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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 19th July, 2012

+ **MAC. APP. No.301/2011**

RAJESH KUMAR.

..... Appellant

Through: Mr. Manish Maini, Advocate

Versus

OM PRAKASH & ORS.

..... Respondents

Through: Mr. Sameer Nandwani,
Advocate for the Respondent
No.3 Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹50,000/- awarded for the death of one Rekha who died in a motor vehicle accident which occurred on 23.09.2008.
2. The finding on negligence is not disputed by the Respondents and has thus attained finality between the parties.
3. During enquiry before the Claims Tribunal, the Appellant concealed the factum of his remarriage. On police report, it was confirmed that the Appellant had remarried. He, therefore, had to later on admit that he had remarried. It was thus established

that the Appellant told a lie in the Court about the factum of his remarriage and tried to conceal the same to the extent possible. Paras 17 to 23 of the impugned judgment are extracted hereunder:

“17.Ld. Counsel for petitioner has placed reliance on Bhuri Bai and Anr v. Shyam Sunder, 2007 ACC 384 (decided on 5/7/2006) and MS RTC v. Darab Khan II (2005) ACC 678 (Bombay High Court)(decided on 4/8/2004) to fortify her argument that remarriage of the petitioner would not make any difference.

18. I have gone through the judgments.

19. In Bhuri Bai’s case (supra) the petition had been filed by the widow, child and parents of the deceased. The petition was dismissed on merits by the Tribunal. The appeal was preferred by the parents of the deceased. The widow and the child had not preferred the appeal. The Hon’ble High Court had, in para 16, simply observed that the remarriage of the widow will not make it a case to disallow the compensation to her even though she had not filed the appeal. In that case it was not clear as to when the widow had remarried. Further, this particular aspect alone had not been taken into account.

20. In MS RTC v. Darab Khan (supra) the parents and brother of the deceased had filed one claim petition and the widow of the deceased had filed another claim petition. An award was passed by the Tribunal. A lumpsum compensation of ₹2 lacs was awarded to the claimants. MS RTC had challenged the award on various grounds and one of the argument was that the widow of the

deceased was not entitled for compensation. The Hon'ble High Court had held that there was no bar for the parents and the brother to seek compensation. The maintainability of the petition by the widow who had remarried was upheld. In this case also nothing has been mentioned as to when the widow had remarried.

21. *The above judgments are therefore distinguishable on facts.*
22. *In the present case the accident had taken place on 23.9.2008. I am not holding that the petition is not maintainable. As per the report of the police and admission of the petitioner (though the admission had come out after the petitioner had been confronted with the police report), there is no dispute that the petitioner had remarried about 1-½ years back. It can be said that he had remarried after about 6 months or 9 months of the accident. The conduct of the petitioner is also material. I have already incorporated the same.*
23. *So far as the remarriage of the petitioner is concerned, I am relying upon H.V. Ranga Raju v. Muqbul Pasa III (2004) ACC 802 (Karnataka High Court) (decided on 6/6/2003). In that case the accident had taken place on 4/6/1995 and the husband of the deceased was found to have remarried. Hon'ble Mr. Justice T.S. Thakur, of the Karnataka High Court (as his lordship then was) had, in paras 6 and 7 observed as under:*

“6. Suffice it to say that remarriage by the husband is an important feature which the court is required to keep in view while determining the extent of the monetary loss on account of loss of services rendered by

the deceased wife. The longer the period for which the husband remains married, the higher will the amount of compensation be. Conversely, if the husband decides to re-marry shortly after the death of the wife, the period for which the loss of service may be considered would be shorter proportionately reducing the amount of compensation payable to him.

7. We, will therefore, have to proceed on the basis that the appellant had contracted a second marriage. If that be so, the multiple applicable for determination of compensation on account of loss of services must get reduced from 18 to the number of years for which the appellant had remained unmarried. Although, there is no clear evidence as to when the appellant contracted the second marriage, yet even if one were to assume that the appellant had remained unmarried for a period of five years, the total amount of compensation on account of loss of services would be ₹10,000/- x 5 i.e. ₹50,000/- “

4. Of course, there are some judgments to the effect that the claim for compensation under Motor Vehicles Act arises out of tort and thus as soon as the tort is committed the person against whom such tort is committed becomes entitled to a compensation. Therefore, if on the date of the accident tort was committed the Claimant was entitled to certain compensation (*New India Assurance Co. Ltd. v. Mona*, (2009) 6 *Maharashtra Law Journal* 728 and *State of Tripura & Anr v. Bela Dey (Das)*)

& Anr., 2011 ACJ 1625). However, the consensus of the various High Courts and also as per the law laid down by this Court is that remarriage of a widow is a relevant factor to be considered and the compensation is to be awarded till a widow remarried. In *Vijay v. Laxmi Chand Jain & Ors.*, 1995 ACJ 755, a contention made on the prospect of re-marriage as a ground for reduction of compensation was rejected, but it was held that if by additional evidence, it was proved that the widow had remarried, the same could have affected the award of compensation. In *Oriental Fire and General Insurance Co. Ltd. v. Shrimati Chandrawati*, AIR 1983 All. 174, Allahabad High Court held that a widow is not entitled to compensation after she remarries. In *Nisha v. Gyanwati*, ILR (2007) 2 Delhi 53, this Court held that “*It would be appropriate if the loss of dependency is confined to the period from the date of the accident till the date of remarriage of the widow*”. Since, the widow had remarried, she would not be considered as a dependent after the date of her remarriage.

5. Turning to the facts of the instant case. It may be mentioned that the Appellant told a lie about his remarriage. On 01.11.2010, he told the Court on oath that he had not remarried, whereas on 04.12.2010 he stated that he had remarried one and half years ago back. The Motor Accident Claims Tribunal(the Claims Tribunal) in this regard observed as under:

“16. On 1/11/2010 the petitioner was again examined by me to find out as to whether he has

remarried or not. The petitioner stated on oath that he had nor remarried. I then got this particular fact verified. SHO Police Station Najafgarh submitted a report intimating the Court that the petitioner had remarried about 1- ½ years back. The petitioner appeared again before me on 14/12/2010. He reiterated that he had not remarried. When he was confronted with the report of the police, he submitted that a lady named Geeta is residing with him for the last six months. On being again question, the petitioner admitted that he had remarried about 1-½ years back. It shows the conduct of the petitioner. He has scant regard for truth. Whatever may be the reason for him to conceal the factum of remarriage, the fact remains that he did not, in the first instance, state that he had remarried about 1-½ years back.”

6. Thus, apart from the fact that the Appellant concealed the factum of his remarriage, it may be mentioned that the deceased Rekha died issueless and there was no loss of dependency as the Appellant remarried immediately after the death of Smt. Rekha, his previous wife. The Claims Tribunal was justified in granting a lumpsum compensation of ₹50,000/-.
7. The Appeal is devoid of any merit; the same is accordingly dismissed.
8. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

JULY 19, 2012
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