



2025:DHC:1518



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

% ***Pronounced on: 07th March, 2025***

+ **MAC.APP. 136/2021 & CM APPL. 10357/2021 (stay)**

CHOLAMANDALAM MS GEN INS CO. LTD.

Plot No. 39, 2nd Floor, Samyak Tower,

Opposite Metro Pillar No. 120,

Pusa Road, New Delhi-110005

.....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

1. **PRAVEEN KUMAR SINGH**
S/o Late Sh. Chander Pal Singh

R/o 262/546/3, Asha Ram Gali,
Mandawli Fazalpur, Ambedkar Marg,
Delhi-110092

.....Respondent No.1

2. **ASAK ALI**
S/o Sh. Alauddin

R/o Shahbad Road, Bilari,
Moradabad-2440001, U.P.

...Respondent No.2

3. **ZAHID KHAN**
S/o Ali Raza Khan

R/o 212-D, Farrachan, Shahbad,
Rampur-244901, U.P.

...Respondent No.3

Through:

+ **MAC.APP. 142/2021 & CM APPL. 10824/2021 (stay), CM APPL.20557/2022**



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**CHOLAMANDALAM MS GEN INS CO. LTD.**

Plot No. 39, 2nd Floor, Samyak Tower,
Opposite Metro Pillar No. 120,
Pusa Road, New Delhi-110005

.....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

1. **TULSI BISHT**
W/o Late Sh. B.S. BishtRespondent No.1
2. **PANKAJ BISHT**
S/o Late Sh. B.S. Bisht

Both R/o Flat No. 23, Plot No. 8, Him Vihar
I.P. Extn., Delhi-110092 ...Respondent No.2
3. **SUSHILA BISHT**
D/o Late Sh. B.S. Bisht
R/o C3/56, Dayalpur Extn., Delhi-110094 ...Respondent No.3
4. **ASAK ALI**
S/o Sh.Alauddin

R/o Shahbad Road, Bilari,
Moradabad-2440001, U.P. ...Respondent No.4
5. **ZAHID KHAN**
S/o Ali Raza Khan

R/o 212-D, Farrachan, Shahbad,
Rampur-244901, U.P. ...Respondent No.5
Through: Mr. Navneet Goyal, Advocate for
respondents No.1 to 3.

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MAC.APP. 240/2023

1. **TULSI BISHT**



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W/o Late Sh. B.S. Bisht

....Appellant No. 1

2. **PANKAJ BISHT**

S/o Late Sh. B.S. Bisht

....Appellant No. 2

3. **SUSHILA BISHT**

D/o Late Sh. B.S. Bisht,
Married Sister

W/o Shri Chander Prakash

Appellant No. 1 & 2

R/o Flat No. 23, Plot No. 8,
Him Vihar, I.P. Estate,
Delhi-110092

Appellant No. 3

R/o C-3/56, Dayalpur Extn.
Delhi-110092

....Appellant No.3

Through: Ms. Suman Bagga, Advocate

versus

1. **CHOLAMANDALAM MS GENERAL INSURANCE CO LTD.**

Through Manager/Officer Incharge

At: Plot No. 39, 2nd Floor, Samyak Tower,
Opposite Metro Pillar No. 120,
Pusa Road, New Delhi

....Respondent No.1

2. **ASIK ALI**

S/o Sh. Alauddin

R/o Shahbad Road, Bilari,
Moradabad-2440001, U.P.

....Respondent No. 2

3. **ZAHID KHAN**

S/o Sh. Ali Raza Khan



2025:DHC:1518



R/o H.No. 212-D, Farrachan,
Shahbad, Rampur-244901, U.P.

....Respondent No.3

Through: Mr. Navneet Goyal, Advocate for
respondents No.1 to 3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

MAC.APP. 136/2021, MAC.APP. 142/2021, MAC.APP. 240/2023

1. These aforesaid four Appeals under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as 'M.V. Act'*) filed by the Appellants, are being decided together as they arise from the same Award dated 27.11.2020, passed by the learned MACT, East District, Karkardooma Courts, Delhi, *vide* which compensation in the sum of Rs.31,57,480/- along with the interest @8% p.a. has been awarded *on account of demise of Mr. Deepak Bisht, aged about 32 years*; and compensation in the sum of Rs.67,000/- along with @8% p.a., has been awarded on account of the *injuries suffered by Mr. Praveen Kumar Singh*, in the road accident on 19.06.2016.

2. The facts *in brief*, are that on 19.06.2016 at about 00:45 hrs (12:45 a.m.), Mr. Deepak Bisht (deceased) along with his friend, Mr. Praveen Kumar Singh, was coming to Delhi from Moradabad in his Car bearing registration No. DL 7CP- 8716. When they reached near Galandh Chauraha, Opposite Jindal Pipe Factory, District Hapur, Uttar Pradesh, a Truck bearing registration No. UP 22T-5401, which was plying ahead of the Car, applied



sudden brakes, without any indication and at the same time, another Truck bearing registration No. UP 22T-9446 hit the Car from the backside. Consequently, the Car dashed into the Truck that had stopped ahead of it and consequently, fatal injuries were suffered by Mr. Deepak Bisht (driver of the Car), who died on the spot while Mr. Praveen Kumar Singh suffered severe injuries.

3. FIR No. 351/2016 under Section 279/338/304-A/427 of the Indian Penal Code (*hereinafter referred to as 'IPC'*) registered at Police Station Pilakhua, District Hapur, Uttar Pradesh. The Charge-Sheet was filed against Mr. Asak Ali, the Driver of the Truck, which was behind the Car of the deceased. The Claim Petitions under Sections 166 and 140 of the M.V. Act, was filed on behalf of the mother, brothers and the sisters of the deceased, Mr. Deepak Bisht and also by Mr. Praveen Kumar Singh, injured.

4. The learned Tribunal *vide* impugned Award dated 27.11.2020 granted compensation in the sum of Rs.31,57,480/- to the Claimants, on account of demise of Mr. Deepak Bisht and Rs.67,000/- to the injured, Mr. Praveen Kumar Singh on account of injuries suffered by him in the road accident on 19.06.2016.

MAC.APP. 136/2021 & MAC.APP. 142/2021:

5. The two aforesaid Appeals have been filed by the Insurance Company to challenge the Compensation granted to the two Claimants, on the following grounds: -

- (i) that the entire liability has been erroneously fixed on the Appellants/Insurance Company, even though, it has emerged in the evidence that the Truck bearing registration No. UP 22T-



5401 was parked on the road side with the indicators on despite which the Car Driver rammed into the Truck establishing the negligence of the Car Driver. It was a case of contributory negligence on the part of the Car Driver; and

- (ii) that interest @8% has been granted on the higher side.

MAC.APP. 142/2021:

6. An additional ground in the Appeal bearing **MAC.APP. 142/2021** has been taken by the Insurance Company, to challenge the compensation award granted to the deceased, Mr. Deepak Bisht, as under:

- (i) that the Future Prospects have been granted @50%, which should have been only 40% since the deceased was self-employed, in terms of the Judgment of the Apex Court in National Insurance Company vs. Pranay Sethi, AIR 2017 SC 5157.

MAC.APP. 240/2023:

7. Appeal bearing MAC. APP. 240/2023 under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed ***on behalf of the legal heirs of the deceased, Mr. Deepak Bisht***, who have sought *enhancement of the compensation amount* on the following grounds: -

- (i) that the income of the deceased has been assessed on the basis of the Income Tax Return (*for short 'ITR'*) of the year 2014-2015 by ignoring the ITRs of the Assessment Years 2015-2016 and 2016-2017, which have been proved as Ex.PW-4/2 according to which, the gross income was Rs.3,76,700/- on which Income-Tax of Rs.10,990/- was paid;



- (ii) that no compensation has been granted for loss of Love and Affection; and
- (iii) that the compensation under Non-Pecuniary Heads i.e. Loss of Consortium, Loss of Estate and Funeral Expenses, needs to be enhanced.

8. Submissions heard and the record perused.

Negligence of the Offending Truck: -

9. The *first aspect* of challenge is that the negligence of the offending Truck bearing No. UP 22T-9446, has been wrongly assessed even though it was a case of contributory negligence on the part of the Driver of the car and the offending Truck.

10. PW-1, Mr. Praveen Kumar Singh, injured, who was the eye witness deposed that on 19.06.2016 at about 12:45 a.m. he was travelling in the Car being driven by Mr. Deepak Bisht from Moradabad towards Delhi. When they reached near Galandh Chauraha, Opposite Jindal Pipe Factory, District Hapur, Uttar Pradesh, a Truck going ahead applied sudden brakes and the deceased also applied brakes of the Car. However, it was hit from behind by the offending Truck bearing No. UP 22T-9446, (*which is insured with the Appellant/Insurance Company*) and dragged and pushed into the Truck which had stopped ahead of them.

11. He further deposed in his cross-examination that their Car was going at the speed of about 90-100 kmph, while the speed of the Truck ahead of them was about 80 kmph and that he had not seen the offending Truck, before the accident.



12. Pertinently, Respondent Nos. 1 and 2, the Driver and the Owner of the offending Truck, chose not to challenge the testimony of PW-1, Mr. Praveen Kumar Singh, by way of cross-examination.

13. Furthermore, the Respondent Nos. 1 and 2 in their Written Statement disputed the involvement of their Truck in the accident, but the Charge-Sheet and the Supporting documents, Ex.PW-1/1(coll.) clearly established that the offending Truck was seized from the spot in accidental condition. Further, Mechanical and Inspection of the Car as well as the offending Truck was done which clearly indicate that the Car was damaged from the front as well as the backside whereas the offending Truck was damaged only from the front right side. The documents prepared during the investigations of the FIR, clearly corroborate the version of accident as narrated by PW-1.

14. Mr. Asak Ali, the Driver of the offending Truck, appeared as R1W1 and deposed that the Truck was not involved in the accident, but was unable to explain as to how the Truck got damaged and why it was seized from the spot. He admitted that he was facing the trial in the Criminal Case and had not made any Complaint against his alleged false implication.

15. The main argument on behalf of the Appellants/Insurance Company is that the Car had first dashed into the Truck, which was plying ahead of it and therefore, it was a case of composite negligence. However, the testimony of PW-1 coupled with the Charge-Sheet, clearly establishes that when the Truck ahead of them applied sudden brakes, Mr. Deepak Bisht also was able to apply brakes, but it is only because the Car got hit by the offending Truck from behind that the Car got dragged and pushed and banged into the back of the Truck ahead.



16. It is clearly established that it is not a case where the Car banged into the Truck ahead but the Car got pushed because it was hit by the Offending Truck from behind.

17. Learned Tribunal, therefore, rightly concluded that there was no negligence on the part of the Truck, which was ahead of the Car and the accident occurred solely due to the negligence of the Truck Driver, who had rammed and pushed the car into the Truck ahead.

18. *There is no infirmity in the conclusion of the learned Tribunal that the accident occurred due to sole negligence of the Truck behind bearing No. UP 22T-9446. There is no interference merited on this account.*

Rate of Interest: -

19. The *second ground* taken by the Insurance Company was that the interest @8% p.a. has been granted on the higher side. The accident is of 2016 and has been decided *vide* Award dated 27.11.2020.

20. In the case of National Insurance Co. Ltd. vs. Yad Ram, 2023 SCC OnLine Del 1849, this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

21. The Tribunal in its discretion has granted interest on the compensation @ 8% per annum. There is nothing to show that there exists any justifiable ground for reducing the interest.

22. *Therefore, the rate of interest needs no modification.*

Grant of Future Prospects:-



23. The *additional ground* taken by the Appellant/Insurance Company in *MAC. APP. 142/2021* is that the Future Prospects of the deceased should have been calculated as 40% instead of 50%.

24. PW-1, Smt. Tulsi, mother of the deceased Sh. Deepak Bisht, had deposed that her son was a graduate and was doing the business related to Real Estate and was earning about Rs.35,000/- per month, in support of which she produced the Income Tax Returns of the Financial years 2013-14, 2014-2015, 2015-2016 and 2016-2017, which are exhibited as Ex. PW-1/4.

25. The Income Tax Returns have also been proved by the PW-3, Mr. K.C. Meena, Inspector, from Income-Tax Department, Ward 58(3), Vikas Bhawan, I.P. Estate, New Delhi.

26. Moreover, PW-4, Mr. Pankaj Bisht son of Late Sh. B.S. Bisht, brother of the deceased, has also proved these Income-Tax Returns for the year 2013-2014 and 2014-2015, though, he also deposed that the brother had filed the Income-Tax Returns for the two subsequent Financial Years.

27. The testimony of all the witnesses examined by the Claimants, therefore, establish that the deceased was in a business and had no constant income.

28. He could not be held to be in a permanent job and therefore, the Future Prospects should have been calculated as 40%, in terms of *Pranay Sethi* (supra).

29. *Therefore, it is held that the compensation amount granted to the Claimants be recalculated by taking the Future Prospects as 40%.*

MAC. APP. 240/2023:-



30. The Claimants of the deceased have sought enhancement of compensation granted to them on account of demise of Mr. Deepak Bisht. It is asserted that the income of the deceased should have been calculated as Rs. 3,76,700/- on the basis of the Income-Tax Return of the year 2016-2017. The claimants in support of their Claim had proved the Income-Tax Returns for the following years: -

Financial Year	Amount	Tax Paid
2013-2014	Rs. 2,10,430/-	Rs. 1,043/-
2014-2015	Rs. 2,61,572/-	Rs. 4,282/-
2015-2016	Rs. 3,84,300/-	Rs. 11,773/-
2016-2017	Rs. 3,76,700/-	Rs. 10,990/-

31. From the Income-Tax Returns, it is evident that there was an annual increase in the income of the deceased and therefore, the income for the financial year 2016-2017 filed on 18.05.2016, i.e. prior to the demise of Mr. Deepak Bisht, for which gross income was Rs.3,76,700/- on which the tax payable was Rs.10,990/-, should have been taken as a basis.

32. ***Therefore, the annual income of the deceased was Rs. 3,65,710/- which should have been rightly taken as the multiplicand.***

33. The *Loss of Dependancy* is thus, recalculated as under: -

$$\text{Rs. } 3,65,710/- \times 140/100 \times 50/100 \times 16 = \text{Rs. } 40,95,952/-.$$

Compensation under Non-Pecuniary Heads:-

34. The Claimants have asserted that the compensation under Non-Pecuniary Heads, needs to be enhanced. The *Loss of Estate* and *Funeral*



Expenses have been granted @15,000/- each, which is in terms of the Judgment of Pranay Sethi (supra) and *do not need any modification*.

35. However, compensation of Rs.40,000/- has been awarded to the Claimants towards the Loss of Consortium when in *Pranay Sethi*, it has been held that each claimant shall be entitled to a compensation of Rs.40,000/- for Loss of Consortium.

36. Accordingly, the compensation under the Head of Loss of Consortium is enhanced to Rs.40,000/- each for the three Claimants i.e. Rs.1,20,000/-.

37. It has also been asserted that no compensation has been granted under the Head of Loss of Love and Affection. Loss of Love and Affection is included in Loss of Consortium. Therefore, nil compensation has been rightly granted for Loss of Love and Affection.

Relief: -

38. The compensation amount is recalculated as under: -

S.No.	Heads	Granted by the Tribunal	Granted by the Court
1.	Income of Deceased	Rs. 2,57,290/-	Rs. 3,65,710/-
2.	Add-Future Prospects	Rs. 1,28,645/- @50%	Rs. 1,47,284/- @40%
3.	Less-Personal Expenses of Deceased	1/2 nd	1/2 nd
4.	Annual loss of Dependency	Rs. 1,28,645/-	Rs. 2,55,997/-
6.	Multiplier	16	16
7.	Total loss of Dependency	Rs. 30,87,480/-	Rs.40,95,952/-
8.	Medical Expenses	NIL	NIL
9.	Compensation for loss of	Rs. 40,000/-	Rs. 1,20,000/-



	Consortium		
10.	Compensation for loss of Estate	Rs. 15,000/-	Rs. 15,000/-
11.	Compensation towards funeral expenses	Rs. 15,000/-	Rs. 15,000/-
12.	Total Compensation	Rs. 31,57,480/-	Rs. 42,46,000/- (rounded off)

39. Thus, the total compensation granted to the *Claimants/ Legal Heirs of Deceased-Sh. Deepak Bisht* is enhanced to **Rs. 42,46,000/-** along with interest @8% per annum.

Conclusion: -

40. The Appeal bearing **MAC. APP. 136/2021** preferred by the Appellant/Insurance Company to challenge the findings on negligence of the Driver of the Offending Truck, is dismissed. The Statutory amount deposited by the Insurance Company be refunded in accordance with law in the Appeals filed on behalf of the Insurance Company.

41. The Appeal bearing **MAC. APP. 142/2021** preferred by the Appellant/Insurance Company to challenge the findings on negligence of the Driver of the Offending Truck, as well as Future Prospects, is partly allowed and the Future Prospects are reduced to 40%.

42. The **Cross-Objections** bearing **MAC. APP. 240/2023** preferred by the Claimants of the deceased/Late Sh. Deepak Bisht are allowed and the compensation is accordingly enhanced. The enhanced amount be deposited by the Insurance Company within 45 days. The compensation be disbursed to the Claimants in terms of the Award dated 27.11.2020 of the Learned Tribunal.



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43. The aforesaid Appeals are disposed of accordingly, along with Pending Applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 07, 2025/RS