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THE HIGH COURT OF DELHI AT NEW DELHI
+MAC APPEAL No.196/2009 & CM NOS. 7968-7969/2010

Reserved on: 28.09.2011

Pronounced on: 09.11.2011

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Tarkeshar Nath and Mr.
Saurabh Tuteja, Advocates

Versus

PHULO DEVI & ORS.

..... Respondents

Through: Mr. S.K. Vashisht, Advocate for
respondents no.1 to 8.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. The Insurance Company challenged the order dated 4.7.2007 passed by learned Judge, MACT, new Delhi in Suit No.259/2006. The respondents no. 1 to 8 herein are legal heirs of deceased Harish Chander @ Hari Chander who was employed as a driver of the truck of respondent no.9 Krishan Gupta. On 6.5.2000, the deceased was

driving the truck and was on his way to Delhi. On the way, one Rampal, an ex employee of the truck owner Krishan Gupta with his two friends met Hari Chander and requested for lift. The deceased Hari Chander obliged them. When the truck reached near Prem Dham, Village-Baldhana at about 10 pm, Rampal along with his accomplices attacked on Hari Chander and gave him multiple stab injuries resulting into his death. His dead body was thrown away. Rampal along with his friends fled away with the vehicles as well as money belonging to Hari Chander. A case FIR No. 164/2000 was lodged under Sections 302/394/411 IPC. Respondents no. 1 to 7 who are the legal heirs of the deceased filed claim petition seeking compensation being Suit No.289/2000 against the owner of the truck Mr. Krishan Gupta and the appellant herein, the insurer of the truck. Both the respondents objected to the maintainability of the petition on the ground that Hari Chander was murdered on account of his personal enmity with the accused persons and none of the respondents were liable for any compensation under the Motor Vehicles Act. Similarly Mr. Krishan Gupta also took the plea that the proper forum for the claimants was to approach the Court under Workmen Compensation Act. On the basis of the pleadings of the parties, the Tribunal framed the following two issues:

- "1. Whether deceased Harish Chander @ Hari Chander sustained fatal injuries because of user of motor vehicle no.DL 1M/0166 (Canter) during the course of his employment? OPP*
- 2. If issue no.1 is proved in affirmative to what amount of compensation, petitioners are entitled to and from whom? OPP"*

2. Relying upon the judgment of **Rita Devi v New India Assurance Company** [J.T. 2000(SC) 355, the Tribunal awarded

compensation of Rs.5,17,480/- to the dependants/ claimants of deceased Hari Chander. The said compensation comprised of Rs.4,92,480/- on account of loss of dependency of the claimants/ dependents; Rs.15,000/- on account of consortium and Rs.10,000/- on account of funeral expenses. Since there was no cogent evidence led with regard to the income of the deceased, the Tribunal took the prescribed minimum wages of a skilled worker as the basis of calculation of compensation and taking note of the fact that minimum wages would have increased to double considering the age of the deceased as 40 years. The Tribunal assessed the average monthly income of the deceased to Rs.4275/- per month. Since the deceased had left behind as many as 8 dependents, the Tribunal made a deduction of 1/5th from the average monthly income of the deceased as towards his personal and living expenses. In this manner, the Tribunal calculated the loss of financial dependency of the dependents to be Rs.3420 per month or Rs.41,040/- per annum. He applied the multiplier of 12 and arrived at a figure of Rs.4,92,480/- as loss of financial dependency of the dependents.

3. The Insurance Company assailed the impugned award mainly on the ground that it was not a case of death of deceased Hari Chander in a motor accident, but it was a case of murder simplicitor by the person known to him and his friends. It was submitted that the reliance upon the case of Rita Devi (supra) by the learned Tribunal was misplaced. The impugned award was also challenged on the ground that the learned Tribunal has erroneously taken the double of the minimum wages in arriving at the average monthly income of the deceased.

4. Cross objections were also filed by the respondents no.1 to 7 who were dependents of the deceased. They averred that the

Tribunal has wrongly applied the multiplier of 12, which according to them ought to be 15. They also contended that non grant of any compensation on account of love and affection by the Tribunal was also erroneous.

5. I have the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that the deceased was driving the truck of respondent no.9 Krishan Gupta when Rampal with his friends got a lift from him and on the way they stabbed him resulting into his death instantly. The question for consideration in this regard would be as to whether this could be said to be a murder simplicitor or the death of the deceased having been caused within the definition of motor vehicle accident. The learned Tribunal relying upon the judgment of Rita Devi (supra) held that the prime motive of the culprits was to commit the offence of property. It was held that if the intention of the offenders was only to commit murder of the deceased on account of personal enmity, there was no reason for taking away the vehicle and also money of the deceased. On this premise, the Tribunal held that the deceased died while using the motor vehicle during his course of employment.

7. Learned counsel for the insurance company sought to distinguish the case of Rita Devi (supra) by stating that it was based on different facts and circumstances inasmuch as in that case the accused persons hired the auto rickshaw of the deceased by making payment with the prime object to steal the same, whereas in the case in hand, the deceased himself had obliged Rampal and his friends had by giving them lift.

8. I have given my thoughtful consideration to the submission made by learned counsel for the appellant and I am of the view that the present case was squarely covered by the case of Rita Devi (supra). In the said case also, similar contentions were raised before the Supreme Court. In the said case, the Supreme Court held as under:

“10. The question, therefore, is can a murder be an accident in any given case ? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts . The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.
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14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the

auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

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18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

9. Applying the principles of law as laid down by the Supreme Court in the aforesaid case, there does not remain any doubt that the death of the deceased was caused accidentally in the process of committing robbery and theft by the offenders.

10. The answer to the plea of the appellant that proper forum for the claimants was under the Workmen Compensation Act and not a claim petition under the Motor Vehicles Act, is in the observations made in Rita Devi (supra) by the Supreme Court which are as under:

“15. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmen’s Compensation Act are in any way different. In our opinion, the relevant object of both the Acts are to provide compensation to the victims of accidents. The only difference between

the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word 'death' in Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the work death in the Motor Vehicles Act also."

11. From the above discussion, I do not see any merit in the instant appeal.

12. Now adverting to the cross objections filed by the claimants, it is again noted that admittedly the deceased was aged 40 years and has left behind as many as 8 dependents. As per the judgment of **Sarla Verma v. DTC and others** [2009 ACJ 1298], the multiplier that was to be applied was 15 and not 12 as applied by the Tribunal. Apparently, the Tribunal seems to have erred in applying the multiplier of 12. However, with regard to the claim of the compensation on account of loss of love and affection and loss of estate, the petition being under Section 163A of the MV Act, the claimants are not entitled to any compensation under this head. Consequently, in view of above, the claimants would be entitled to compensation to be calculated by applying multiplier of 15. In this view of the matter, the claimants are entitled to compensation of Rs.6,15,600. [3420x12x15) on account of loss of dependency instead

of Rs.4,92,480/- as awarded by the Tribunal. Thus, they would be entitled to the enhanced compensation of Rs.1,23,120/- (Rs.615600/- – 492480/-) on this count. Since the respondent no.8 has not claimed any enhanced compensation, 40% of the enhanced compensation shall be paid to the claimant no.1 who is the widow of deceased and 10% each to claimants 2 to 7 who are sons and daughters of the deceased. The shares of the minors would be kept in FDR in a nationalized bank in their names till they attain the age of majority. The Insurance company who is the insurer is directed to pay the enhanced compensation of Rs.1,23,120/- within 30 days from today and thereafter with interest @ 7.5% per annum.

13. The appeal stands disposed of in terms of above order.

**M.L. MEHTA
(JUDGE)**

November 09, 2011
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