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

Date of decision: 2nd July, 2012

+ **MAC. APP. No.160/2004**

SHRI VYAS PURI & ANR.

..... Appellants

Through: Mr. V.S. Yadav, Advocate

Versus

SHRI NARESH SINGH & ORS.

..... Respondents

Through: Mr. S.L. Gupta with Mr. Ram
Ashray, Advocates for the
Respondent No.3 Insurance Co.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants impugn a judgment dated 04.11.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) preferred by the Appellants for the death of their son Master Akhlesh Kumar aged 13 years was dismissed on the ground that the Appellants failed to establish that the accident was caused on account of the rash and negligent driving of half-body truck No.HR-38A-6195 by Naresh Singh the First Respondent.

2. On 17.01.1998, deceased Akhilesh Kumar along with his younger brother Vinod was travelling in a TSR No.HR-10-6312 from Narela to Safiabab. When the TSR reached Safiabab Road near water tank Narela, truck No. HR-38A-6195 being driven in rash and negligent manner by the First Respondent came from Safiabab side and struck against the TSR. As a result of the impact, Akhlesh Kumar suffered serious injuries. The deceased was removed to Hindu Rao Hospital and was then shifted to Dr. Ram Manohar Lohia Hospital and Safdarjang Hospital. The deceased succumbed to the injuries in Safdrjang Hospital.
3. During inquiry before the Claims Tribunal, the Respondents No.1 and 2 (the driver and the owner of the offending vehicle) preferred not to contest the proceedings and were ordered to be proceeded ex parte. The Respondent No.3 New India Assurance Co. Ltd. contested the Claim Petition by way of filing a written statement and disputed the manner of the accident.
4. During inquiry, the Appellants examined PW1 Vinod Kumar an eye witness of the accident. He deposed about the manner of the accident. PW2 Vyas Puri is the deceased's father. He testified that the deceased was a student of 9th Standard. He proved the School Leaving Certificate and the Character Certificate as Exs PW2/2 and PW2/3 respectively.
5. While dealing with the issue of negligence, the Claims Tribunal held as under:

“8. The brother of the deceased, Vinod Kumar was examined by the petitioners as the eye witness to the accident. As per this witness it was the TSR driver who called the police on the spot and statement of this witness as well as that of the driver of TSR was recorded by the police. Petitioner No.1 examined himself and proved the death certificate of deceased Akhlesh Kumar, the FIR registered against respondent No.1, the MLC conducted upon the deceased Akhlesh, the post-mortem report pertaining to deceased, the site plan as well as the charge-sheet filed ultimately against respondent No.1, the driver of the offending truck.

9. As per the contents of the charge-sheet which is Ex.P-6, no eye witness had been found by the police on the spot. Both vehicles i.e. the bus and the TSR were found in an accidental state on the spot. The direction from which the offending truck was coming has not been brought out clearly by either the testimony of the eye witness or even in the site plan. The dead body of deceased was identified by the cousin brother Mithlesh Kumar and the father of the deceased i.e. petitioner No.1. Police searched for eye witness also in the hospital but none was found. There is no mention of name of Vinod Kumar PW-1 in this case nowhere either in the FIR or in the charge-sheet or on any of the document prepared by the police. Although the list of prosecution witness does mention Vinod Kumar at serial No.15. Going by the contents of the charge-sheet and in the absence of the investigation proceedings, it is not understandable as to how the concerned IO has made Vinod Kumar as a witness when in the charge-sheet the concerned IO has himself stated that no eye witness was found either at the spot or in the hospital at any point of time. It is stated that site plan was prepared, but it is not clear as to at whose instance the site plan was

prepared. Even the seizure memo of the truck nor of the TSR is on record and in fact there is no mention of the same even in the charge-sheet. It is not clear as to when both the TSR as well the truck were found on the spot, why and on what basis the charge-sheet was filed against the driver of truck and as to what led the IO concerned to arrive at a prima facie finding that it was the truck driver who was responsible for causing the accident? None of the documents evidencing the seizure of the truck or preparing of site plan have been proved by the petitioner. The witness PW-2 has earlier in his initial statement has stated the name of the driver of the truck as Ramesh and which after seeking permission from this court he had been allowed to rectify the same as Naresh Singh. It is not clear at all as to due to whose negligence the said accident occurred i.e. by the rash and negligent driving of the truck driver or of the TSR driver. PW-1 clearly appears to have been brought in as a witness subsequently and whereas actually this witness was not present on the spot. Had he been present and seen the accident his presence was natural and probable on the spot of accident or at least at the hospital after the accident. But as stated above it is stated in the charge-sheet that no eye witness had been found by the police at any point of time at the spot or even at the hospital. The testimony of PW-1 is not inspiring any confidence. Petitioner has hardly led any documentary evidence to prove the circumstances of the accident not even the site plan has been proved by the petitioner.

The death of Master Akhlesh Kumar s/o Vyas Puri stands established by Ex.P-3. However, the same does not establish the link between the death of the deceased and its being caused by the driver of the truck No.HR-38a-6195. The petitioner has hardly led any evidence worth its name to prove the

contention made regarding issue No.1 that deceased Akhlesh Kumar died in motor accident caused by rash and negligent driving of truck No.HR-38A-6195 by its driver Naresh Singh R-1 on 17.1.98 at about 3 P.M. Accordingly, issue No.1 stands decided against the petitioners.”

6. As I have already noticed above, the Respondent No.1 Naresh Kumar did not contest the proceedings in spite of due service. Vinod Kumar deposed about the manner of the accident and testified that while he and his brother were travelling in a TSR, a half-body truck No. HR-38A-6195 being driven in rash and negligent manner by the First Respondent came from Safiabadd side and struck against the TSR. This part of the testimony was not challenged in cross-examination conducted on behalf of the Respondent No.3 Insurance Company. It is not fathomable as to how the Claims Tribunal reached the conclusion that PW1 Vinod Kumar was not an eye witness of the accident simply on the ground that the IO did not meet him at the spot and later on in the Hospital. It has to be borne in mind that the deceased was aged 13 years and PW1 Vinod Kumar was aged 12 years (at the time of the accident). PW Vinod Kumar might have proceeded to his home after the accident or might have accompanied the deceased. The fact, however, remains that no question was put to PW1 on this aspect in cross-examination. A criminal case being FIR No.21/1998 Police Station Narela was registered in the PS. During investigation of the criminal case, statement of Vinod

Kumar was recorded under Section 161 Cr.P.C. During investigation he was also examined as a witness in the court of Metropolitan Magistrate trying the criminal case wherein he duly supported the prosecution version that the accident was caused on account of rash and negligent driving of truck No.HR-38A-6195 by the First Respondent.

7. It has to be borne in mind that in a Claim Petition under Section 166 of the Act, the negligence is not required to be proved beyond reasonable doubt but on the touchstone of preponderance of probability. A reference can be made to a report of the Supreme Court in *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, wherein it was held as under:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

8. The observations of the Supreme Court in *Bimla Devi (supra)* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.

9. In my view, the Claims Tribunal erred in holding that the Appellants had failed to establish culpable negligence on the part of the First Respondent. As stated earlier, it is clearly proved that the accident was caused because of rash and negligent driving of truck No.HR-38A-6195 by the First Respondent.
10. As far as quantum of compensation is concerned, the case is covered by a judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763, where after considering the various judgments of the Supreme Court a compensation of ₹3,75,000/- was awarded in case of death of a minor child. Paras 4 to 8 of the report in *Farzana (supra)* are extracted hereunder:

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. *The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi's case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.*

6. *The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi's case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-*

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as *Manju Devi V. Musafir Paswan*, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of *R.K. Malik vs. Kiran Pal, III* (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that

account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

11. It may be mentioned that 1/3rd deduction towards personal and living expenses in the notional income of ₹15,000/- was not made by the Supreme Court in *Manju Devi (supra)* which was followed by this Court in *Sobhagya Devi(supra)* and then in *Farzana(supra)*. Thus, the Appellants are entitled to overall compensation of ₹3,75,000/- i.e. ₹2,25,000/- on account of loss of dependency, ₹75,000/- towards future prospects and ₹75,000/- towards non-pecuniary damages.
12. The compensation awarded shall carry interest @ 7.5% per annum from the date of the filing of the Petition till the date of payment. The Respondent No.3 New India Assurance Co. Ltd. is directed to deposit the compensation in the name of the Appellants with UCO Bank, Delhi High Court Branch in equal shares within six weeks.

13. Since this accident took place in the year 1998, 50% of the amount deposited shall be released in favour of the Appellants immediately on deposit. Rest of the amount shall be held in Fixed Deposit for a period of two years.
14. The Appeal is allowed with costs throughout quantified at ₹10,000/-.

(G.P. MITTAL)
JUDGE

JULY 02, 2012
pst