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

% ***Reserved on: 16.12.2022***
Pronounced on: 31.01.2023

\+ **MAC.APP. 471/2013**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. Ravi Sabharwal, Advocate

versus

RUBY DEVI & ORS. ..... Respondents
Through: Mr. Parveen Kumar Mehdiratta and Mr. Ram Singh, Advocates for R-1 to 5

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 ("***the Act***") against the Award dated 06.04.2013 passed in case no. 504/2011 by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, (West), Delhi ("***impugned Award***").
2. By way of the impugned Award dated 06.04.2013 the learned Claims Tribunal awarded a compensation of Rs. 12,57,198/- with interest @ 7.5% per annum from the date of filing of the claim petition till the issuance of notice under order XXI Rule 1 CPC and directed the Insurance Company to deposit the entire awarded amount within a period of one month. Learned Claims

Tribunal further granted recovery rights in favour of the Appellant as Respondent No.6 did not have a valid license at the time of the accident.

3. On 03.05.2011 at about 05:00 am, the deceased Sh. Rambhaj @ Kanu Prasad was coming from Azadpur Mandi in TSR goods tempo bearing no. DL IL N 0163 driven by Mr. Santosh Kumar/Respondent No. 6. The offending vehicle hit the divider of the road and it overturned. Due to the impact of the accident, the deceased fell down, came under the offending vehicle and died. An FIR was registered against Respondent No.6 for causing death due to rash and negligent driving.

4. The deceased was a fruit seller aged 32 years at the time of his death. He was survived by his widow, 2 minor children (one daughter and one son), his mother and a major brother. The learned Claims Tribunal has awarded compensation of Rs.12,57,198/- under the following heads:

S.No	Head	Compensation
1.	Loss of Dependency	Rs. 12,02,198/-
2.	Loss of Love and Affection	Rs. 25,000/-
3.	Loss of Estate	Rs. 10,000/-
4.	Funeral Charges	Rs. 10,000/-
5.	Loss of Consortium	Rs.10,000/-
	TOTAL	Rs. 12,57,198/-

5. Being aggrieved by the impugned award, the Appellant preferred the present Appeal.

SUBMISSIONS OF THE APPELLANT

6. Mr. Ravi Sabharwal learned counsel for the Appellant/Insurance Company contended that the learned Claims Tribunal failed to appreciate that negligence is *sine qua non* in order to bring the case within the purview of the Section 166 of the Act. He further submitted that in the present case the negligence of the driver of the offending vehicle has not been proved as no evidence in this regard has been led by the claimants. In order to prove negligence, petitioners were required to examine the eyewitness which they failed to produce. He further submitted that mere production of documents during the trial would not substitute the testimony of an eyewitness. As such non production of an eye witness in order to prove negligence is a blatant error and accordingly, the Appellant shall be exonerated from the liability of making payment of compensation to the claimants.
7. Learned counsel further contended that the driver of the offending vehicle was not having a valid driving license at the time of the accident and hence the Appellant was not responsible for indemnifying the Claimants.
8. Learned counsel fairly concedes that in terms of dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as ***(2017) 16 SCC 680,*** compensation under the head '*Future Prospects*' is to be paid by adding 40% of the assessed income of the claimant instead of

30% as awarded by the learned Claims Tribunal. Learned counsel further contended that in terms of dicta of ***Pranay Sethi (Supra),*** compensation under the head '*Love and Affection*' has to be deducted.

SUBMISSIONS OF THE RESPONDENTS

9. Mr. Anurag Singh learned counsel appearing on behalf of the Respondents contended that the negligence of the driver of the offending vehicle has been proved on record by production of records pertaining to the criminal case registered against the driver. Learned counsel further placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***Pushpabai Parshottam Udeshi & others vs M/s Ranjit Ginning & Pressing Co. Pvt. Ltd. & Another*** reported as ***AIR 1977 SC 1735*** wherein it was held that '*owner is not only liable for negligence of driver if that driver acting in course of his employment but also when driver is with owner's consent driving car on owner's business or for owner's purposes*'. Learned counsel while placing reliance on the case of ***Pranay Sethi (supra)*** contended that compensation under the head '*Loss of Consortium*' '*Loss of Estate*' and '*Loss of Funeral Expenses*' as well as under other heads needs to be modified/enhanced.

LEGAL ANALYSIS

10. This Court had heard the arguments advanced by learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

11. The Appellant is challenging the impugned Award on two counts; (i) the Claimants failed to prove that the accident occurred due to the rash and negligent driving of the Driver of the offending vehicle and (ii) the Driver of the offending vehicle was not having valid driving license at the time of the accident and hence there was a breach of the terms and conditions of the insurance policy and hence in view of the same, the Appellant is not responsible for indemnifying the Claimants.

12. For the purpose of determining the question as to whether the deceased suffered fatal injuries and succumbed to death due to the rash and negligent driving of Respondent No.6, it is necessary to examine the findings of the learned Claims Tribunal, evidence led by both the parties as well as the documents produced by both the parties before the learned Claims Tribunal. This Court examined the evidence led by the parties. Admittedly at the time of the unfortunate accident, the deceased was travelling in the offending vehicle. The Police registered FIR No.89/2011 and after the completion of investigation, Charge sheet has been filed against Respondent No.6/Driver of the offending vehicle under Section 279/304A IPC and Section(s) 3/181 of the Motor Vehicles Act, 1988. The site plan produced as part of FIR no. 89/2011 depicts that the accident occurred as the offending vehicle hit the divider of the road and overturned. The mechanical inspection reports suggest damage on both front and rear side of the vehicle, however, there was no observation regarding the mechanical fault in the vehicle

which led to the accident. There is nothing on record to show that the driver of the offending vehicle has taken due care and caution to evade any such incident. The driver of the offending vehicle did not have a valid driving license at the time of the accident. The police investigation also shows that the accident occurred due to the rash and negligent driving of Respondent No.6. The offending vehicle overturned after hitting the divider of the road and the deceased came under the offending vehicle which led to his death. All these facts show that the accident occurred due to the rash and negligent driving of Respondent No.6.

13. The learned Claims Tribunal examined these aspects in detail while deciding Issue No.1 and concluded as under:-

> "*To determine negligence, I am being guided by the judgment of Hon'ble High Court of Delhi in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein in the Hon'ble High Court held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under section 279/304A IPCor the certified copy of the FIR or in addition the recovery memo on the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed, in this regard. Further, in Kaushunumma Begum and others Versus New India Assurance Company Limited, 2001 ACJ 421 SC the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being ordamage to property would made the petition maintainable under section 166and 140 of the*

Act. It is also settled law that the term rashness and negligence has to construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a peril one.

14. Further recently the Hon'ble High of Delhi in MAC App. No.200/2012 in casetitled as United India Insurance Co. Ltd. Vs. Smt. Rinki @Rinku &Ors decided on 23/07/2012 by Hon'ble Mr. Justice G. P. Mittal, held as under:-

> *"The Claims Tribunal was conscious of the fact that negligence is a sine quo-non to apetition under Section 166 of the Motor Vehicles Act, 1988 (The Act). It is also true that the proceedings for grant of compensation under the Act are neither governed by the criminal procedures nor are a civil suit. A reference may be made to ajudgment of the Supreme Court Bimla Devi and Ors. V Himachal Road Transport Corporation and Ors, (2009) 13 SC 530 where it was held as under:*
>
> *"XXX XXX XXX"*

15. Therefore, reading all the documents filed by the petitioners as a whole it is clear that respondent No.l was driving the vehicle in-a rash and negligent manner.:."

14. This Court is in agreement with the findings of the learned Claims Tribunal. In view of the aforesaid reasons, this Court is of the considered view that the deceased suffered fatal injuries and succumbed to death due to the rash and negligent driving of Respondent No.6.

15. Learned counsel for the Appellant/Insurance Company further contended that the learned Claims Tribunal erred in placing the liability of payment of compensation amount onto the Appellant as admittedly the driver of the offending vehicle was not holding

a valid driving license at the time of the accident. Respondent No.6/Driver & Respondent No.7/Owner failed to contest the proceedings before the learned Claims Tribunal and also before this Court. The Appellant issued notice under order XII Rule 8 CPC against Respondent Nos. 6 &7 for the production of the original driving license. However, they failed to respond to the said notice. Hence an adverse inference can be taken against Respondent Nos.6 &7. Further FIR 81/2011 registered against Respondent No.6 shows that he was charged with offences u/s 3/181 of the Act. Hence it is evident that Respondent No.6 was not having valid driving license at the time of the accident. The contention raised by learned counsel for the appellant stood un-rebutted as the appeal remained uncontested. Hence this Court is of the view that the driver of the offending vehicle was driving the vehicle without any valid license and hence there is a breach of the terms and conditions of the insurance policy.

16. In view of the above finding, this Court is now examining the law in relation to scope of exoneration of the insurance company from the liability of payment of compensation amount.

17. It is pertinent to note that in the case of ***Skandia Insurance Co. Ltd. Vs Kokilaben Chandravandan*** reported as ***(1987) 2 SCC 654***, the need for beneficial construction of the provisions of the Motor Vehicles Act, 1988 was emphasized by the Hon'ble Supreme Court in the following terms:-

> "*13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions*

keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. ..In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves

> *rather than defeats the purpose of the legislation provision has therefore to be interpreted in the twilight of the aforesaid perspective."*
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> *"14. .... What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to, the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.*"
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> *(emphasis supplied)*

18. To give full effect to the beneficent nature of the Act, the Court must ensure that the compensation amount is disbursed to the claimants at the earliest. The practice in this regard has been to make the insurance company liable to satisfy the claim of the aggrieved third party and thereafter recover the same from the insured. This practice obviates the misery caused to the claimants in having to approach different forums to avail of their entitlement to just compensation under the Act.

19. This practice holds good even in cases where there has been a breach of terms and conditions of the insurance policy by the insured, wherein the insurance company first satisfies the

claimants and thereafter gains recovery right against the insured. This becomes evident from the observation of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs Swaran Singh*** *reported as* ***2004 (3) SCC 297.*** The relevant paragraph is being reproduced hereunder:

> "*110. (iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*
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> *XXXX XXXX XXXX*
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> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the Rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured Under Section 149(2) of the Act.*
>
> *XXXX XXXX XXXX*
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> *(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between*

claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

(emphasis supplied)

20. It is also to be noted that the Appellant is not disputing the fact that the offending vehicle was insured with the Appellant at the time of the accident. Upon considering the position of law as emanating from the perusal of the above judgments, this Court is of the view that the learned Claims Tribunal was right in directing the Appellant to deposit the compensation amount at the first instance with the recovery rights against the Respondent No.6/Respondent No.7 in accordance with law, as Respondent No.6 was not having a valid driving license at the relevant time.

21. In view of the above appreciation of facts and legal position this Court holds that there is no perversity in the impugned award with regard to involvement of the offending vehicle in the accident. It is further evident that on 03.05.2011, the offending vehicle was driven in a rash and negligent manner which led to the death of the deceased. It is further held that there is no manifest error in the reasoning given by the learned Claims Tribunal with respect to recovery rights granted to the Appellant/Insurance company.

22. The rest of the argument raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (supra)***, in terms which, an addition of 40% of the established income of the deceased should be granted under the head '*Future Prospects'* as the deceased was of the age of 32 years at the time of the alleged incident. Further the deceased had 5 dependents and hence in view of the law laid down by the Hon'ble Supreme Court in

Sarla Verma & Ors. Vs & Anr. reported as ***(2009) 6 SCC 121***, the learned Claims Tribunal was right in deducting 1/4th of the income towards the personal and living expenses of the deceased. The deceased was of 32 years old at the time of his death, and hence in view of ***Sarla Verma (supra)***, the learned Claims Tribunal rightly applied multiplier 16.

23. Further in terms of ***Pranay Sethi (Supra)***, compensation for the conventional heads, namely, '*Loss of Estate*', *Loss of Consortium*' and '*Funeral Expenses*' is fixed at Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. There would be no change in the income assessed by the learned Claims Tribunal/ rate of interest awarded by the learned Claims Tribunal.

24. In view of the above discussion, the compensation granted as per the impugned Award dated 06.04.2013 is modified as under: -

    i. '*Loss of dependency*' is calculated as

        1. Rs. 6,422/- + 40% (Rs. 2,568.8/-) = Rs. 8,990.8/-
        2. Rs. 8,990.8/- less 1/4th deduction (Rs. 2,247.7/-) =Rs. 6,743.1/-
        3. Rs. 6,743.1/-X 12 X16 = **Rs. 12,94,675.2/-**

    ii. '*Loss of Consortium*' is computed as follows:

    Respondent No.1 (Widow) is entitled for the Spousal Consortium. Respondent Nos.2&3 (Minor children of the deceased) are entitled for Parental Consortium. Respondent No.4 (Mother of the deceased) is entitled for Filial consortium.

Respondent No.5 (major brother of the deceased) is not entitled for the compensation under this head.

Hence compensation under this head would be Rs. 44,000 X 4 = **Rs. 1,76,000/-**

iii. '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the claimants.

iv. '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the claimants.

v. Compensation under the head ''*Love and Affection*.' = Nil.

vi. Total compensation to be paid to claimants is; Rs. 12,94,675.2/-+ Rs. 1,76,000+ Rs. 16,500/- + Rs. 16,500/- = Rs. 15,03,675.2/-. **(Rounded as Rs.15,03,675/-)**

25. Accordingly, the compensation granted by the learned Claims Tribunal is modified/enhanced from **Rs. 12,57,198/-** to **Rs. 15,03,675/-.**

26. Perusal of the order sheets shows that this Court vide order dated 24.05.2013 directed the Appellant to deposit the entire awarded amount with up-to-date interest with the Registrar General of this Court. This Court further directed the registry of this Court to release 80% of the deposited amount to the Claimants as per the terms and conditions fixed by the learned Claims Tribunal. In view of the same, the Appellant is directed to deposit the enhanced compensation with 7.5% interest from the date of filing of the present Appeal within 4 weeks from today. On

deposit of the entire modified/enhanced compensation alongwith interest, the said amount with the balance amount lying deposited with the registry of this Court with up-to-date interest be released to the Claimants in terms of the Award dated 06.04.2013. The Statuary deposit shall also be released to the Claimants.

27. The present Appeal is dismissed. No order as to costs.

GAURANG KANTH

JANUARY 31, 2023