



2024:DHC:9759



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

% *Date of decision: 13th November, 2024*

+ **MAC.APP. 369/2016 & CM APPL. 15433/2016**

RELIANCE GENERAL INS CO LTDAppellant
Through: Mr. A.K.Soni, Advocate.

Versus

SONIA SOOD & ORSRespondents
Through: Mr. Rahul Shukla and Ms. Bachita
Baruah Shukla, Advocates for R-1
to 4.

+ **MAC.APP. 805/2016**

SONIA SOOD & ORSAppellants
Through: Mr. Rahul Shukla and Ms. Bachita
Baruah Shukla, Advocates.

Versus

RELIANCE GENERAL INSURANCE CO LTD & ORS
.....Respondents
Through: Mr. A.K.Soni, Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. These two Appeals under Section 173 of *Motor Vehicle Act, 1988* arise out of common impugned Award dated 24.02.2016 whereby compensation in the sum of Rs. 2,35,87,500/- with interest @ 9% per annum from the date of filing of petition till date of realisation of amount,



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has been granted to the claimants on account of demise of Mr. Rajesh Sood in a road accident which took place on 04.02.2011.

2. ***The Appeal MAC.APP.369/2016 has been preferred by the Insurance Company*** challenged the impugned Award on the following grounds:-

- (i) the *negligence* caused by the deceased has been attributed to 25% whereas it should have been 50% ;
- (ii) the compensation has been calculated by considering the Income Tax Returns ('ITR') of the deceased which were filed after his demise; and
- (iii) *multiplier of 14 instead of 13*, has been applied for calculating *loss of dependency*.

3. ***The Cross-Appeal MAC.APP.805/2016 has been filed on behalf of the Claimants seeking enhancement of the compensation*** on the following grounds:-

- (i) There was *no negligence on the part of the deceased and 25% deduction has been wrongly attributed to him as it was Head- On collision* and the offending truck was being driven in the wrong direction; and
- (ii) The *deduction* of Rs. 30 lacs paid under Accidental Insurance Policy from the calculated compensation, is bad in law.

4. ***The learned counsel on behalf of the Claimants*** has submitted



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that the ITRs are required to be filed by the legal heirs of the deceased after his demise in terms of Section 159 of *Income Tax Act, 1961*. Moreover, two official witnesses from the Department of the deceased have deposed about his income. Therefore, the learned Tribunal has rightly taken the salary of the deceased and granted a fair compensation which does not need any reduction.

5. It is further submitted that 25% deduction toward contributory negligence has been wrongly attributed to the deceased, as it was a head on collision and the offending truck was being driven in the wrong direction.

6. Learned counsel for Claimants further argued that the learned Tribunal did not consider that the amount of Rs. 30 Lacs received by the petitioner under the *Group Accidental Insurance Policy*, the premium for which was deducted from the salary of the deceased. However, the learned Tribunal has erroneously held the amount of premium as is shown in the salary slip, as a cost to the Company and not as a part of petitioner's salary. Thus, deduction of Rs.30 Lacs from the amount of compensation, is bad in law.

7. ***To the contrary, learned counsel appearing for Reliance General Insurance Company*** has submitted that it was a head on collision and the negligence of the deceased infact, should have been considered as 50% instead of 25%.

8. ***It is*** further argued that the ITR relied upon by the learned Tribunal were filed subsequent to demise of Rajesh Sood and should not have



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been considered to calculate the monthly income of the deceased.

9. Also, the Tribunal has erred in applying the multiplier of 14 instead of 13. The compensation awarded deserves to be reduced accordingly.

10. Submissions Heard and record perused.

11. *Briefly stated*, on 04.02.2011 the deceased-Mr. Rajesh Sood along with Ridhima Nandan were coming from Bhatinda to Gurgaon by car bearing No. DI-3-CBM-0775, which was driven by the deceased. Near Gandhra Mor, Sampla, Rohtak, their car was hit by a Truck bearing No. HR-38H-6188 due to which Rajesh and Ridhima sustained grievous injuries. Both the injured persons were taken to PGI Rohtak, where Mr. Rajesh Sood was declared "*Brought Dead*".

12. In respect of this accident, FIR No. 60/11 under Sections 279/337/304-A of *Indian Penal Code, 1860* ('IPC' hereinafter) was registered at PS Sampla, District, Rohtak against the driver of the offending vehicle i.e. the truck.

13. The Claimants, who are the mother, wife, daughter and son of the deceased preferred petition *under Section 166 and 140 of the M.V. Act* against the driver, owner and Insurer (Reliance General Insurance Company Limited) of the offending vehicle, the Truck, *for grant of compensation*.

14. In support of the claim, the wife of the deceased Sonia Sood got herself examined as PW-1 and PW-3 Ms. *Ridhima Nandan*, the eye witness. Besides, PW-2 Mr. *K.N. Rajeevan*, Vice President and PW-4 Mr.



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Vibhor Jindal, Deputy Manager, official witnesses from Feedback Ventures Pvt. Ltd., where the deceased was employed, were also examined.

15. The Respondent- Reliance General Insurance Company Limited, got examined R2W1Mr. Sourav Setua, the partner in the Investigating Agency, who conducted the verification of the driving license of the driver; R2W2 Navneet Goyal, Deputy Manager to prove the Insurance Policy; R2W4 Mr. Tilak Raj Investigating Officer to prove non verification of the Permit of the offending vehicle.

16. The learned Tribunal granted compensation in the sum of Rs. 2,35,87,500/- to the Claimants with interest @ 9% per annum from the date of filing of petition till date of realisation of amount.

Negligence of the Vehicles:

17. The *first aspect of challenge* is whether there was any the negligence attributable to the deceased Rajesh Sood in driving the car. To ascertain this aspect, it would be relevant to note the manner in which the accident had taken place.

18. The claimants had examined PW-3 Ms. Ridhima Nandan, the eye witness of the accident as she was travelling in the car, which was driven by the deceased- Rajesh Sood. She deposed that on 04.02.2011, at about 09:00 one truck came from the opposite direction and struck the car. She suffered injuries and became unconscious and was taken by the public person to Civil Hospital, Rohtak. *In her cross examination* by the Insurance Company, she clarified that they had commenced their journey



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from Bhatinda at about 6:00 am the car was being driven at the speed of about 150 kmph. and they never stopped at any place on their way. She further clarified that their car was on the left side of the road when the *head on collusion* took place with the offending truck. She also asserted that it was a foggy day and there was no clear visibility at the time of the accident because of which she had not seen the truck at the time of the accident.

19. Pursuant to the directions of the Tribunal, *Mr. Manoj Kumar Agnihotri, Investigator on behalf of the Investigating Company* submitted his Report dated 18.12.2012 to confirm if there was a road diversion near the place where the accident took place. He confirmed from the Agencies and reported that Mr. Brijesh Kumar, ERA Infrastructure Engineer's Office, verbally informed him that on 04.02.2011 there was construction of CUP/ Slap Casting on CA 60/800 towards the left side of the road and hence, all the traffic from Delhi to Rohtak was diverted to the right side of the road and the left side of the road was closed. Both sides' traffic was moving on the right side of the road and therefore, the truck was on the right side of the road at the time of the accident.

20. The testimony of PW-3 Ms. Ridhima Nandan, and of the Investigator, is further corroborated by the Charge-sheet and the documents filed therein. The site plan shows that after the accident the truck was found stationed on the extreme right side of the road. The photographs have also been filed, which show that it was a front right side of the truck which had *head on impact* with the right front side of the



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car. The photograph also shows that the front right side of the car was badly damaged. This is also supported by the fact that Ms. Ridhima Nandan, who was sitting next to the driver, sustained grievous injuries while Mr. Rajesh Sood, who was driving had instantaneous death because of the impact.

21. It is also pertinent to observe that the entire front car portion was completely demolished. The manner in which the accident took place clearly shows that it was the truck which was negligent and despite being on the wrong side of the road, it failed to exercise due care and caution to ensure that the vehicle which was coming on the road in its right direction, is taken care of since the truck itself which was being driven on the wrong side.

22. The learned Tribunal has rightly observed that the distance from Bhatinda to the place of accident was approximately 260 kms. and considering the distance covered, it could be safely assessed that the car was being driven at the speed of 70-75 kms per hour and this was not a high speed, when a vehicle is being driven on a National Highway.

23. Though PW-3 Ms. Ridhima Nandan, eye witness has deposed that it was a foggy day and the visibility was not very good, but this fact is not proved for the simple reason that the accident had occurred in the morning of 04.02.2011 *at around 09:30 AM*. Even if it was a foggy night, but the fog gets dispelled with the rising of the sun. There is no cogent evidence led to prove that it was a foggy morning or the visibility at the time of accident was poor.



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24. The learned Tribunal, attributed 25% of negligence to him by observing that since it was a clear straight road, the Driver should have been able to see the truck coming from the opposite side. However, it must be not be overlooked that even if the vehicle was coming from the opposite direction, the Law of Relatability of Motion makes it difficult to ascertain whether the vehicle is moving or stationed. It was the responsibility of the truck that should have blown the horn, slowed the speed or otherwise taken due care and caution to avoid hitting into the car, which was on the correct side of the road.

25. The sole negligence of the truck driver, is also established from the fact that after due investigation, Charge Sheet was filed against the Driver of the offending Truck. In the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del.

26. In the facts of the present case, there is no contributory negligence attributable to the deceased. The finding of the learned Tribunal that there was 25% negligence attributable to the driver of the car i.e. the deceased, is hereby set aside. It is held that the accident occurred due to sole negligence of the Driver of the offending Truck and the compensation has to be modified accordingly.

Computing of Salary of Deceased from The Income Tax Records:



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27. The *Second ground* agitated by the Insurance Company is that the compensation has been calculated by considering *the ITR of the deceased which were filed on 29.03.2011 after his demise* and these ITRs should not have been considered. It is argued that the Initial ITR filed by deceased on 26.02.2010 for AY 2009-10 showed a considerably less income of Rs. 7,21,390/- in the Assessment Order. Thus, the income has not been calculated correctly by placing reliance of the ITR filed after his demise. Reliance is placed on *Subbulakshmi & Ors. v. S. Lakshmi & Ors.* 2008 (2) SCR 387 to assert that ITR filed after the death of the deceased, is not to be considered.

28. The learned Tribunal, in the impugned Award has observed that the Form 16 of AY 2011-12 of the deceased shows that he received a salary of Rs. 28,56,583/- on which he paid Income Tax of Rs. 5,93,497/-. *CW-2 Sh. J.P. Shukla*, Inspector of Income Tax Ward-I (3), Noida and *CW-3 Sh. Shri A.P. Tewari*, Income Officer, Ward-I (3), Noida, Officials from the Income Tax Department proved ITR of AY 2009-2010, Ex. No. CW2/A, ITR of AY 2010-11, Ex. No. CW2/B, and Form 26 AS Ex. CW3/DA to DC.

29. The learned Tribunal observed that the ITR of deceased was based on Form 26 AS, supported by Bank Statements and proved by CW-2 and CW-3. Reference be made to *United India Insurance Co. Ltd. v. Ram Sujan Mehto* 2014 SCC OnLine Del 3635 wherein this Court considered ITR for assessing the loss of dependency.

30. The Tribunal observed that the previous ITR for AY 2009-10 p.a.



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demonstrates that the income from salary was Rs. 18,60,000/- p.a. and it increased in AY 2010-11 to Rs. 25,36,000/- p.a. and in the year of accident it was 28,56,583/- p.a. The Tribunal concluded that the Deceased was an educated person working as a Vice President in a Company, who was growing further in his career. Consequently, his salary was correctly considered as Rs. 2,16,510/- per annum.

31. ***The Ld. Tribunal has correctly considered the income and awarded loss of dependency, which does not warrant any interference.***

Multiplier:

32. The *Third* ground agitated by the Insurance Company is that the Ld. Tribunal erred in applying the multiplier of 14 while calculating loss of dependency, whereas the multiplier of 13 was applicable as the deceased was aged 45 years 9 months at the time of the accident, as provided in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* (2009) 6 SCC 121.

33. Admittedly, on the date of the Accident the deceased was 45 years 9 months old. **The applicable multiplier is 13 and not 14 as applied by the Ld. Tribunal, which needs to be rectified.**

Deduction of Rs.30 Lacs paid under Accidental Insurance Policy:

34. On the plea of the claimants that the learned Tribunal has wrongly made deduction of Rs.30 Lacs paid under Accidental Insurance Policy, while calculating the Awarding Amount, reference be made to the case of *Helen C. Rebello Vs. Maharashtra State Road Transport* 1999 (1) SCC 90, wherein the issue before the Apex Court was whether the amounts



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received by the deceased by way of provident fund, pension, life insurance policies and similarly, cash, bank balance, Shares, Fixed Deposits, etc. are pecuniary advantages received by the heirs on account of death of deceased and liable to be deducted from the compensation. *The Apex Court held that none of these amounts have any correlation with the compensation receivable by the dependants under the Motor Vehicles Act, which is on account of injury or death without making any contributions towards it. The fruits of the amount received through contribution of the insured, cannot be deducted out of the amount receivable under the Motor Vehicles Act. Only the amount under the Motor Vehicle Act which are payable without any contribution as it is statutory in the nature, are to be taken into consideration for calculating compensation.*

35. In the case of Sebastiani Lakra Vs. National Insurance Company Ltd. AIR 2018 SC 5034, the Apex Court observed that advantage which accrues to the legal heirs of the deceased or to his dependents as a result of some contract nor act which the deceased performed in his lifetime, cannot be considered to be the outcome or result of the death of the deceased even though these amounts may come into the hands of the dependents only after his demise.

36. Similar observations have been made in the case of National Insurance Company Ltd. vs. Mannat Johal & ors. AIR 2019 SC 2079, wherein it was reiterated that *while making the assessment of pecuniary loss, the ex gratia amount received by the claimants from the employer, is*



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not to be deducted from the total compensation amount.

37. In the light of the aforementioned decisions, deduction of Rs.30 Lacs from the compensation amount which the family got on account of independent Accidental Insurance Policy taken by the deceased during his lifetime, could not have been deducted and the compensation amount is required to be modified accordingly.

Non-Pecuniary Heads

38. In the impugned Award, both the Loss of Consortium and Loss of Love and affection have been granted in the sum of Rs. 1,00,000/- each. However, it is a settled position as per *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 that 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 and no separate award can be made on account of loss of love and affection. Further, it is evident from the impugned Award that the Compensation for loss of Estate of Rs. 10,000 is awarded on the lower side and the Funeral Expenses are awarded as Rs. 25,000/-. Therefore, the impugned Award is modified accordingly as per *Pranay Sethi* (supra).

Conclusion:

39. In the light of the above discussion, the Compensation amount awarded to the Claimant is modified as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased Less	Rs. 2,08,884	Rs. 2,08,884/-



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	Income Tax (A)		
2.	Add-Future Prospects (B)	30%	30%
3.	Less-Personal Expenses of Deceased (C)	1/4	1/4
4.	Monthly loss of Dependency [(A+B)-C=D]	1,56,663/-	1,56,663/-
5.	Annual loss of Dependency (Dx12)	24,43,932/-	24,43,932/-
6.	Multiplier (E)	14	13
7.	Total loss of Dependency	3,42,15,000/-	3,17,71,116/-
8.	Medical Expenses	-	-
9.	Compensation for loss of Consortium	1,00,000/-	1,60,000 (40,000 x 4)
	<i>Loss of Love and Affection</i>	1,00,000/-	Nil
10.	Compensation for loss of Estate (I)	10,000/-	15,000/-
11.	Compensation towards funeral expenses (J)	25,000/-	15,000/-
12.	Deduction on Account of Accidental Insurance Policy (K)	30,00,000	Nil
13.	Total Compensation (F+G+H+I+J) – (K) =L)	Rs. 3,14,50,000/- (3,44,50,000 – 30,00,000)	3,19,61,116/-
14.	Deduction on Account of Contributory Negligence	25%	None
15.	Amount Awarded	2,35,87,500/-	3,19,61,116/-
16.	Rate of Interest Awarded	9%	9%

Relief:

40. In view of the above, the total amount of Compensation awarded is



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thus, modified to **Rs. 3,19,61,116/-** along with interest @ 9% per annum, on the same terms of the Award dated 24.02.2016, passed by the Ld. Tribunal.

41. The Appeals stand partly allowed and is disposed of accordingly along with pending applications, if any.

42. The Statutory amount be returned to the Insurance Company in accordance with Law.

NEENA BANSAL KRISHNA, J

**NOVEMBER 13, 2024/
r/Arjun**