2026:DHC:4601

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

% ***Date of decision: 19th May 2026***

\+ **MAC.APP. 924/2013**

THE NEW INDIA ASSURANCE CO LTD .....Appellant

Through: Mr. Pankaj Seth and Ms. Shruti Jain, Advocates.

versus

SMT PARMINDER KAUR & ORS .....Respondents

Through: Mr. S.N. Parashar and Mr. Ritik Singh, Advs. R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. The appeal has been filed assailing the impugned judgment dated 16th August 2013 passed by Motor Accident Claims Tribunal ['***MACT***'], South District, Saket Courts in Suit No.683/2009, whereby compensation of *Rs.25,21,536/-* along with interest @ *9%* per annum from the date of filing the petition has been awarded to the claimants.

2. The accident occurred on 08th July 2009 at about 02.35 p.m. near IIT Hauz Khas, when the deceased while riding a motorcycle was hit by a TSR bearing registration no. DL-1RJ-3421 allegedly driven in a rash and negligent manner, resulting in fatal injuries. FIR No. 240/2009 was registered under Section 279/304A IPC at PS Hauz Khas.

3. The deceased was said to be working as a permanent employee at IIT Delhi drawing a monthly salary of *Rs.25,150/-* which was proved by **PW-2**. The age of the deceased was 55 years at the time of the accident and hence, multiplier of '11' was applied and 1/4th was deducted towards personal expenses considering there were 4 dependents. The Tribunal granted the right to *pay and recover* to Insurance Company, as they succeeded in proving breach of policy conditions.

4. Issues on computation and negligence have been canvassed before the Court by *Ms. Shruti Jain*, counsel for Insurance Company.

5. No one appears for driver and owner and no appeal has been filed to challenge the issue of pay and recovery. Accordingly, the finding of Tribunal as regards the right of pay and recover shall not be disturbed.

6. *Ms. Shruti Jain*, counsel appearing on behalf of appellant/Insurance Company, raises the following points:

(i) The issue of negligence was decided, *inter alia,* based on the FIR and the chargesheet in favour of the claimants, holding that the accident occurred due to the rash and negligent driving of the driver/owner of the TSR, which was insured by appellant/Insurance Company. Though recovery rights were granted in favour of the Insurance Company, the challenge is being made since the criminal proceedings have now resulted in an acquittal. In this regard, the decision of the Supreme Court in ***N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal*** (1980) 3 SCC 457, is pressed by the counsel for respondents, wherein it is clearly stated that acquittal does not bar civil liability, as the standard of culpability is higher in criminal proceedings than required in civil proceedings.

(ii) The dependency ought to have been calculated keeping in account that two of the claimants, being legal heirs of the deceased, were son and daughter, both of whom had attained the age of majority. *Ms. Shruti Jain*, counsel for appellant/Insurance Company, points out to the statement of **PW-1**, the wife of the deceased, recorded on 26th November 2011, wherein she states that the daughter is 29 years old, married and living with her husband, and son is 27 years old and a graduate, staying abroad, and doing a job and has been helping the family financially. Since the accident had occurred in 2009, both the daughter and the son would still have been major in age and not dependent on the deceased. Therefore, the deduction for personal expenses ought to have been 1/3rd instead of 1/4th, as calculated by the MACT (considering that the other two claimants were the wife and the mother of the deceased).

(iii) It was argued by counsel for Insurance Company that the multiplier ought to have been *9* instead of *11* since the age of deceased at the time of incident was about 55 years and 7 months. To this, *Mr. Parashar*, counsel for respondents points out that the multiplier for category of *56-60* years is *9,* and since the deceased had not completed 56 years of age, it would still be considered in the category of *51-55* years with the multiplier of *11*.

(iv) As per the counsel for Insurance Company, the following alignments are also required to be made:

a. *Funeral expenses* awarded at *Rs.25,000/-*; shall be reduced to *Rs. 15,000/-* in terms of ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680;

b. *Loss of care and guidance* was awarded at Rs.*1,00,000/-*, which is now not permissible, as per the Supreme Court's judgment in ***United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others*** (2021) 11 SCC 780.

c. *Loss of consortium* was awarded at *Rs.1,00,000/-,* whereas as per ***Pranay Sethi*** (*supra*) and ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and Others*** (2018) 18 SCC 130, ought to be *Rs.40,000/-* each in favour of parental consortium of the mother and the spousal consortium of the wife.

7. Further, counsel for appellant, strenuously argues that the MACT has failed in its duty to give a proper assessment on the issue of negligence and has simpliciter relied upon the FIR and the chargesheet, which is not in consonance with the burden of proof which needs to be discharged by a petitioner/claimant filing a claim petition under Section 166 of the MV Act.

Analysis

8. As regards the issue of dependency, considering that daughter of deceased was 29 years old, married and living with her husband, and

son of deceased was a 27 years old graduate staying abroad and helping the family financially, in the opinion of this Court, deduction of personal and living expenses would be 1/3rd instead of 1/4th as calculated by the MACT, keeping in view that the only other two claimants *i.e.* wife and mother of deceased will be considered as dependants.

9. Multiplier would be '*11*', considering that deceased had not completed the age of 56 years and, therefore, will still fall into the bracket of 51-55 years as per the tabulation provided in ***Pranay Sethi***, (*supra*) and ***Sarla Verma v. DTC***, (2009) 6 SCC 121.

10. As far as other alignments are concerned, same shall be done with respect to ***Pranay Sethi*** (*supra*) and the relevant observations are extracted as under:

> *"**52.** As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]. It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification*

must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

(emphasis added)

11. Therefore, *funeral expenses* shall be reduced to *Rs.15,000*/-. *Loss of consortium* awarded at *Rs.1,00,000*/- would be *Rs.1,60,000*/- (40,000×4), considering that there were 4 claimants namely, mother, wife, daughter and son).

12. Considering that *loss of estate* has not been granted by the MACT, to align the same with ***Pranay Sethi*** (*supra*), *Rs. 15,000/-* shall be granted under that head.

13. *Loss of care and guidance* awarded at *Rs.1,00,000*/- shall be deleted as per the ***Satinder Kaur*** (*supra*).

14. Therefore, the following adjustments shall be made to the

impugned award:

(i) *Personal expenses* shall be deducted to 1/3rd.

(ii) *Funeral expenses* shall be reduced to *Rs.15,000*/-.

(iii) *Loss of consortium* shall be awarded at *Rs.1,60,000*/-

(iv) *Loss of Estate* shall be awarded at *Rs.15,000*/-.

(v) *Loss of care and guidance* awarded at *Rs.1,00,000*/- shall be deleted.

15. As regards issue of negligence, *Mr. Parashar* challenges the plea of no negligence raised by Insurance Company and places reliance for the same on *paragraph 37* of the judgment of this court in ***National Insurance co ltd v Shehnaj Begum & Ors.*** 2026:DHC:3169 which is extracted as under.

> "*37. Thus, where direct evidence regarding the manner of the accident is unavailable, the Tribunal is entitled to examine the surrounding circumstances and assess whether the occurrence is of such a nature that negligence can reasonably be inferred. In such cases, the doctrine of res ipsa loquitur operates as a rule of evidence enabling the Tribunal, on the touchstone of preponderance of probabilities, to determine whether the accident itself provides a reasonable basis to infer negligence.*"

16. In the present matter FIR No.240/2009 under 279/304A IPC was registered at PS Hauz Khas however, the same has resulted in acquittal the driver.

17. In the facts of the present case, this Court is of the view that the doctrine of *res ipsa loquitur* squarely applies. The material placed on record, including the FIR, and chargesheet, clearly establishes that the offending vehicle had struck the motorcycle with considerable force,

resulting in the death of the deceased. Further, the Mechanical Inspection Report of the TSR shows that there was fresh damage to the front side. The offending vehicle was under the exclusive control and management of respondent no.2/driver, yet neither the driver nor the owner entered the witness box to furnish any explanation regarding the manner in which the accident occurred or to rebut the allegation of rash and negligent driving. In these circumstances, the surrounding facts themselves furnish sufficient basis to draw an inference of negligence against the driver of the offending vehicle. The Tribunal, therefore, was justified in arriving at the finding of negligence on the touchstone of preponderance of probabilities.

18. Further, the argument that the driver was acquitted in criminal proceedings is not of relevance here as the burden of proof in motor accident cases under the MV Act is preponderance of probabilities and not beyond reasonable doubt. The Supreme Court has held in ***N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal,*** (*supra*) as under:

> "***2…***
> *<u>The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability.</u> The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to reopen the holdings on culpability and compensation.*"

19. Further, it is contended by *Mr. Prashar* that considering the age of deceased at 55 and that he was in permanent employment with IIT Delhi he

is entitled to future prospects at *15%* in consonance with the principles enunciated in ***Pranay Sethi*** (*supra*).

20. *Ms. Shruti Jain*, Counsel for Insurance Company, places reliance on the judgment of ***Ranjana Prakash v. Divl. Manager,*** (2011) 14 SCC 639, the relevant paragraph is extracted as under:

> "*8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.*"

21. On the contrary, *Mr. Parashar*, counsel for claimant, places reliance on the order of Supreme Court in Special Leave Petition (Civil) No. 8439/ 2019 titled "***Surekha & Ors. v Santosh & Ors***." passed by three judge bench to contend that even in absence of cross appeal, the Court can enhance compensation. The Supreme Court in the aforesaid order held that Courts should not take hyper-technical approach and ensure that just compensation was awarded to the affected person or the claimants. The order of Supreme Court rejected the judgment of Bombay High Court basis

which the enhancement of compensation was declined on ground that no cross appeal had been filed.

22. Even otherwise the principle that Courts are duty bound to award just compensation irrespective of the pleading of the parties is relatively well settled. Reference can be made to ***Ningamma v. United India Insurance Co. Ltd.*** (2009) 13 SCC 710. The relevant part of the judgment is extracted as under:

> *"25.....Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not......"*
>
> (emphasis added)

23. In view of the above, this Court is inclined to accept argument of counsel for appellant as the same is in consonance with the view taken by Supreme Court but also with the principles of just compensation. Accordingly, the future prospects that were omitted by the Tribunal are granted at *25%.*

24. The revised compensation is as under:

25.

S.No.	**Heads of Compensation**	**Awarded by the Tribunal**	**Awarded by this Court**
Loss of Dependency			
1.	Loss of income per month (A)	Rs. 23,198/-	Rs. 23,198/-
2.	Future Prospects @25% (B)	*Nil*	Rs. 5,800/-
3.	Less Personal expenses of the deceased (C) *1/3rd*	Rs. 5,800/-	Rs. 9,666/-
4.	Monthly Loss of Dependency (A+B-C=D)	Rs 17,398/-	Rs. 19,332/-
5.	Annual loss of dependency (D x 12=E)	Rs. 2,08,776/-	Rs. 2,31,984/-

6.	Multiplier (F)	11	11
7.	Total loss of dependency (E x F = G)	Rs. 22,96,536/-	Rs. 25,51,824/-
Conventional Heads			
8.	Compensation for loss of consortium (H)	Rs. 1,00,000/-	Rs. 1,60,000/-
9.	Compensation for loss of estate (I)	Nil	Rs.15,000/-
10.	Compensation towards funeral expenses (J)	Rs.25,000/-	Rs.15,000/-
11.	Loss of care and guidance	Rs. 1,00,000/-	*Nil*
11.	Total compensation (G+H+I+J = K)	Rs. 25,21,536/-	Rs. 27,41,824/-
12.	Rate of Interest Awarded	9%	9%

26. The compensation is enhanced by *Rs. 2,20,288/-*.

27. *Vide* order dated 11th October 2013, this Court directed that on deposit of entire award amount along with up-to-date interest accrued with the Registrar General of this Court there shall be stay on the impugned award. Further, this Court directed that the *80%* of the deposited amount shall be released in favour of claimant as per the terms and condition fixed by Tribunal through UCO Bank, High Court of Delhi Branch.

28. It is directed that the balance amount deposited with the Registrar General of this Court along with accrued interest shall be released to the claimant in terms of the directions of MACT in the impugned award.

29. The enhanced compensation along with accrued interest *@9%* per annum shall be deposited before the Registrar General of this Court within a period of four weeks. The enhanced compensation along with accrued interest shall be released to the claimants as lumpsum.

30. The appeal is accordingly disposed of in terms of the above.

31. Statutory deposit be refunded to appellant/Insurance Company, only if the order of deposit has been complied with.

32. Judgment be uploaded on the website of this Court

(ANISH DAYAL)
JUDGE

MAY 19, 2026/sm/zb