learned Tribunal also considered the government's notification regarding the transition to Smart Card licenses. As per the Transport Commissioner's Public Notice dated 1.08.2014, licenses issued in booklet form before 30.10.2009 were to be digitized into Smart Cards by 1.12.2014, failing which they would be treated as cancelled. However, the learned Tribunal noted that the accident occurred on 10.05.2014, prior to the cut-off date, making this directive irrelevant to the present case.

19. In light of these findings, the learned Tribunal concluded that at the time of the accident, the driver's license was not proven to be fake or invalid in a manner that would justify shifting liability. Since the insurance company could not establish a willful or material breach of policy terms, it was held liable to pay the compensation without the right to recover it from the driver or owner of the vehicle.

20. Given these facts, the Court finds no merit in the appellant's argument regarding recovery rights. The insurance company is liable to pay the compensation amount without the right to recover it from the owner or driver.

21. The compensation amount, along with the accrued interest, is directed to be released in favour of the claimants, in the manner as provided in the impugned award.

22. In view of the above, this Court finds no merit in the



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present appeal filed by the insurance company. The appeal is therefore dismissed. Pending applications also stand disposed off.

AMIT MAHAJAN, J

MARCH 3, 2025

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