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

% *Decided on: 18.02.2020*

\+ MAC. APP. 534/2017 & CM APPL. 23164/2017

THE ORIENTAL INSURANCE CO. LTD. … Appellant

Through: Mr. Pankaj Seth, Adv.

versus

..... Respondent

SARDAR SINGH & ORS.

Through: Mr. Siddhartha Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 14.03.2014 passed by the learned MACT in Suit No. 5390/16, on the ground that no contributory negligence has been fastened upon the deceased-motorcyclist. It is argued that since the deceased did not have a valid driving licence at the time of the motor accident, therefore, he would not be deemed to have possessed requisite driving skills, thereby leading to the inexorable conclusion that he did contribute to the unfortunate accident involving a fatality and a serious injury.

2. The nature of the accident, recorded in the impugned order is that, while returning from school on 25.11.2019, Mr. Bhupinder Singh alongwith his friend-Gautam, on a motorcycle bearing registration no. DL8S NC 3707 met with an accident at about 2.10 pm, near the railway crossing at Alipur, Holambi Road. They were riding on their side of the road. The offending

bus bearing registration no. DL1PC 1304 was coming from the opposite direction. It was behind a Tempo vehicle. The bus was being driven in a rash and negligence manner. While trying to overtake the tempo ahead of it, it suddenly came in front of the motorcyclist leading to the unfortunate accident. The mere fact that it tried to overtake the tempo without even ascertaining if any vehicle coming from the opposite direction, *ex post facto* proves that the bus driver was unmindful of the traffic rules, he was rash and negligent in driving a large motor vehicle. His driving became a hazard to the safety of on-coming traffic thereby, leading to the fatality. There is nothing on the record to show that the deceased himself, merely by riding the motorcycle without a driving licence contributed to the motor accident. It is not in dispute that the motorcyclist was on his side of the road. It is nobody's case that he was swerving from one side to another or was fooling around while riding the motorcycle. He did not pose a traffic hazard. He was not disturbing the on-coming traffic. Instead it is the evident rash and negligence of the offending bus that gets proven. There is also nothing on the record to show that the driving of the motorcyclist was linked to the accident. Therefore, there being no cogent link between the manner of riding of the motorcycle and the accident, there can be no apportionment of contributory negligence on the part of the motorcyclist. The law in this regard is settled in terms of the dicta of the Supreme Court in *Mohammed Siddique and Another vs. National Insurance Company Ltd. and Others*, Civil Appeal No. 79 of 2020, decided on 08.01.2020, which held inter alia as under:

> *"13. .....The fact that the deceased was riding on a motor cycle along with the driver and another, may not,*

by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from

behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

3. In view of the above, the appellant's contention in this regard is untenable and is accordingly rejected.

4. The only issue now to be determined is: whether the quantum of compensation awarded is on the higher side. The learned counsel for the appellant contends that the pecuniary amount awarded is equivalent to the amount awarded towards non-pecuniary damages. There is no justification for payment of equal amount towards the same. In this regard, he relies upon the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi* (2017) 16 SCC 680. The claimants would be entitled to and are hereby granted additional non-pecuniary compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, in terms of dicta of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.,* (2018) 18 SCC 130**.** They would also be entitled to and are hereby granted compensation towards 'funeral expenses' and 'loss of estate' @ Rs. 15,000/- under each of

the heads, in terms of *Pranay Sethi* (supra).

5. Now the issue which is to be decided is that whether on the base figure on which the compensation was calculated for a person between the age bracket of 15 years to 20 years, the multiplier of 18 would be applicable or not. The learned counsel for the appellant submits that the impugned order erred in applying the multiplier of 18 in terms of dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (2017) 16 SCC 680. He states that the principle laid down in *Chetan Malhotra vs. Lala Ram* 2016 SCC OnLine Del 2981 ought to be taken into consideration and accordingly the multiplier of 15 shall be made applicable on a person falling in the age bracket of 15-18 years.

6. In the present case, the deceased was 17 years old at the time of the motor vehicular accident, therefore, the multiplier of 18 would be applicable. However, the calculation of 'loss of dependency' is based upon the formula as mentioned in the dicta of this Court in *Chetan Malhotra vs. Lala Ram*, MAC. APP. No. 554/2010, decided on 13.05.2016 and *R. K. Malik Vs. Kiran Pal* (2009) 14 SCC (1). The reasons for adopting the said calculation by the learned Tribunal are as under:

> *"14. According to Senior Secondary School certificate, the victim (Bhupinder Singh) was born on 28.09.1992. In other words, he was about 17 years of age. Admittedly, the victim had no earning of his own. Schedule II annexed with Section 163-A of the Motor Vehicle's Act provides for notional income of such person, as Rs. 15,000/- p.a. Due to lapse of lot of time, this provision has become inadequate. The High Court of Delhi speaking through Hon'ble Justice R.K. Gauba while disposing of 16 appeals through a single judgment tided as Chetan Malhotra Vs. Lala Ram etc. MAC APP. No. 554/2010 etc. decided on 13.05.2016, envisaged a*

formula called as "inflation correction method", taking financial year of 1997-98 as base year. Same is Rs. 15,000 x A/331. Figure of Rs.15,000/- represents the notional income, specified in Second Schedule 'A' "represents CII for the financial year in which victim died and figure 331 represents the CII for the base year. Accident in question occurred on 25.11.20009, when victim (Bhupinder Singh) died. CII for the financial year 2009-2010 was Rs. 632/-. The Apex Court in case of R. K. Malik Vs. Kiran Pal (2009) 14 SCC (1) divided child victims in three categories, the first being those who were less than ten years of age. Second category being of children more than 10 years and upto 15 years, and in third category there are children more than 15 years of age but not having attained age of majority. The High Court of Delhi in Chetan Malhotra's case (Supra) mandated to apply multiplier of 15 for children (victims) in age group between 15-18 years. Victim being about 17 years of age, a multiplier of 15 is taken. Counting in this way, loss of estate comes to Rs. 5,15,528.70p (15000X632/331x18). l/3rd of said amount is deducted as personal expenses of victim, leaving as Rs. 3,43,685.8p. Same amount is added as composite non-pecuniary damages including future prospects, making a total of Rs. 6,87,371.6p.

This issue is therefore decided in favour of the petitioners and against respondents."

7. This Court in *The Oriental Insurance Co Ltd vs. Suman & Ors.*, MAC. APP. 981/2015, decided on 09.08.2016, held, *inter alia*, as under:

"4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects, the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not

awarded. It is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :-

For victims aged more than 20 years:-
(Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs.
For victims aged less than 20 years:-
(Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs

5. It is relevant to note that the Uphaar tragedy took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-."

8. In *National Insurance Company Ltd. vs. Sheela Devi & Ors.*, MAC APP 466/2015 decided on 14.05.2017, this Court had held that the award of compensation which had granted an addition of 50% towards "loss of future prospects" on minimum wages of Rs. 3,516/- to a self employed person i.e. a vegetable vendor, was just and fair. It was reasoned in this regard as under:

"3. The claimants sought compensation on the basis that the deceased was earning about Rs. 8,000/- per month from his vocation as a vegetable vendor, however, in the absence of any proof in support of this claim the Tribunal accepted the minimum wages of an unskilled person as on 26.01.2008 as applicable to the deceased. Minimum wages were Rs. 3516/-,

on which 50% loss of future prospects were added and 1/4th was deducted towards his personal expenses bringing the deceased's income to Rs. 3955.50/- [Rs. 3516 + Rs. 1758/- (50% of Rs. 3516/-) = Rs. 5274/- less Rs. 1318.50/- (1/4th of Rs. 5274/-) i.e. Rs. 3955.50/-.]. This monthly earning was multiplied by 12. Based upon the post-mortem report, showing the age of the deceased as 35 years, a multiplier of 16 was applied giving the compensation towards loss of earning as Rs. 7,59,552/-. Additionally, Rs. 25,000/- was awarded towards funeral expenses and Rs. 1 lakh each towards loss of consortium to the widow and loss of care and guidance for the minor children. Interest at the rate of 9% was awarded on the compensation amount from the date of filing of the petition i.e. 06.02.2008. Since the offending vehicle was insured, the insurance company was held liable to pay the compensation amount. 4. The award has been impugned by the appellant on the ground that there is an addition of 50% towards loss of future prospects on minimum wages of a self-employed person. The Court is unable to accept this contention for the reason that the compensation of the amount is just and MAC.APP.No. 466/2015 Page 3 of 4 fair. In The Oriental Insurance Company Ltd. v. Suman & Ors., this Court has discussed a similar circumstance as under: "4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects, the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not awarded. It is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier

method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :- For victims aged more than 20 years:- (Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs. For victims aged less than 20 years:- (Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs. 5. It is relevant to note that the Uphaar tragedy took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-. MAC.APP 981/2015 Page 3 of 3 Although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages. 6. This Court has applied the principles laid down in Uphaar tragedy case to compute the compensation in United India Insurance Co. V. Kanwar Lal, 2012 SCC Online Del 2411, New India Assurance Co. Ltd. v. Bal Kishan Pawar, 2012 SCC MAC.APP.No. 466/2015 Page 4 of 4 Online Del 3201, National Insurance Co. Ltd. v. Chander Dutt, 2012 SCC Online Del 2412, National Insurance Co. Ltd. v. Sewa Ram, 2012 SCC Online Del 2413 and National Insurance Co. Ltd. v. Komal, 2014 ACJ 1540, National Insurance Co. Ltd. v. Gaje Singh, 2012 ACJ 2346 and National Insurance Co. Ltd. v. Bhateri, 2012 SCC Online Del 2409. 7. Applying the principles laid down in Uphaar tragedy case, the income of the deceased is presumed to be Rs.5,384.85....."""

9. In view, for a person falling below the age of 20 years, calculation ought to be carried out in terms of *Uphaar (supra)* case. Accordingly, "loss of dependency" shall be payable as under:

> Rs.6,249/- (notional income) less Rs. 2,083/- (1/3rd deduction towards personal expenses) x 12 (months) x 18 (multiplier as per *Pranay Sethi (supra)*) + 50% (future prospects) = Rs. 13,49,784/- lakhs

10. In view of the above, the equivalent amount awarded towards non-pecuniary compensation is unjustified and is hereby set-aside.

11. The amount payable to the claimants shall be:-

S.No.	Particulars	Amount
1.	Loss of dependency	Rs. 13,49,784/-
2.	Loss of love and affection [Rs. 50,000 x 2 (claimants)]	Rs. 1,00,000/-
3.	Loss of consortium [Rs. 40,000 x 2 (claimants)]	Rs. 80,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 15,59,784/-

12. Let the aforesaid amount, alongwith interest @ 9% p.a. from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal, within three weeks from the date of receipt of a copy of this order, to be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

13. Since the appellant has partially succeeded in its appeal, the statutory amount, alongwith interest accrued thereon, be returned to it.

14. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 18, 2020
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