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

% **Judgment reserved on : 10 April 2024**
Judgment pronounced on : 22 May 2024

\+ MAC.APP. 992/2017

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

DEEPAK KUMAR & ORS ..... Respondents
Through: Mr. Ghanshyam Thakur, Adv. for R-1 and R-2

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988[1] assailing the impugned judgment-cum-award dated 04.09.2017, passed by the learned Presiding Officer, Motor Accident Claims Tribunal (West-01), Tis Hazari Courts, Delhi[2], whereby the claim petition under Section 166/140 of the MV Act filed by the parents (*hereinafter referred to as the 'claimants-parents')* of the deceased boy-Kunal, who was aged about 15 years, was allowed and they have been granted a total compensation of Rs. 10,19,640/- with interest @ 9% per annum from the date of filing of the petition till realization.

2. Shorn of unnecessary details, the deceased-Kunal aged about 15 years, who was driving a Scooty bearing registration No. DL4SCD-

[1] MV Act

9679, that was involved in an accident on 07.05.2016 at about 01:00 P.M., when he was hit by a TATA Truck-407 bearing registration No. DL-1LT-6310 (*hereinafter referred to as the 'offending vehicle' for brevity*) driven by respondent No.3/Chhote Lal, which was owned by respondent No.4/Ravinder Singh and duly insured for third party risks with the appellant/insurance company.

3. The learned Tribunal *vide* issue No.1 found that the driver[3] of the offending vehicle was at fault and it was his rash and negligent driving that led to the accident resulting in fatal injuries to the deceased-Kunal and thus, the claim petition filed by the claimants-parents was allowed and the aforementioned compensation has been awarded to them.

4. The impugned judgment-cum-award dated 04.09.2017 has been assailed in the present appeal, upon which, *vide* order dated 04.10.2018, a sum of Rs. 3,00,000/- was ordered to be released to the claimants-parents without prejudice.

5. Mr. Sameer Nandwani, learned counsel for the appellant/ insurance company urged that the impugned judgment-cum-award is not sustainable on facts and law since the learned Tribunal failed to appreciate the fact that the deceased was 15 years of age and he did not have a valid driving license[4] to drive a Scooty on a public road and he was not even wearing a Helmet. It was further submitted that even

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[2] Tribunal

[3] 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

[4] Section 2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

the registered owner of the Scooty, who is the respondent No.4 in the present appeal, was not made a party to the claim petition and that the learned Tribunal failed to consider the issue of *contributory negligence* on the part of the deceased.

6. *Per contra*, Mr. Ghanshaym Thakur, learned counsel for the claimants-parents urged that there was a categorical finding by the learned Tribunal that the accident occurred due to rash and negligent driving by the driver of the offending vehicle, resulting into fatal injuries to the deceased, and thus, there arose no question of fastening the deceased with any fault.

ANALYSIS AND DECISION:

7. Having heard the learned counsel for the rival parties and on perusal of the record, it would be apposite to refer to the findings recorded by the learned Tribunal while deciding issue No.1 with regard to - Whether or not the driver of the offending vehicle was at fault?, which are as follows:

> "Ld. Counsel for the Insurance Company has argued that certainly, there was contributory negligence as the deceased was minor and driving the Scooty bearing no. DL-4SCD-9679 without wearing the helmet.
>
> It has to be seen that the question of contributory negligence arises when there has been some act or omission on the part of the claimant/deceased/injured who has materially contributed to the cause of the accident. Negligence ordinarily means breach of a legal duty to take care but contributory negligence means the failure by a person to use reasonable care for the safety of either he himself or for the safety of his property so that he becomes blameworthy for his own act.
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> In the case in hand, PW-1 is the father of the deceased Master Kunal. PW-2 is the eye witness to the accident and he was the pillion rider on the scooty bearing No. DL-4SCD-9679. PW-1

> & PW-2, both, in their cross examinations have stuck to the stand that the accident in question caused on account of the rash and negligent driving of the TATA 407 bearing No. DL-1LT-6310. The respondents have failed to lead any evidence. As such, to my mind, the testimony of PW-1 & PW-2 on the aspect of negligence remains uncontroverted. I have no hesitation to hold that the nothing has been placed on record by the respondents so as to disbelieve the testimony of PW-1 & PW-2.
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> It is true that the deceased Kunal was not having any valid DL at the time of the accident as has been admitted by PW-1 in his cross examination but to my mind, in the light of the cross examinations of PW-1 & PW-2 and in the light of no evidence on behalf of the respondents, the respondents have utterly failed to prove that there was contributory negligence on the part of the deceased.
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> Considering the fact that negligence has to be assessed on touchstone of preponderance of probabilities and a holistic view is to be taken, it has been established that the accident was caused due to rash and negligent driving of the offending vehicle bearing No. DL-1LT-6310. Issues No.1 is decided accordingly in favour of the petitioners and against the respondents."

8. A careful perusal of the aforesaid reasoning given by the learned Tribunal would show that it relied upon the testimony of PW-2, who was a pillion rider on the Scooty at the time of the accident, who testified that he, along with the deceased-Kunal, had gone to purchase some cold drinks and when they reached Paschimpuri Chowk, New Delhi, the deceased took a turn towards the right with due care and caution when all of a sudden, the offending vehicle which was coming from the side of Paschim Vihar, driven at a fast pace and in a rash and negligent manner, hit their Scooty with great force and due to the heavy impact, they fell on the road and received serious injuries. In his cross-examination, PW-2 for the first time volunteered that the offending vehicle had hit their Scooty after jumping the red light, but then he also testified that he could not see

the offending vehicle prior to the accident. However, he acknowledged the fact that the deceased was not wearing a Helmet at the time of the accident. A bald suggestion was given in the cross-examination of PW-2 that it was the deceased who was guilty of negligence but without elaborating how or in what manner.

9. However, on perusal of the site plan of the place of occurrence of the accident prepared during the investigation *vide* FIR[5] No. 337/2016 dated 07.05.2016 under Sections 279/304-A of the IPC[6] Police Station Punjabi Bagh, it was the deceased who was taking a turn from the *chowk* towards the road from the side of Punjabi Bagh to Madipur, while the offending vehicle was coming from the side of Club Road and was going straight. In other words, the right to way or cross the road was first that of the offending vehicle and it is probable that the deceased, who was a teenager, was little reckless in taking a turn towards the right side without waiting for the Truck to pass and probably, in such circumstances, the offending vehicle hit the scooterist.

10. Further, on perusal of the *post mortem* report of the deceased dated 07.05.2016, which was conducted at Sanjay Gandhi Memorial Hospital, it appears that he had Lacerated wound 3 x 0.5 cm x bone deep on chin; Multiple Reddish abrasions varying in size from 1 x 0.05 cm to 5 x 3 cm on face, forehead, front of chest, right foot, left elbow and left knee and the cause of death was opined to be '*Craniocerebral damage as a result of blunt force impact*.'

[5] First Information Report
[6] Indian Penal Code, 1860

11. In view of the aforesaid discussion, there is no gainsaying that the deceased was not possessing a valid driving license and he was also not wearing a Helmet, which might have saved his life. All said and done, while the evidence on the record does attribute some degree of fault on the part of the deceased too, this Court understands that *children are children* and they would at times drive around motor vehicles despite having no driving license, but then, it is the paramount duty of the parents to rein them and see that they do no perform such audacious acts which amounts to a violation of the law. Although unfortunately, a teenage life was lost at the age of 15 years, which must have caused a degree of pain and anguish to the claimants-parents, but then, it was their responsibility alone to teach their son and instill in him the respect for the law of the land. In view of the above discussion, attributing some contributory negligence on the part of the deceased too, the total amount of compensation should be reduced by 50%.

QUANTUM OF COMPENSATON:

12. Having said that, this Court finds that it should exercise its *suo moto* powers so as to modify the impugned judgment-cum-award insofar as the quantum of compensation is concerned, which is based on the decision in the case of **Chetan Malhotra v. Lala Ram**[7]. There is no gainsaying that this Court can *suo moto* enhance the amount of compensation in an appeal under section 173 of the MV Act wherever it is found that just and fair compensation has not been awarded, for

[7] 2016 SCC OnLine Del 2981

which, reference can be invited to a decision in the case of **National Insurance Co. Ltd. v. M. Jayagandhi**[8], wherein it was observed:

> "The question arising for consideration is whether in the absence of any Cross Objection, the Appellate Court could suo motu enhance the compensation. **The Appellate Court exercising power under Order 41 Rule 33 CPC could enhance the quantum of compensation even without Cross-Objection.** The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just. **Reference could be made to the decision of the Supreme Court in Sheikhupura Trans. Co. Ltd. v. Northern India Transporter's Ins. Co. Ltd., 1971 ACJ 206 (SC),** wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. **The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the Claimants of future pecuniary benefits and on the other any pecuniary advantage which from what-ever sources come to them by reason of the death, i.e. the balance of loss and gain to a dependant by the death must be ascertained.** The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary bene-fits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. **Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be un-reasonable, excessive nor deficient**. (paragraph 37)
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> **{bold portions emphasized}**

13. In that view of the matter, coming to the instant appeal, it would be apposite to refer to the observations made by the learned Tribunal while making the assessment of compensation, which goes as under: -

> "As per the petition, the deceased was studying in 8th class and was also doing tuition work at the time of accident and earning of Rs.15,000 per month. It has been stated in the petition that the deceased was 15 years of age at the time of accident.

[8] 2008 SCC OnLine Mad 53

The petitioner has filed on record the copy of Aadhar Card of the deceased in which the birth of year of the deceased is 2001. The date of accident is 07.05.2016. Accordingly, the age of the deceased is treated as 15 years at the time of accident.

PW-1 Sh. Deepak Kumar, the father of the deceased has admitted it to be correct that he has not placed on record any document to show the educational qualification of his deceased. He has further admitted that he has not placed on record any document to show that his deceased son was giving private tuitions or to show the monthly earnings of his deceased son.

In the case of a minor, the compensation is to be computed as prescribed by the Hon'ble High Court of Delhi vide judgment dated 13.05.2016 in MAC Appeal No. 554/2010 titled as Chetan Malhotra vs. Lala Ram.

Accordingly, in terms of the said orders, the national income of the minor has to be computed as Rs.15,000/- X A (Cost Inflation Index for the financial year in which the accident occurred)/331 (C11for the base year 1997-1998).

Thus, NI = Rs.15000/-X 1125 (C11 for the year 2016-2017)/331 = Rs.50982/- (After rounding off of Rs.50981.87).

By virtue of para no. 71 (iv) of the said judgment, the said notional income is to be reduced by 2/3rd after deducting 1/3 towards personal and living expenses of the deceased and the remainder has to be treated as annual loss to the estate.

Accordingly, the total lost of the estate comes to Rs. 5,09,820/- = (Rs. 50982/- - Rs. 16,994/- i.e. 1/3rd of Rs. 50,982/- i.e. Rs. 33,988/- x 15).

Furthermore, by virtue of para No. 71(viii) of the said judgment, a sum equal to loss of estate i.e. Rs. 5,09,820/- is added towards non pecuniary damages.

Accordingly, the total compensation comes to Rs.l0,19,640/- (Rupees Ten Lacs Nineteen Thousand Six Hundred and Forty Only). Upon the said amount, the interest @ 9% per annum is also awarded from the date of filing of the DAR/claim petition i.e. w.e.f. 14.09.2016. The amount of interim award, if any, shall however, be deduced from the above amount, if the same has already been paid to the petitioners.

The respondent No.l being the driver, the respondent No. 2 being the owner and the respondent No.3 being the insurer are jointly and severally liable to make the payment of compensation to the petitioners/claimants.

14. Accordingly, the learned Tribunal awarded a total compensation of Rs. 10,19,640/- from the date of filing of the DAR[9] / claim petition i.e. 14.09.2016 till realization. In view of this Court, it would be appropriate to award the compensation assessed as per the parameters laid down in the case of **National Insurance Company Limited v. Pranay Sethi**[10]. During the relevant time, the minimum wages for a non-matriculate were Rs.10,582/- per month. Thus, assuming the notional income of the deceased boy to be Rs. 10,582/- plus enhancing the same by 40% towards loss of future prospects, the annual notional income comes to Rs. 1,77,778/-. Since the deceased was a boy aged about 15 years, 1/2nd is to be deducted towards personal use and living expenses. Further, considering that the deceased-Kunal was 15 years of age at the time of accident, the multiplier of '18' is applied as per the decision in the case of **Sarla Verma v. DTC**[11]. Thus, total loss of financial dependency would come to Rs.16,00,002/-. Further, Rs.40,000/- is to be awarded to each of the parents towards loss of consortium besides Rs.15,000/- each towards funeral expenses and loss of estate. Thus, the total compensation works out to be Rs.17,10,002/-.

15. In view of the reasons given hereinabove, 50% of the amount of compensation is to be deducted towards contributory negligence on the part of the deceased. Hence, the total amount of compensation now comes to Rs. 8,55,001/- (Rupees Eight Lacs Fifty Five Thousand and One rupee Only), which be awarded to the claimants-parents with

[9] Detailed Accident Report
[10] (2017) 16 SCC 680

interest @ 7.5% from the date of filing of the DAR i.e. 14.09.2016 till realization. Lastly, an amount of Rs. 3,00,000/-, which has already been paid to the claimants-parents without interest, is to be deducted from the aforesaid amount. The appellant/insurance company is directed to deposit the balance amount of compensation with accrued interest with the learned Tribunal within four weeks from today, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum on the balance amount from the date of this judgment till realization.

16. The amount of Rs. 25,000/- deposited by the appellant/ insurance company towards statutory deposit for filing of the instant appeal be released in their favour.

17. The present appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

MAY 22, 2024
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[11] (2009) 6 SCC 121