HIGH COURT OF DELHI

Bench: Justice Navin Chawla

Date of Decision: 11 December 2023

MAC.APP. 774/2017 & CM APPL. 41950/2018, 50140/2018

NATIONAL INSURANCE CO LTD ..... Appellant

versus

PUNEET BHATIA & ORS ..... Respondents

Legislation:
Motor Vehicles Act, 1988
Code of Criminal Procedure, 1973

Subject: Motor Accident Compensation - Validity of driving license - Non-wearing of a helmet - Attribution of contributory negligence for non-use of helmet - Tax deduction from the income of the deceased - Rate of interest awarded by the Tribunal - Discretion of the Tribunal in awarding interest - Consideration of surrounding circumstances in determining the rate of interest - Modification of the Impugned Award - Release of excess amount deposited by the appellant - Disposal of appeal and pending applications.

Headnotes:
Motor Accident Compensation - Challenge to Impugned Award - Appeal against the Award of Motor Accident Claims Tribunal - Accidental death of Smt. Shalini Bhatia - Collision with an offending vehicle - Allegation of rash and negligent driving - Award of compensation to claimants - Challenge to findings of negligence - Credibility of eyewitness testimony (PW-2) - Overloading of offending vehicle - Corroboration of evidence through photographs - Contributory negligence - Validity of driving license - Non-wearing of a helmet - Attribution of contributory negligence for non-use of helmet - Tax deduction from the income of the deceased - Rate of interest awarded by the Tribunal - Discretion of the Tribunal in awarding interest - Consideration of surrounding circumstances in determining the rate of interest - Modification of the Impugned Award - Release of excess amount deposited by the appellant - Disposal of appeal and pending applications. [Para 1-52]

Referred Cases:

- National Insurance Company Ltd. v. Pranay Sethi & Ors. (2017) 16 SCC 680
- HDFC Ergo General Insurance Co. Ltd. v. Bindu Paswan & Anr., Neutral Citation No. 2023/DHC/000993
- Sudhir Kumar Rana v. Surinder Singh & Ors., (2008) SCC OnLine SC 794

- Reliance General Insurance Co. Ltd. v. Manju & Ors. 2023 SCC OnLine Mad 4142
- Ramasami v. Shanmugam & Anr. 2019 SCC OnLine Mad 14285
- Vimla Devi & Anr. v. Royal Sundaram All Ins. Co. Ltd. & Anr., Neutral Citation No. 2019:DHC:6698
- National Insurance Co. Ltd vs Yad Ram & Ors., 2023 SCC OnLine Del 1849

Advocates representing: Mr. Arihant Jain, Adv. for Ms. Shantha Devi Raman, Adv. (Appellant); Mr. Mayank Khurana, Mr. Aksh Tomar, Advs. (Respondents).

CORAM:

HON'BLE MR.

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 30.05.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North-East District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 449998/2016, titled ***Puneet Bhatia & Ors. v. Prem Gaur & Ors.***.

2. The above Claim Petition had been registered on the Detailed Accident Report (in short, 'DAR'), which stated that on 19.02.2014 at about 7:50 AM, the deceased Smt.Shalini Bhatia was going on a scooty in front of the Ram Leela Ground, F-1U Block, Pitam Pura, Delhi. She was hit by a Tempo bearing registration no. HR-27-J-0821 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by the respondent no.4 herein in rash and negligent manner. She was rushed to the Santom Hospital, Prashant Vihar, Delhi, where the doctors of the said hospital declared her as 'brought dead'.

3. The respondent nos.4 and 5, that is, the driver and the owner of the offending vehicle respectively, took a stand in their reply that no accident took place with the offending vehicle, and that the deceased got entangled with some electric wires that were lying on the road and died due to the electric shock.

4. The learned Tribunal, on assessing the evidence led by the parties, and, especially, relying upon the statement of Sh.Shajid Salmani (PW-2), who is an alleged eye witness to the accident, held that the offending vehicle was being driven in a rash and negligent manner, leading to the accident in question, and the death of the deceased. The learned Tribunal awarded a compensation of Rs.79,88,000/- along with interest at the rate of 9% per annum, in favour of the respondent nos.1 to 3 herein, that is, the claimants, on the following heads:

1.	Compensation	Rs.76,12,113/-
2.	Funeral Expenses	Rs.25,000/-
3.	Loss of love and affection	Rs.1,50,000/-
4.	Consortium	Rs.1,50,000/-
5.	Loss of estate	Rs.50,000/-

	Total	**Rs.79,87,113/-**
	Rounded off	**Rs.79,88,000/-**

Issue of Negligence:

5. The first challenge of the appellant to the Impugned Award is by contending that the learned Tribunal has erred in holding that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner.

6. The learned counsel for the appellant contends that the PW-2 was an interested witness and, therefore, his testimony could not have been relied upon by the learned Tribunal. He submits that there were contradictions in his statement.

7. The above contentions of the appellant are refuted by the learned counsel for the respondent nos.1 to 3, who in turn, submits that even during the cross-examination of PW-2 no material contradiction could be derived in his statement by the appellant or the respondent nos.4 and 5.

8. I have considered the submissions of the learned counsels for the parties.

9. PW-2, in his evidence by of an affidavit, had stated that on 19.02.2014 at about 7.45 A.M., he was going from his residence towards the shop by his Bicycle, and when he reached Near Sarvodaya Vidhyalaya, F-1 U-Block, Pitampura, Delhi, he saw the offending vehicle loaded with Plastic Bales upto the height over and above of 67 feet from body of tempo, coming from the opposite direction alongside the Ram Leela Park. He further stated that the offending vehicle was being driven at a very high speed and in a rash and negligent manner. He stated that there were electric wires attached just opposite the gate of Ram Leela Park towards the side of the school, with an iron pipe over the road. The plastic bales loaded in the offending vehicle struck against the electric wires, as a result of which the electric wires were broken and fell down on the deceased who was driving her scooty. The deceased was trapped in the wires and sustained a severe head injury. He stated that the accident had taken place as the offending vehicle was overloaded with plastic bales extended much beyond the body of the offending vehicle. He was cross-examined by the learned counsel for the respondent nos.4 and 5, wherein he maintained his stand. I also do not find any inconsistency in his statement, or any material contradiction which may lead this Court to, in any manner, doubt the testimony of PW-2.

10. Though the respondent no.4 herein also entered into the witness box as R1W1, and stated that the offending vehicle did not hit the scooty driven by the deceased, curiously, he did not state that the electric wires did not break down due to the offending vehicle hitting the same as it was overloaded. He, in fact, in his evidence by way of an affidavit, admitted that the deceased died due to the falling of the electric wires which struck the scooty of the deceased, resulting in her suffering fatal injuries. In fact, he stated that it was the fault of the organizer/decorator who had put the electric wires across the road.

11. Even the photographs of the offending vehicle clearly show that the offending vehicle was overloaded with the Plastic Bales jutting out over the body of the offending vehicle. In my opinion, the testimony of PW-2 stands corroborated with these photographs and, in fact, the stand of the respondent no.4 himself.

12. I, therefore, find no merit in the above challenge of the appellant. The same is, accordingly, rejected.

Deceased not having a driving license to drive a scooty:

13. The next challenge of the appellant to the Impugned Award is by claiming that as the deceased was not having a valid driving licence for a two-wheeler/scooty, contributory negligence should have been attributed on her for the accident and compensation amount, accordingly, reduced.

14. The learned counsel for the appellant submits that while the deceased was holding a driving licence for driving a light motor vehicle-non-transport, she did not have a valid and effective driving licence to drive a Motor Cycle/Two-wheeler without gear.

15. Placing reliance on the judgment of this Court in ***HDFC Ergo General Insurance Co. Ltd. v. Bindu Paswan & Anr***., Neutral Citation No.2023/DHC/000993, he submits that the contributory negligence of, at least, 15% should be attributed to the deceased.

16. On the other hand, the learned counsel for the respondent nos.1 to 3, placing reliance on the judgment of the Supreme Court in ***Sudhir Kumar Rana v. Surinder Singh & Ors***., (2008) SCC OnLine SC 794, submits that the mere fact of the deceased not having a valid driving licence for a specific category of vehicle, would not be a proof of the deceased driving her scooty in a rash and negligent manner and, therefore, the deceased cannot be held guilty of contributory negligence.

17. I have considered the submissions made by the learned counsels for the parties.

18. In ***Sudhir Kumar Rana*** (supra), the Supreme Court rejecting submission akin to the one made by the appellant in the present case, observed as under:

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.
10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

19. In ***Bindu Paswan*** (supra), this Court was considering a case where the insurance company was seeking a right to recover the compensation paid to the Claimants therein from the owner of the offending vehicle/a two wheeler, as the driver of offending vehicle was not having a valid driving licence to drive the same. It was in those facts that the Court held that merely because the driver of the offending vehicle was holding a licence to drive a commercial vehicle/light motor vehicle, he could not have been held by the learned Tribunal to be authorised to drive a two wheeler as well, and therefore, granted a right in favour of the Insurance Company therein to recover the compensation from the owner of the Offending Vehicle. The said judgment, therefore, will have no application to the facts of the present case, as the appellants have not been able to show that the accident had taken place as the deceased was driving the scooty without a valid driving license to drive a two wheeler or the accident could have been prevented had the deceased been in possession of such a licence.

20. In view of the judgment of the Supreme Court in ***Sudhir Kumar Rana*** (supra), I find no merit in the challenge of the appellant. The same is, accordingly, rejected.

Deceased not wearing a Helmet:

21. The learned counsel for the appellant further submits that the deceased was not wearing a helmet at the time of the accident in question. He submits that this itself contributed to the accident. Placing reliance on the judgment of the Madras High Court in ***Reliance General Insurance Co. Ltd. v. Manju & Ors.*** 2023 SCC OnLine Mad 4142; and in ***Ramasami v. Shanmugam & Anr.*** 2019 SCC OnLine Mad 14285, he submits that contributory negligence of, at least, 15% should have been fastened on the deceased for the accident in question.

22. On the other hand, the learned counsel for the respondent nos.1 to 3, placing reliance on the testimony of PW-2, submits that the deceased was indeed

wearing the helmet. He submits that, therefore, the plea of the appellant deserves to be rejected.

23. Placing reliance on the judgment of this Court in ***Vimla Devi & Anr. v. Royal Sundaram All Ins. Co. Ltd. & Anr.,*** Neutral Citation No.2019:DHC:6698, he submits that even assuming that the deceased was not wearing a helmet at the time of the accident, contributory negligence cannot be attributed to the deceased.

24. I have considered the submissions made by the learned counsels for the parties.

25. Though PW-2, in his statement, had stated that at the time of the accident, the deceased was wearing a helmet, in his statement under Section 161 of the Code of Criminal Procedure, 1973, recorded by the police, he had stated that the deceased was not wearing a helmet at the time of the accident. Even the Seizure Report does not mention recovery of a helmet at the site of the accident. In my view, therefore, the mere statement of PW-2 that the deceased was wearing a helmet at the time of the accident cannot be believed.

26. The question remains as to the effect of the deceased not wearing a helmet.

27. In ***Vimla Devi*** (supra), this Court rejected a similar plea of attribution of contributory negligence on the person/deceased for not wearing a helmet while riding as a pillion rider on a two-wheeler, by observing as under:

> *"4. The learned counsel for the respondents submits that the deceased fully knew that the mounting of three persons on a moving scooty was impermissible under motor traffic rules. The accident occurred in the middle of the road. The pillion riders were not wearing helmets, therefore, there appears to be contributory negligence. The Court is of the view that the aforesaid argument is untenable because not wearing a helmet could at best be a traffic offence and not necessarily be regarded as contributing to the motor accident itself. After an accident occurs, its consequence depends upon the impact...."*
> *(Emphasis Supplied)*

28. Even though in ***Manju*** (supra) and in ***Ramasami*** (supra), the Madras High Court has taken a view that non-wearing a helmet justifies attribution of 10%/15% contributory negligence on the deceased, I am bound by the above judgment of a Co-ordinate Bench of this Court in ***Vimla Devi*** (supra).

29. Even otherwise, applying the ratio of the judgment of the Supreme Court in ***Sudhir Kumar Rana*** (supra), I am also of the view that, though not wearing a helmet would have magnified the injuries suffered by the deceased, the same were caused by the accident in question, where the cause of the

accident was the overloading of the offending vehicle which had led to the overhanging electric wires being struck with the bales that were being carried in the Offending Vehicle and the said wires falling over the deceased, entangling her scooty and making her fell down. Non-wearing of the helmet by the deceased, therefore, did not cause or contribute to the accident, though had the deceased worn a helmet, the injuries suffered by the deceased due to the accident may have been reduced (though this also remains in the realm of conjecture!).

30. The above challenge of the appellant is, accordingly, rejected.

Income Tax Deduction:

31. The next challenge to the Impugned Award is on the ground that the learned Tribunal has erred in not deducting the tax payable on the income of the deceased for the purposes of determining the loss of dependency.

32. The learned counsel for the respondent nos.1 to 3 does not dispute the above position in law.

33. The learned counsel for the appellant submits that on the income of the deceased, she would have to pay tax of Rs.57,138/- per annum.

34. Accordingly, the award of compensation on the head of loss of dependency in favour of the respondent nos.1 to 3, shall stand modified and reduced, as under:

Yearly Income of the Deceased: *Rs.52,281 x 12 = Rs.6,27,372/-*

Less: Tax payable*: Rs.57,138/-*

Total annual income of the deceased*:* Rs. 5,70,234/-

Compensation*: - 5,70,234/- x 130/100 x 14 x 2/3 =* ***Rs.69,18, 840/-*** 35. The Impugned Award shall stand modified to this extent.

Non-Pecuniary Heads:

36. The next challenge of the appellant to the Impugned Award is on the ground of compensation granted under the non-pecuniary heads.

37. The learned counsel for the appellant submits that the compensation granted under the said heads is not in terms of the judgment of the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680.

38. The learned counsel for the respondent nos.1 to 3 is not in a position to deny the above position in law.

39. Accordingly, the compensation payable to the respondent nos.1 to 3 on account of non-pecuniary heads, is re-assessed as under:

Funeral expenses: *Rs.15,000/-*

Loss of consortium *(as the respondent no.1 re-married post the death of the deceased only the children of the deceased would be entitled to compensation for Loss of consortium)**:*** *Rs.40,000/- x 2:*

Rs. 80,000/-

Loss of estate: - *Rs.15,000/-*

40. The Impugned Award shall stand modified to this extent.

Rate of Interest:

41. The last challenge of the appellant to the Impugned Award is on the ground that the learned Tribunal has erred in awarding interest at the rate of 9% per annum in favour of the respondent nos.1 to 3.

42. The learned counsel for the appellant submits that keeping in view the rate of interest as notified by the RBI at the time of the accident, it should not have been more than 7% per annum. 43. I am unable to agree with the above contention of the appellant.

44. Section 171 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') empowers the Motor Accidents Claims Tribunal to direct the payment of simple interest on the compensation determined, at such rate and from such date, not earlier than the date of making the claim, as it may specify in this behalf. A discretion is therefore, vested with the learned Tribunal to award the rate of interest. It need not completely match with the rate of interest as may be notified by the Reserve Bank of India. There are other circumstances as well which the learned Tribunal has to take into account. This Court, in ***National Insurance Co. Ltd vs Yad Ram & Ors.,*** 2023 SCC OnLine Del 1849, has held as under:-

> ***"24.*** *From a perusal of the aforesaid, it is evident that even though Section 171 gives a discretion to the learned Tribunal to grant interest on compensation, unlike Section 34 of the Code of Civil Procedure which prescribes that interest, except in commercial matters, would not exceed 6% p.a., neither any fixed rate of interest has been prescribed nor has any ceiling on the rate at which interest can be granted by the learned Tribunal under the MV Act has been provided. It is, therefore, always incumbent for the learned Tribunal to award interest at a rate which is deemed appropriate in the facts of each case; the rate must however be just and fair. The learned Tribunal has to keep in mind that interest is awarded not because of any contractual obligation but because of the delay in the claimants receiving the compensation which they should receive at the time of the accident itself. Since the time gap between the accident and the passing of an award may vary from case to case, Section 171 does not prescribe any fixed rate of interest and clothes the Tribunal with a discretion to award interest by taking into account factors like inflation, the rate of interest as prescribed by the Reserve Bank of India at the time of the accident as also the at the time of the passing of the award, the duration of the pendency*

of the claim petition, the nature of injuries, the nature of the urgency of the requirement of the claimants to receive compensation. The learned Tribunal may also take into account as to whether the claimants in order to meet the expenses for medical treatment of the injuries resulting from the accident were required to borrow from financial institutions. Another important factor would be as to what proportion of the awarded compensation pertains to damages already suffered such as medical charges, loss of earnings and out of pocket expenses vis-àvis payments made towards loss of future earnings and loss of dependency, which in fact is being paid in advance. It cannot, therefore, be urged that because interest was granted at @12% p.a. by the Apex Court in respect of an award of a particular year, interest must necessarily be granted at the same rate in respect of all awards in the same year.

Similarly, it cannot be said that because interest @ 6% p.a. was granted in an award pertaining to another year, the said rate must be followed in all awards of the same year. In every case, all surrounding circumstances have to be considered by the Court before awarding interest and infact even a slight change in the circumstances of two claim petitions in respect of two contemporaneous accidents in itself may be a ground to award interest at different rates in the two cases."

45. The Court has therefore, held that the rate of interest notified by the Reserve Bank of India is only one of the considerations that must weigh with the learned Tribunal while determining the rate of interest; the other considerations being the duration and pendency of the Claim Petition, and other surrounding circumstances, which would cumulatively make the award of rate of interest to appear as reasonable.

46. In the present case, the accident had taken place on 19.02.2014, whereas the Impugned Award has been passed only on 30.05.2017. In my view, the rate of interest awarded by the learned Tribunal cannot be said to be unreasonable so as to warrant any interference from this Court.

47. The challenge of the appellant is, accordingly, rejected.

CONCLUSION:

48. In terms of the interim order dated 29.08.2017, the appellant has deposited the entire awarded amount with interest with the learned Tribunal, 40% whereof was directed to be released in favour of the respondent nos.1 to 3. I am informed that the respondent nos.1 to 3 have still not received the said amount.

49. Be that as it may, as the Impugned Award now stands modified, the excess amount deposited by the appellant shall be released in favour of the appellant along with proportionate interest accrued thereon. The remaining amount shall be released in favour of the respondent nos.1 to 3 in accordance with

the Schedule of disbursal as prescribed by the learned Tribunal in the Impugned Award.

50. The statutory amount deposited by the appellant be released in favour of the appellant along with interest accrued thereon.

51. The appeal and the pending applications are disposed of in the above terms.

52. There shall be no order as to costs.