

(2023) 08 DEL CK 0041
In the Delhi High Court
Case No : MAC.APP. No. 102 Of 2016

Reliance General Insurance Co Ltd

APPELLANT

Vs

Mamta & Ors

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 279

Citation : (2023) 08 DEL CK 0041

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : A.K. Soni, S.N.Parashar

Final Decision : Disposed Of

Judgement

Navin Chawla, J

1. This appeal has been filed by the appellant challenging the Award dated 26.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, West-01, Delhi (hereinafter referred to as the 'Tribunal') in Suit No.19/09, titled as Smt. Mamta & Ors. v. Sh. Rahul Khanna & Ors.

2. The appellant has challenged the Impugned Award on the following grounds:

a) That the claimants had failed to prove that the accident occurred due to the offending vehicle being driven in a rash and negligent manner;

b) That the future loss of income has been granted at 50% of the income of the deceased instead of 40% payable in terms of the decision of the Supreme Court in National Insurance Company Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680;

c) That the father of the deceased has been taken as a dependent though there was no such evidence led by the claimants, and as a result thereof, 1/4th of the income has been deducted towards personal expenses of the deceased instead of and in place of 1/3rd as provided in the judgment of Pranay Sethi (supra); and,

d) That the compensation awarded on account of non-pecuniary heads is in excess of what is provided in the judgment of the Supreme Court in Pranay Sethi (supra).

3. As regards the issue of the offending vehicle being driven in a rash and negligent manner and resulting in the accident in question, the learned counsel for the respondents/claimants has rightly placed reliance on the statement of the brother of the deceased, Mr.Dinesh Kumar, who not only identified the offending vehicle and its driver, but also stated that the driver, in acceptance of his liability, paid a sum of Rs.25,000/- to the respondents/claimants for the medical treatment of the deceased, who at that time was alive and undergoing treatment. FIR No.604/13, P.S. Punjabi Bagh, under Sections 279/304 of the Indian Penal Code was lodged against the driver of the offending vehicle. The manner of the accident, the involvement of the offending vehicle, and the same being driven in a rash and negligent manner thereby resulting in the accident, was not disputed before the learned Tribunal by the respondent nos.5 and 6, that is, the driver and the owner of the offending vehicle. It is not the case of the appellant that there was any connivance between the Claimants and the driver or the owner of the offending vehicle. In absence thereof, the appellant cannot be heard in challenge to the finding of the learned Tribunal on the issue of accident being caused by the rash and negligent driving of the offending vehicle.

4. In view of the above, I find no merit in the first challenge of the appellant to the Impugned Award.

5. As far as the plea of only 40% to be added in the loss of future prospects is concerned, the learned counsel for the respondents/ claimants does not dispute the same, and, in fact, acceded to this challenge, as also recorded in the order dated 11.01.2023 of this Court.

6. The Impugned Award, therefore, stands modified to the above-said extent.

7. On the issue of deduction towards personal expenses of the deceased, the learned counsel for the respondents/claimants has drawn my attention to the affidavit of evidence of the wife of the deceased, namely Ms. Mamta-PW6, and her cross-examination. In the affidavit of evidence, she states that the parents of the deceased were dependent on the deceased. The father of the deceased was aged about 63 years at the time of the accident. In her cross-examination, though a suggestion was given that the parents of the deceased were residing with the brother of the deceased, the same was denied by PW6. From the evidence, it is, therefore, apparent that the father of the deceased was dependent on the deceased. There were a total of four dependents and only 1/4th could have been deducted from the income of the deceased.

8. I therefore, find no infirmity in the Impugned Award on this account.

9. Keeping in view the above, compensation on account of loss of dependency is reduced to Rs. 7,53,127/- $\{(Rs. 3,516/- + 40\% \text{ of } 3516) \times 3/4 \times 12 \times 17\}$.

10. The last challenge of the appellant to the Impugned Award is on the compensation awarded by the learned Tribunal on the non-pecuniary heads, as under:

"33. In terms of the aforesaid judgment in Rajesh's case(supra), the Hon'ble Supreme Court of India has granted Rs. 25000/- towards funeral charges, Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children, accordingly, I award Rs. 1,00,000/- towards loss of consortium; Rs. 25,000/- towards funeral charges; Rs. 1,00,000/- towards loss of care and guidance for minor children. I also award Rs. 10,000/- towards loss of estate. Therefore, in total. I hereby award a sum of Rs.11.95,107/- = (Rs. 8,06,922/- + Rs.1,53,185/- + 2,35,000/-) in favour of the petitioners and against the respondents."

11. In Pranay Sethi (supra), it has been held that on conventional heads, namely, loss of estate, loss of consortium, and funeral expenses, amounts of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively, should be granted. The said amount should be enhanced on a percentage basis every three years and the enhancement should the rate of 10% in a span of three years.

12. In United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors., (2021) 11 SCC 780, it was further held that the loss of consortium is to be awarded to each of the dependents.

13. Accordingly, and as the accident took place on 21.11.2008, the Impugned Award shall stand modified, and it is held that the claimants shall be entitled to a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.1,60,000/- towards loss of consortium.

14. The amount as awarded shall carry interest at the rate of 9% per annum from the date of the filing of the claim petition till the deposit of the same by the appellant with the learned Tribunal. The amount so deposited shall be released to the respondents/claimants, if not already released. In case it is found that any excess amount has been deposited by the appellant/Insurance Company with the learned Tribunal pursuant to the interim order of this Court, the said excess amount along with interest accrued thereon, shall be released to the Insurance Company.

15. The statutory amount deposited by the Insurance Company with the Registry of this Court shall also be released to the appellant along with interest accrued thereon.

16. The Impugned Award granted recovery rights to the appellant, and I am informed that the Impugned Award has not been challenged by the respondent nos.5 and 6, that is, the driver and the owner of the offending vehicle. The recovery right of the appellant shall stand intact.

17. The appeal is disposed of in the above terms.