2024:DHC:9641

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

% ***Date of decision: 28th November, 2024***

\+ **MAC.APP. 606/2024 & CM APPL. 69528/2024**

M/S NATIONAL INSURANCE COMPANY LTD

Mamta Place, Etawah,
Uttar Pradesh-206001 .....Appellant

Through: Ms. Hetu Arora Sethi, Advocate.

versus

1. **NEERU DEVI (WIFE)**

   S/o Shri Dharam Singh .....Respondent No. 1

2. **SUNNY KUMAR (SON)**

   D/o Shri Jagdish .....Respondent No. 2

3. **SONAM KUMARI (DAUGHTER)**

   D/o Shri Jagdish .....Respondent No. 3

4. **ANUU KUMARI (DAUGHTER)**

   S/o Shri Jagdish .....Respondent No. 4

   All R/o B-239, Indira Kalyan Vihar,
   Okhla Phase-1, PS Okhla,
   District South Delhi, Delhi-110020

5. **PRADEEP**

   S/o Harish Chander,
   R/o H. No. 98, Saifai, Etawah,
   Uttar Pradesh-206130 .....Respondent No. 5

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL. 69400/2024 *(Exemption)*

1. Allowed, subject to all just exceptions.

2. The Application is disposed of.

CM APPL. 69401/2024 *(u/S 151 of CPC, 1908)*

3. By way of present Application, the Appellant seeks condonation of 10 days' delay in filing the Appeal.

4. For the reasons and grounds stated in the present Application, the Application is allowed. The delay of 10 days in filing the Appeal is hereby condoned.

5. The Application is disposed of.

MAC.APP. 606/2024

6. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the Appellant/Insurance Company against the Award dated 17.08.2024 *vide* which a compensation in the sum of Rs. 1,05,75,000/- along with interest @ 9% per annum has been granted to the Claimants-legal heirs of the deceased, Shri Arvind Kumar Singh, who died in the road accident on 29.08.2017.

7. The Appellant/Insurance Company has challenged the impugned Award on *two grounds*, namely:

(i) that the *eye-witnesses* examined on behalf of the Claimants/Respondents were *not able to prove the factum of accident*; and

(ii) that there is *no proof of the income* of the deceased Shri Arvind

Kumar Singh, despite which his salary has been taken by the Tribunal as Rs. 95,000/- per month.

8. **Submissions heard and Record perused.**

9. ***Briefly stated***, on 29.08.2017 at around 11 p.m., the deceased, Shri Arvind Kumar Singh, aged about 54 years, was travelling from Bhind to Delhi in Eicher vehicle bearing No. DL IX 7401 when it was hit by the offending truck bearing No. UP 75M 8577 coming from the wrong/opposite lane which was being driven by Respondent No.1-Shri Pradeep *Kumar (driver-cum-owner)*. He sustained fatal injuries.

10. FIR No. 245/2017 under Section 279, 304A, 427 IPC at PS Badhpura, Etawah, UP, was registered, on 30.08.2017.

11. ***The primary ground of challenge*** is that the Claimants' eye-witnesses failed to substantiate the occurrence of the accident.

12. The Claimants examined two eye witnesses, namely PW-4, Kapil Goyal and PW-5, Devesh Pradhan.

13. *PW-4,* Kapil Goyal deposed that the Eicher vehicle no. 7401 travelling from Bhind to Delhi was hit by a Truck no. 8577, which was being driven at high speed approaching from the wrong side, causing the fatal accident of the driver of the Eicher vehicle. Although he was unable to recall the entire number, he stated that the offending truck was red in colour with silver cabin. Furthermore, he was also cited as a witness in Charge Sheet, Ex.PW-l/2, and that his statement was recorded by the police on the scene of the accident.

14. *The second eye-witness, PW-5, Devesh Pradhan* deposed on the same lines as PW-4. He deposed that he witnessed the accident while returning from village Ekdil near Itawa to Bhind. He stated that the deceased was

driving one Eicher Truck and the other vehicle was a big Tata Truck of Red Colour bearing No. *"UP 75 ..."* but he could not give the complete Number of the offending vehicle. He further deposed that the vehicle of the deceased was on the left side of the road, whereas the offending vehicle which was coming from the opposite side, from the direction of Itawa, was not on its left side. There was no divider on the road. He further clarified that it was the offending truck which was speeding from the opposite side of the road, deviating from its own path, and ended up hitting the Eicher vehicle being driven by the deceased, which was running on the correct side of the road, resulting in a head on collision. He also stated that the deceased was taken to hospital by PW-4.

15. PW-5 denied that the accident took place in the middle of the road, which is duly reflected in the site plan, Ex.PW-1/11, clearly indicating that the accident did not occur in the middle of the road rather slightly towards the left side of the road.

16. Both the witnesses have clearly deposed about the facts which established the rashness and negligence on the part of the driver of the offending vehicle. Although Respondent No-1/Shri Pradeep Kumar was charge-sheeted but he did not appear as a witness to tender his evidence.

17. Hence, **the learned Tribunal was correct in relying upon the testimony of the two eye-witnesses to conclude that the accident was caused by rash and negligent driving of the offending truck.**

<u>Income of the Deceased:</u>

18. ***The second ground of challenge*** is that there is no proof of the income of the deceased and that the learned Tribunal has erroneously taken the salary as Rs. 95,000/- per month.

19. *The first material witness in this regard was the wife of the deceased, PW-1 Smt. Neeru Devi,* who deposed that the deceased was in the business of transportation and was earning around Rs. 1 lakh per month. PW-1 clarified that the deceased was owner of two trucks bearing no. DL lLW 4950 and DL lLW 4979, and was having earnings from these two vehicles. The Trucks were financed from Indusind Bank and HDFC Bank. The deceased was paying instalments of the two trucks, the Statement of Account of Loan were proved as Ex.PW-1/17. She further deposed that her husband was also a commercial driver and used to drive other vehicles on part time basis. Her testimony is fully supported by the RC of the Truck as Ex.PW-l/15 and his driving license, Ex.PW-1/16, which is for LMV/Commercial vehicles.

20. The testimony of PW-1 Smt. Neeru Devi was fully corroborated by *PW-2 Sh. Shashank Singh, Legal Manager, HDFC Bank, who* produced the Statement of Account for the period between 05.01.2016 till 05.03.2019 for Loan Account Number 36271446 in respect of the Eicher truck bearing no. DL ILW 4979, issued to the deceased. He clarified that the Loan account was still active.

21. *PW-3 Anil Kumar, Legal Manager Indusind Bank,* produced the Statement of Account for Loan Account bearing No. DASO1109L Ex.PW3/1 in respect of the Eicher Truck bearing Reg. No. DL ILW 4950.

22. The two loan documents demonstrate that the monthly instalments were for Rs.23,240/- and Rs.24,613/- totalling to EMI of Rs. 47,853 per month.

23. In the case of *Gurpreet Kaur and Ors. vs. United India Insurance Company Ltd. & Ors.*, Civil Appeal Nos. 6981-82 of 2022, the Apex Court

observed that a person's income can be assessed by considering the amount of the Equated Monthly Instalment (EMI) payments, which is a sufficient indicator of his earning capacity. A person could only consistently make such substantial loan payments only if he was earning sufficient income. It was held that when positive evidence of income exists, it should be preferred over Minimum Wage notifications, especially when the deceased was not a labourer.

24. *In the present case*, the testimony of the wife of the deceased, PW-1, Smt. Neeru Devi, substantiated by documentary evidence including vehicle registration certificates proved that the deceased owned two trucks bearing No. DL lLW 4950 and DL lLW 4979. He also worked as a commercial driver. His bank loan statements reflecting payment of monthly EMI payments of Rs. 47,853, were an objective indicator of the earning sources of the deceased.

25. Any person to pay this amount of monthly Loan would have to be earning at least double the amount to pay the EMIs and also to meet the household and business expenditure. Hence, **the learned Tribunal has rightly assessed the deceased's income at Rs. 95,000 per month.**

<u>Conclusion:</u>

26. There is no merit in the present Appeal, which is hereby dismissed and disposed of accordingly along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024
S.Sharma