



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

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**Judgment reserved on : 01 April 2024**  
**Judgment pronounced on : 07 May 2024**

+ MAC.APP. 630/2014 & CM APPL. 11273/2014, CM APPL.  
24003/2023, CM APPL. 42094/2023, CM APPL. 42095/2023

NEW INDIA ASSURANCE CO. LTD ..... Appellant  
Through: Mr. J.P.N. Shahi, Adv.

versus

SHWETA NAYYAR SHARMA & ORS ..... Respondents  
Through: Mr. Arihant Jain, Ms. Sanjana  
& Mr. Devi Raman, Advs. for  
R-1 & R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. This judgment shall decide the present appeal preferred by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act 1988<sup>1</sup>, assailing the impugned judgment-cum-award dated 01.05.2014 passed by the learned Judge, Motor Accident Claims Tribunal, Dwarka Courts, New Delhi<sup>2</sup> in MAC Claim Petition No.295/2011<sup>3</sup>, whereby the learned Tribunal has passed an award in the sum of Rs. 1,68,51,340/- with interest @7.5% from the date of filing of the claim till realisation in favour of the claimants/dependents

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<sup>1</sup> Act

<sup>2</sup> Tribunal

<sup>3</sup> Claim petition



and fastened the liability upon the insurance company to pay the compensation.

### **FACTUAL BACKGROUND**

2. Shorn of unnecessary details, it is an admitted fact that on 25.02.2011, at about 11:30 PM, the deceased/Sh. Puneet Sharma while coming back from his work, met with an accident while driving his car bearing No.HR-26-AX-7104 when a Tata Safari bearing No. DL-9CQ-7911 (hereinafter referred to as the ‘offending vehicle’ for brevity), being driven by one namely Ravi Khanna, coming at a very high speed in a rash and negligent manner, hit the car of the deceased as a result of which, he sustained fatal injuries. Consequently, on 25.05.2011, a claim petition seeking compensation was filed by the wife, minor daughter and father of the deceased.

3. Written statements were filed on behalf of respondents No.1 and 2, who are the driver<sup>4</sup> and registered owner<sup>5</sup> of the offending vehicle respectively besides respondent No.3/Insurance Company. Respondents No.1 and 2 denied any negligence on the part of the driver stating that it was the sole negligence on the part of the deceased. It was further averred by the respondents that the driver felt some problem with the rear wheel of the vehicle and so he put his vehicle in a stationary position with parking indicators on and it was

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<sup>4</sup> Section 2(9) “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

<sup>5</sup> Section 2(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.



the vehicle of the deceased, that came at a high speed and hit the offending vehicle from behind.

4. Based on the pleadings, the learned Tribunal framed the following issues:

**“Issue No.1**

Whether Puneet Sharma sustained fatal injuries in a motor vehicle accident dtd 25/Q2/20U due to rash or negligent driving of vehicle no. DL-9CO-7911 by RI? ..OPP

**Issue No.2**

Whether the petitioners are entitled to claim compensation, if so, what amount and from whom?

**Issue No.3**

Relief.”

**PROCEEDINGS BEFORE THE LEARNED TRIBUNAL AND IMPUGNED AWARD:**

5. Deciding Issue No.1, the learned Tribunal placed reliance on the testimony of PW2/Rahul Singh, who was an eye witness to the incident. He clearly deposed that the offending vehicle was being driven in a rash and negligent manner by Ravi Khanna/driver. It was further observed that PW-2 remained at the spot till the body was removed to the Mortuary for postmortem as the police reached the spot only five minutes after the accident.

6. The learned Tribunal found the testimonies of PW-1 and PW-2 as trustworthy establishing culpability on the part of respondent No.1/driver in causing the accident. In this regard, the learned Tribunal gave detailed observations as to how the stand taken by the respondents that the deceased was driving the vehicle rashly and negligently is preposterous. The germane observations have been reproduced hereunder:



“12. The photographs Ex. PW2/RX shows that vehicle bearing no. DL-9CQ-7911 is damaged from left side whereas vehicle bearing no. HR-26-AX-7104 has been completely damaged from the front. This stand taken by the respondent that the vehicle of the deceased being driven in a negligent manner is not worthy of credence for the reasons firstly that the eye witness of the entire accident who has been examined as PW-2 has clearly stated that the offending vehicle was being driven by Ravi Khanna in rash and negligent manner tried to over take the vehicle of the deceased and in the process the back side of hie vehicle bit the right side of the deceased vehicle. Secondly, had the vehicle of the deceased hit the vehicle of R1 which was in a stationary position as alleged the vehicle of the deceased should have been found absolutely closer to the offending vehicle. The site plan prepared by the Police gives a clear account of the scene and shows the positioning of the offending vehicle and the vehicle of the deceased at point C&B respectively.

13. In the cross of PW-2 it has come that "the offending vehicle was stopped at a distance of 100-120 feet ahead from the place of accident",

14. R1W1 in his statement has also stated that " the blow was so powerful that the fuel tank oi the vehicle of the deponent was ruptured and fuel was flowing out, it so for safety reason the deponent parked his vehicle few meters away from the spot and immediately made an emergency call on 911/100". There appears to be no logic at all in moving his vehicle further away from the vehicle of the deceased if his vehicle was hit while in stationary position. He should have let his vehicle as it was. Lastly, had the vehicle been hit while in a stationary position it should have also received almost and near impact as that of the vehicle of the deceased. It is highly probable that at the time of accident both these vehicles were moving and in an effort to over take the vehicle of the deceased the offending vehicle had hit his back portion. As a result of which the accident had happened and deceased had died.”

7. As regards the assessment of income of the deceased, PW3/Bhupen Chand Bhatt, HR Manager, PVR Ltd. was examined, who proved the salary of the deceased (Ex. PW3/B) stating that the deceased was appointed as the Vice President on a pay scale of Rs.14,00,000/- per annum. Considering that he also paid income tax, his annual income after deduction was arrived at Rs.11,07,756/-.



Further, considering the age of the deceased to be 36 years, other heads were assessed accordingly. Lastly, as regards the number of dependents, it is pertinent to mention here that the deceased left behind his wife/Shweta Nayyar and daughter/Vedha Sharma. Therefore, 1/3<sup>rd</sup> was deducted towards personal and living expenses. The apportionment of compensation by the learned Tribunal is assessed hereunder:

S.No.	HEAD	AMOUNT
1.	Loss of dependency (Rs.11,07,756/- x 15)	Rs.1,66,16,340/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	For funeral expenses	Rs.25,000/-
4.	Loss of estate	Rs.10,000/-
5.	Loss of consortium	Rs.1,00,000/-
	<b>TOTAL</b>	<b>Rs.1,68,51,340/-</b>

*Under the head of loss of love and affection only Rs.1,00,000/-(in total to the claimant) is granted. MAC appeal no. 743/2012 Chandra Kala & anr. Vs. Satpal & ors. decided on 11.09.2013 is relied upon.*

*\*\*Funeral expenses' in the absence to contrary for hire expenses, to award at least an amount of Rs. 25,000/-*

*\*\*\*loss of consortium: amounting to Rs. 1,00,000/- after applying the ratio of the judgment of Raiesh & ors. Vs. Raihir.*

8. Finally, insofar as the liability to pay compensation is concerned, the learned Tribunal held that the offending vehicle was being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Further, the insurance company/respondent No.3 shall be the principal tort-feasor and driver and owner of the offending vehicle are jointly and severally liable. Respondent No.3 was burdened with payment of the amount.



### **GROUND FOR APPEAL**

9. The appellant assails the impugned judgment-cum-award *inter alia* on the grounds that R1W1/driver has specifically deposed in his testimony that his vehicle was in a stationary position *with parking lights on* and it was the vehicle of the deceased that hit his vehicle. It was further averred that the driver was acquitted in a criminal case at Gurgaon, and therefore, he was not negligent. Lastly, it was contested that the Tribunal has wrongly enhanced the income to 50%, which can only be done in case of a permanent job.

### **LEGAL SUBMISSIONS ADVANCED AT THE BAR**

10. Learned counsel for the appellant-Insurance Company urged that it was the deceased-driver who tried to overtake the vehicle driven by respondent No.4/Ravi Khanna. It was further pointed out that both Rahul Singh and Ravi Khanna are eye witness to the incident. *Per contra*, learned counsel for the claimant, placing reliance upon **Janabai v. ICICI Lombard Insurance Company Limited<sup>6</sup>** and **Sunita v. State of Rajasthan<sup>7</sup>**, submitted that preponderance of probabilities have to be applied in appreciation of the evidence on the record that speak volumes that respondent No. 4 was responsible for the mishap.

### **ANALYSIS AND DECISION**

11. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties. I have also

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<sup>6</sup> (2022) 10 SCC 512

<sup>7</sup> (2020) 13 SCC 486



perused the relevant record of the case including the digitized Trial Court Record (TCR).

12. At the outset, the present appeal by the appellant/Insurance Company is devoid of any merits. The main observations made by the learned Tribunal have already been reproduced hereinabove and the testimony of PW-1 and PW-2 *vis-a-vis* the site plan of the place of occurrence and the physical damage suffered by the two vehicles would clearly bring out that it was the respondent No.1/Sh. Ravi Khanna, driver of the offending TATA Safari, that was being driven in a rash and negligent manner and in the process, hit the back side of the ill-fated car being driven by the deceased and the impact caused fatal injuries to the deceased. The testimony of PW-2 that the offending TATA Safari stopped at a distance of 100 to 120 feet ahead of the place of accident was not challenged in his cross-examination and the testimony of R1W1/Ravi Khanna that his vehicle was in a stationary position, is not fathomable.

13. Merely because the respondent No.4/Ravi Khanna was acquitted in a criminal matter has no binding effect on the determination of his guilt arrived at by the learned Tribunal in the claim petition. It is well settled that the findings rendered by the criminal court shall not be binding upon the findings recorded by the learned Tribunal with regard to the culpability of respondent No.4/Ravi Khanna in causing the accident.

14. As regards the challenge by the appellant/Insurance Company to the quantum of compensation awarded by the learned Tribunal, it was proven on the record that the deceased was appointed as Vice



President *vide* appointment letter dated 21.04.2008 on a pay scale of Rs. 14 lakhs per annum, which has been proved by the salary certificate Ex.PW3/B and the learned Tribunal after deduction of the income tax including the education cess amounting to Rs. 3,06,024/-, rightly arrived at an annual income Rs. 11,07,756/-. The deceased was 36 years of age and the future prospects have rightly been reckoned @ 50% in terms of the decision in the case of **National Insurance Company Ltd. v. Pranay Sethi**<sup>8</sup>. The only flaw in the decision made by the learned Tribunal is awarding compensation towards loss of love and affection and loss of consortium @ Rs. 1,00,000/- each which, as per decision in *Pranay Sethi (supra)* has to be reckoned @ Rs. 40,000/- for each of the surviving legal heirs i.e. wife and the daughter. Accordingly, the compensation shall be arrived at by reckoning the loss of dependency @ Rs. 1,66,16,340/- plus Rs. 80,000 towards loss of consortium plus Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate, which comes to Rs. 1,67,26,340/-.

15. Thus, the claimant shall be entitled to receive a sum of Rs. 1,67,26,340/- (One crore sixty seven lacs twenty six thousand three hundred and forty only) with interest @ 7.5% from the date of filing of the petition till realization.

16. It is borne out from the record that the father of the deceased has since expired and a 'No Objection Certificate' was placed on the record by his daughter to the effect that she has no objection if the

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<sup>8</sup> (2017) 16 SCC 680





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amount of compensation is released in favour of the respondents No.1 and 2/claimants i.e. wife and daughter of the deceased.

17. The appellant/Insurance Company is directed to deposit the entire amount of compensation with the learned Tribunal, if not already deposited, within four weeks from today with accrued interest, failing which, they shall be liable to pay penal interest @12% per annum from the date of this judgment till realization. Further, the amount of statutory deposit of Rs. 25,000/- deposited on filing of the present appeal shall be forfeited to the State.

18. The appeal is dismissed except for rectifying the total quantum of compensation as discussed hereinabove. All the pending applications also stand disposed of.

**DHARMESH SHARMA, J.**

**MAY 07, 2024/sp**