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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decisions: 6th December, 2024***+ **MAC.APP. 691/2019**

RASHMI SHARMAAppellant

Through: Mr. Sunil Kr. Verma, Advocate.

versus

1. BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
.....Respondent No.12. AMARVEER RANA (DRIVER-CUM-OWNER)
S/o Sh. Rajpal Singh RanaRespondent No. 2
Through: None**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G E M E N T (Oral)**

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant, for enhancement of the compensation in the sum of Rs.17,54,500/- along with the interest @9% p.a. *vide* the impugned Order dated 29.03.2019, on account of demise of Mr. Rachit Sharma aged 20 years, in a road accident on 29.05.2006.

2. The *basic grievance* on behalf of the Appellant/mother is that initially, the Claim Petition was allowed *vide Order dated 14.10.2015*, whereby the compensation in the sum of Rs. 34,40,272/- was granted along with the interest @10% per annum. However, the Appeal was preferred by the Insurance Company *vide* MAC. APP. No. 1008/2015 whereby this Court had remanded the Case for a decision afresh. Consequently, the *impugned Order dated 29.03.2019* has been made wherein Rs.17,54,500/- along with interest @9% has been granted. This Award has been challenged on the sole ground that the income of the deceased has been taken as per minimum wages @ Rs.10,211/- per month instead of



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Rs.20,156/-as per the Salary Slip which was accepted in the earlier Award. It is asserted that the compensation amount be revised by taking the income as This amount is thus, sought to be enhanced by taking the as salary Rs.20,156/- as per the Salary Slip.

3. None has appeared on behalf of the Respondent.

4. Submissions heard.

5. ***Briefly Stated***, on 29.05.2006 at 3:30 AM Rachit Sharma (since deceased) was going to his friend's house at Janak Puri on his motorcycle bearing no. DL 4SAR 8140 along with his friend. When they reached in front of CVD Line Gate, near Peer Baba, Delhi Cantt, suddenly, a Honda City car bearing No. DL-4CAB-1370 came at a high speed, being driven in a rash and negligent manner by Amar Veer Rana and hit the above-said motorcycle as a result of which Mr. Rachit Sharma and his friend fell down and sustained grievous injuries.

6. It is further stated that after the accident, injured was taken to DDU hospital, where the doctors were on strike and accordingly injured-Rachit Sharma was taken to Base hospital, Delhi Cantt, where he expired after few hours. At the time of accident, deceased was aged about 20 years and was working as an Associate with Wipro BPO Ltd. and he used to contribute his entire earnings towards the family members.

7. FIR No. 207/2006 was registered under Section 279/337 of *Indian Penal Code, 1860* ('IPC' hereinafter) on 30.10.2008 at Police Station Delhi Cantt.

8. The Petition under Sections 166 & 140 of *Motor Vehicles Act, 1988* for grant of compensation was filed on behalf of Claimant- Rashmi Sharma.

Loss of Dependency

9. The *sole ground* pressed by the Appellant to seek enhancement is that in the impugned Award the income of the deceased has been taken as Rs.10,211/- per month instead of Rs.20,156/-as per the Salary Slip.

10. The Ld. Tribunal referred to the testimony of the Appellant as PW-3/Rashmi Sharma (mother/ LR of deceased) who deposed that at the time of



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accident, deceased Mr. Rachit Sharma was aged about 20 years and was working as Associate with Wipro BPO Ltd. and was earning about Rs.12,000/- p.m.

11. In this regard, the Claimant also examined *PW-2 Sh. Rakesh Sharma*, Assistant Manager, Wipro BPO Ltd. Okhla, New Delhi, who proved the copies of the pay Slips of the deceased for the month of January 2005 to August 2005 as Ex. PW-2/E (colly) which reflected that the Deceased-Rachit Sharma was getting different amount of salary for the different months. Consequently, the Ld Tribunal took the salary mentioned in the pay slip for the month of August 2005 (the last pay slip filed on behalf of the Appellant/Claimant prior to the death of Deceased Rachit Sharma) i.e. Rs.10,211/- p.m. for calculating the loss of dependency.

12. It is evident from the Pay Slips exhibited as Ex-PW2/E (Colly) that the Deceased was earning Rs.20,156.35/- in January 2005, Rs.10,082/- in February 2005, Rs.9,833.51/- in March 2005, Rs.18,265/- in April 2005, Rs.9,620/- in May 2005, Rs.11,403/- in June 2005, Rs.9,924.61 in July 2005 and Rs.10,211.8/- in August 2005.

13. The Apex Court in *Ramla & Ors. v. National Insurance Company Limited and Ors.* 2019 2 SCC 192 has observed that the Motor Vehicles Act, 1988 is a beneficial and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record.

14. In the case of *Jayshree v. Muahaningappa and Ors.* 2024:KHC-K:1887-DB, the Karnataka High Court took into account that the income of the injured is not stable and held that if there are variations found in the Income for different years as reflected in Income Tax returns, it would be appropriate to calculate the average income of three assessment years to arrive at the annual stable income of the claimant seeking compensation under the *Motor Vehicles Act, 1988*. It was thus, opined –

“ 13.When the income declared by a person engaged in a profession or **business is not stable**, in order to assess the income of the injured/deceased to arrive at established income, which would be the



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foundation for assessing the compensation, the average of the income of the years considered would be appropriate. Further the average income would be appropriate in the interest of the claimant as well as the insurer. If average income is not considered, if an established income of the injured/deceased is reduced in the year of accident or due to windfall the income of the victim/deceased increased in the year of accident, the process of determining the established income would fail.”

15. In the peculiar facts and circumstances of the present case, the Deceased had considerable variance in the salary earned by him on a monthly basis. The first salary Slip of January, 2005 was in the sum of Rs.20,156.35/-, but for all subsequent month it was between Rs. 18,000/- -Rs.11,000/- approximately. It is evident from the Salary Slip Ex. PW-2/E that the difference in monthly salary is essentially on account of incentives, performance reward and attendance incentive. If the same are deducted on an average the monthly salary comes to Rs.12,437/- per month.

16. Therefore, following the principle in *Jayshree* (supra) the loss of dependency should be calculated by taking an average of the said amounts which comes to Rs.12,437/- per month. The impugned Award is accordingly modified.

Relief:

17. The Compensation amount is modified accordingly as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	Rs. 10,211/- per month	Rs. 12,437/- per month
2.	Add-Future Prospects (B) 50%	Rs. 5,105/-	Rs. 6,218.5/-
3.	Less-Personal Expenses of Deceased	Rs. 7,658/-	Rs. 9,327.75



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	(C) [1/2 of A+B]		
4.	Monthly loss of Dependency [(A+B)-C=D]	Rs. 7,658/-	Rs. 9,327.75
5.	Annual loss of Dependency (Dx12)	Rs. 91,896/-	Rs. 1,11,933.00
6.	Multiplier (E)	18	18
7.	Total loss of Dependency	Rs. 16,54,128/-	Rs. 20,14,794
8.	Compensation for loss of Consortium (H)	Rs. 40,000/-	Rs. 40,000/-
9.	Compensation for Loss of Love and Affection	Rs. 30,000/-	Rs. 30,000/-
10.	Compensation for loss of Estate (I)	Rs. 15,000/-	Rs. 15,000/-
11.	Compensation towards funeral expenses (J)	Rs. 15,000/-	Rs. 15,000/-
12.	Total Compensation (F+G+H+I+J=K)	Rs. 17,54,128/- rounded of Rs. 17,54,500/-	Rs. 21,14,794/-
13.	Rate of Interest Awarded	@ 9% per annum	@ 9% per annum

18. The enhanced compensation amount of **Rs. 21,14,794/-** along with interest @ 9% per annum, be deposited by the Insurance Company before the learned Claims Tribunal within four weeks, which may be disbursed in accordance with Award dated 29.03.2019.

19. Accordingly, the Appeal along with pending Application(s), if any, is hereby disposed of in the aforesaid terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 6, 2024/RS