



2023:DHC:7522



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

Date of decision: 12.10.2023

+ **MAC.APP. 77/2019 & CM APPL. 21509/2023**
KRISHAN PAL MOURYA & ORS

..... Appellants

Through: Mr.S.N. Parashar, Adv.

versus

**RAVINDER KUMAR & ORS (THE NEW INDIA
ASSURANCE CO LTD)**

..... Respondents

Through: Mr.Anshuman Jain, Adv. for R-
3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 27.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 15441/15, titled ***Krishan Pal Mourya & Ors. v. Ravinder Kumar & Ors.***

2. It was the case of the claimants before the learned Tribunal that their father, Sh.Balak Ram (hereinafter referred to as the 'Deceased') along with one Nafees was going towards IT Park from Jamuna Khadar on foot. As they reached IT Park Red Light ISBT to Shastri Park Chowk, GT Road, Delhi, a mini bus

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bearing registration no.DL-1VA-0384 (hererinafter referred to as the 'Offending Vehicle'), which was being driven by respondent no.1 at a very high speed and in a rash and negligent manner, came from Kashmiri Gate side and hit the deceased. Resultantly, the deceased fell down on the road and sustained fatal injuries. Though he was rushed to Dr. Jag Parvesh Chand Hospital, Shastri Park by the CAT Ambulance, he was declared as brought dead.

3. The learned Tribunal, on appreciation of evidence led before it, came to a conclusion that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner. However, on the quantum of compensation to be awarded to the appellants, the learned Tribunal held that as all the claimants were major, they could not be considered as dependent on the deceased and, therefore, awarded only a sum of Rs.50,000/- as compensation, relying upon the judgment of the Supreme Court in *Manjuri Bera v. Oriental Insurance Co. Ltd.*, (2007) 10 SCC 643.

4. The limited challenge of the appellants to the Impugned Award is on the quantum of compensation awarded in their favour.

5. The learned counsel for the appellants submits that the appellant no.4, the daughter of the deceased was aged only 18 years and was unmarried. She was clearly dependent on the income of the father, that is, the deceased. He submits that the appellant no. 1 appeared before the learned Tribunal as PW-1,

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and deposed that the appellants were dependent on the income of the deceased. He submits that in terms of the judgment of the Supreme Court in ***Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another***, (2009) 6 SCC 121, the appellant no. 4 would be dependent on the deceased and his income, by deducting one half of the income of the deceased towards personal expenses, should have been taken into consideration for awarding the compensation to the appellants.

6. On the other hand, the learned counsel for respondent no.3 submits that there was no document filed by the appellants to prove the income of the deceased.

7. I have considered the submissions made by the learned counsels for the parties.

8. In ***National Insurance Co. Ltd. v. Birender***, (2020) 11 SCC 356, the Supreme Court has held as under:-

“14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the

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earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

9. In ***Oriental Insurance Co. Ltd. v. Raj Rani***, 2022 SCC OnLine P&H 3673, the High Court of Punjab and Haryana, while dealing with a similar issue, held as under:-

“19. I find that though no fault can be found with the observations by the Tribunal that claimant Sanju Kumar could not be taken to be dependent upon earnings of the deceased for the reason that he had attained majority but same cannot be said to be true with regard to claimant Shavnam, aged about 21 years, an unmarried daughter of the deceased. There is nothing on record to show that Shavnam is engaged in any avocation or has any source of income. Therefore, she should have been taken to be dependent family member of the deceased. As has been generally observed, an unmarried daughter of the age of 21 years is financially dependent upon her parents and rather father in most of the cases, for meeting her basis needs. Most girls in that age group are usually students and after completion of studies, they are to be married off by the parents bearing the necessary expenses. Therefore, observing that Shavnam was not entitled for compensation is not the correct view taken by the Tribunal. The Tribunal has however found Smt. Raj Rani - widow and Sumit minor son of the deceased to be dependent family members.”

10. As noted hereinabove, PW-1 Sh. Krishan Pal Maurya had stated that appellant no.4 was aged only 18 years and was unmarried as on the date of the accident. In terms of the above judgments, she would clearly be dependent on the deceased. The learned Tribunal has, therefore, erred in not treating the

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appellant no. 4 as dependent on the deceased and awarding loss of dependency in her favour.

11. As it would be a case of a single dependent, one half of the income of the deceased would be deducted towards his personal expenses.

12. As far as the income of the deceased is concerned, the learned counsel for the appellant is unable to show any document in proof of the claim of the income of the deceased. He prays that the income of the deceased be determined on the basis of the minimum wages notified by the Government of NCT of Delhi for an unskilled person as on the date of the accident. He submits that the same was Rs.9048/- per month.

13. I agree with the submission made by the learned counsel for the appellants. In the absence of proof of income of the deceased, as the deceased was claimed to be working as a labourer, the minimum wages notified for an unskilled worker are to be adopted for determining his income.

14. Further, as the deceased was aged 56 years at the time of the accident, in terms of the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, future prospects at the rate of 10% are to be considered. In addition, a multiplier of 9 is to be applied in terms of *Sarla Verma* (Supra), which has been reaffirmed in the judgement of *Pranay Sethi* (supra).

15. In view of the above, the loss of dependency to be awarded to the appellants is determined as under:-

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S.No.	Particulars	Amounts
1.	Income (Minimum Wages)	Rs.9048/-
2.	Future Prospects	10%
3.	Personal Deduction	1/2
4.	Multiplicand	12
5.	Multiplier	9
6.	Total Loss of Dependency	9048x110/100x1/2 x12x9 =Rs.5,37,451.20/- Rounded off to: Rs. 5,37,500/-

16. Over and above this, in terms of the judgment of the Supreme Court in *Pranay Sethi* (supra), and as explained by the Supreme Court in *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others*, (2021) 11 SCC 780, the appellants are held entitled to compensation towards loss of consortium of Rs.40,000/-x4= Rs.1,60,000/-; loss of estate Rs.15,000/-; and towards funeral expenses Rs.15,000/-.

17. The total compensation, to which the appellants are held entitled, is as under:

<u>S.No.</u>	<u>Particulars</u>	<u>Amounts</u>
1.	Loss of Dependency	Rs.5,37,500/-
2.	Loss of consortium	Rs.1,60,000/-

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3.	Loss of Estate	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-
5.	Total Amount	Rs.7,27,500/-
6.	Less: Amount already Deposited	(Rs.50,000)
7.	<u>Enhanced Compensation</u>	<u>Rs.6,77,500/-</u>

18. The above enhanced compensation shall also carry interest at the rate of 9% per annum from the date of filing of the Claim Petition till realisation.

19. The Respondent no.3 has already deposited the compensation of Rs.50,000/- along with interest with the learned Tribunal. The Respondent no.3 shall deposit the enhanced amount along with interest, with the learned Tribunal within a period of six weeks from today.

20. The compensation assessed towards the loss of dependency shall be released only in favour of the appellant no.4. As far as compensation on the other conventional heads are concerned, the same shall be released equally in favour of the appellants by the learned Tribunal.

21. As the accident took place in the year 2015 and more than 8 years have passed, the entire compensation amount shall be released in favour of the appellants as a lump-sum.

22. The learned Tribunal, by the Impugned Award, has granted a right to the respondent no.3 to recover the

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compensation paid to the appellants from the respondent nos.1 and 2. In spite of service, respondent nos.1 and 2 have not entered appearance. Accordingly, respondent no.3 shall have a right to recover the enhanced compensation as well, from respondent nos. 1 and 2.

23. The appeal is allowed in the above terms. The pending application is also disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 12, 2023/rv/ss

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