

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

Date of decision: 15th October, 2012

+ **MAC.APP. 877/2010**

RAJANI SHARMA & ORS. Appellants
Through Mr. Sunil Kumar Verma, Adv. with
Mr. D.N. Singh, Adv.

versus

BODHU & ORS. Respondents
Through Ms. Manjusha Wadhwa, Adv. for R-3.

+ **MAC.APP. 49/2011**

NATIONAL INSURNACE COMPANY LTD. Appellant
Through Ms. Manjusha Wadhwa, Adv.

versus

SMT. RAJANI SHARMA & ORS. Respondents
Through Mr. Sunil Kuamr Verma, Adv. with
Mr. D.N. Singh, Adv. for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals MAC APP.877/2010 and MAC APP.49/2011 arise out of a judgment dated 18.09.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹67,21,000/- was awarded for the injuries suffered by Munish Kumar Sharma in a motor vehicle accident which occurred on 10.01.2004. Said Munish

Kumar Sharma succumbed to the injuries a little less than five years after the same.

2. The deceased Munish Kumar Sharma was a building contractor and was running a Proprietorship firm in the name and style of M/s. Bhanu Associates. He was mainly working for Indian Railways and Indian Oil Corporation and was being assessed to income tax. On the fateful day, that is on 10.01.2004 he was proceeding on his motor cycle No.DL-2CS-1396. When he was on the intersection of Sectors 22 and 23, Dwarka, a truck bearing No.HR-55A-7823 which was driven by Respondent No.1 Bodhu in a rash and negligent manner, came from the left side and struck against the car. Ram Nath Sharma and Manoj Upadhaya who were travelling in that very car suffered injuries. Ram Nath Sharma was declared brought dead in the DDU hospital. Deceased Munish Kumar Sharma suffered head injuries. He was also removed to DDU hospital and was later on shifted to Apollo Hospital. On account of the injuries suffered Manish Kumar Sharma became paraplegic and was unable to move of his own. He was unable to move, to eat or drink anything from the date of the accident till he died on 04.10.2008.
3. Deceased Munish Kumar Sharma was holding a Diploma in Civil Engineering. He returned an income of ₹2,22,000/- in the relevant year of his death, which was disbelieved by the Income Tax Officer. His income was increased to ₹ 4,50,000/-.
4. The Claims Tribunal awarded a compensation of ₹67,21,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicine & Treatment	₹9,50,000/-
2.	Loss of Income/Loss of Earning Power	₹ 16,25,000/-
3.	Loss of Amenities	₹ 1,50,000/-
4.	Pain and Suffering	₹ 1,50,000/-
5.	Conveyance and Special Diet	₹ 1,50,000/-
6.	Attendant Charges	₹ 1,71,000/-
7.	Loss of Dependency	₹ 34,20,000/-
8.	Loss of Love & Affection	₹ 75,000/-
9.	Funeral Expenses	₹ 10,000/-
10.	Loss to Estate	₹ 10,000/-
11.	Loss of Consortium	₹ 10,000/-
	Total	₹ 67,21,000/-

5. For the sake of convenience, the Appellants in MAC APP.877/2010 shall be referred to as the Claimants whereas Appellant in Cross Appeal being MAC APP.49/2011 shall be referred to as the Insurance Company.
6. The contentions raised on behalf of the Claimants is that the deceased's future prospects were not taken into consideration while computing the loss of dependency and that the compensation awarded towards Attendant Charges is wholly inadequate considering that the deceased Munish Kumar Sharma was in a vegetative state for a period of about 57 months.

7. On the other hand, following contentions are raised on behalf of Insurance Company:-

- (i) There was contributory negligence on the part of deceased Munish Kumar Sharma. The Claimants were not entitled to full compensation.
- (ii) The compensation payable to injured on account of non-pecuniary damages, that is, loss of amenities, pain and suffering is not payable to the legal heirs if the injured dies during pendency of the Claim Petition as it is only the loss of estate which could be awarded to the legal heirs. Reliance is placed on the Full Bench judgment of the Karnataka High Court in *Uttam Kumar v. Madhav & Anr. 2002 ACJ 1828*.
- (iii) The compensation of ₹75,000/- awarded towards loss of love and affection is excessive and exorbitant.
- (iv) The income of the deceased as ₹4,50,000/- was excessive and exorbitant.
- (v) Award of sum of ₹1,71,000/- towards Attendant charges were excessive and exorbitant.

NEGLIGENCE

8. I have before me the Trial Court Record which contains testimony of PW-11 Manoj Upadhyay and the record of the criminal case pertaining to FIR No.4/2004 registered in Police Station Kapashera including the site plan. The Claims Tribunal dealt with the issue of negligence as under:-

“51. Considering the fact that Manoj Upadhaya had also sustained injuries in this very accident and it was he on whose statement FIR was registered, therefore, his presence at the place of incident which although was disputed by respondent no.3, the Insurance Company, however the same cannot be doubted.

52. Having held so, that Manoj Upadhaya was present at the place of incident at the time of accident and he too had sustained injuries in this very accident vide MLC Ex.PW-4/B, his deposition assumes importance for the disposal of this issue.

53. PW-11 Manoj Upadhaya stated that at the time of accident Munish Kumar Sharma was turning the car towards right side at the intersection of Section 19-20, 22-23, Dwarka. He deposed that at that time respondent no.1 came there driving the offending truck from the left side and struck against their car. He deposed that the impact was so severe that their car rolled thrice on the road and truck too over turned.

54. This deposition of PW-11 could have been controverted on the ‘aspect of negligence’ on behalf of respondent no.1 & 2. However, respondent no.1 & 2 had chosen not to appear and contest the claim petition filed by the petitioners and were proceeded ex parte. Thus, deposition of PW-11 remained uncontroverted on the ‘aspect of negligence’. Deposition of PW-11 have been corroborated and supported from the documentary evidence on record in the form of site plan Ex.PW-5/3. It is apparent on perusal of site plan that accident had taken place at an intersection.

55. In a city like Delhi, where the total number of vehicles, exceeds far ahead than the composite number of vehicles, which all the other four metropolitan cities of the country possess, driver of every motor vehicle is supposed to follow certain basic rules and regulations promulgated by the Government. These rules and regulations have been formed not only for the safety of the person driving the motor vehicle but also for the other road users, so as to minimize the chances of road side accidents.

56. It is incumbent duty of driver of every motor vehicle to drive his vehicle at a controlled speed so that it always remain in control to avoid any unforeseen eventuality. It is also expected to driver of

motor vehicle to slow down the speed of his vehicle while approaching an intersection and to look for other vehicles already on the intersection.

57. In the present case, it is apparent from deposition of PW-11 as well as documentary evidence that respondent no.1 failed to follow any of the aforementioned rules and regulations. It is apparent from Ex.PW-5/3 that car of the petitioners had almost crossed the intersection when the same was hit by the offending truck from the left side.

58. The manner in which the offending truck was being driven and its speed can be assessed from the fact that the car as a result of the impact was rolled over thrice on the road. These facts in itself speaks volume about the negligent manner in which the offending vehicle was being driven by respondent no.1.

59. Having regards to these facts and circumstance, it is apparent that accident did take place due to negligence of respondent no.1, who was driving the truck at a fast speed.”

9. Respondent No.1 Bodhu did not come forward to rebut PW-11's testimony. The Appellant Insurance Company preferred not to summon and examine him to rebut PW-11's testimony that the truck was being driven at an excessive speed and in a rash and negligent manner. The excessive speed of the truck can be gauged from the fact that the motor car which the deceased was driving rolled thrice and the truck also overturned.
10. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a Petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed 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.”

11. The observations of the Supreme Court in *Bimla Devi* were referred with approval in a later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
12. Thus, the Claims Tribunal’s finding that there was culpable negligence on the part of driver of the truck cannot be faulted.

COMPENSATION TOWARDS NON-PECUNIARY DAMAGES:-

13. It is urged by the learned counsel for the Appellant Insurance Company that the claim for damages on account of pain and suffering and loss of amenities abates on the death of the injured, who dies on account of having no nexus to the accident or even on account of the injuries received in the accident.
14. Learned counsel for the Appellant places reliance on the Full Bench decision of the Karnataka High Court in *Uttam Kumar v. Madhav & Anr.* 2002 ACJ 1828. In the said case one Uttam Kumar sustained injuries in a motor vehicle accident on 07.01.1995. On a Petition filed by said Uttam Kumar, a compensation of ₹36,250/- was awarded. He preferred an Appeal seeking enhancement of compensation. Unfortunately, he died during pendency of the Appeal on 25.12.1999 and his legal

representatives were substituted. The Division Bench of the Karnataka High Court relying on its full Bench decision in *Kannamma v. Deputy General Manager, Karnataka State Road Transport Corporation*, 1991 (1) ACJ 707 held that the cause of action will not survive and LRs of deceased Claimant will not be entitled to compensation. The Division Bench, however, made a reference to the Larger Bench in view of the coming into force of the Motor Vehicles Act. The Full Bench approved the earlier decision. Paras 12,13 and 14 of the report are extracted hereunder:-

“12. Considering this question, the Full Bench of this Court in Kannamma's case, 1991 ACJ 707 (Karnataka), has held thus:

"(i) The Common Law Rule 'actio personalis moritur cum persona' as embodied in Section 306 of the Succession Act since applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/her legal representatives;

(ii) Cause of action for personal injuries being founded on tort (motor accident caused by the tortfeasor), injured person's claims for damages under heads recognised by Common Law and not by Statute, based on such tort and not independently of it, cannot, on such person's death, survive for prosecution by his/her executors or administrators (or legal representatives) since Section 306 of the Succession Act, in express terms, declares that the cause of action in favour of a person for personal injuries (tort) does not survive on such person's death to his/her executors or legal representatives;

(iii) A claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the First Appellate Court or be it pending in the Second Appellate Court, does not survive on such person's

death not caused as a consequence of personal injuries, to his legal representatives;

(iv) A claim of a person for compensation for personal injuries if has resulted in award of the Claims Tribunal or decree of the Appellate Court, survives to his legal representatives on his death, even if such death is not the consequence of personal injuries sustained by him and hence, if such award or decree is disputed in the First Appellate Court, or the second Appellate Court, the same could be resisted by the legal representatives of the claimant;

(v) A person's claim for compensation for personal injuries under the head loss to his/her estate, can, on his/her death as a consequence of such injuries, be prosecuted by his/her legal representatives, if they do not include a claim for compensation under that head, as and when they file a claim petition under clause (b) of Sub-section (1) of Section 110-A of the Act, on the death of the person injured".

13. After elaborate discussion and detailed order, the Full Bench answered thus:

"(i) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939 by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income etc. (loss to estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to

loss to estate of the deceased person due to bodily injuries sustained in the motor accident".

14. On overall consideration and as discussed above, we are in full agreement with the well reasoned order made by the Full Bench since that part will not say anything regarding Section 306 of the I.S. Act and it is not necessary to go into the observation. It is also not necessary to go into the question of fact as alleged by the LRs that the deceased died due to the injuries sustained in the accident and that question can only be considered while considering the compensation. We answer the reference in the affirmative and fully approve the earlier Full Bench decision in Kannamma's case as stated."

15. The Delhi High Court in *V. Mepherson and Anr. v. Shiv Charan Singh & Ors. 1 (1998) ACC 6* relied on a judgment of Punjab and Haryana High Court in *Joti Ram & Ors. v. Chaman Lal & Ors. 1984 ACJ 645* and held that in a Claim for damages for injuries suffered by a deceased, the Claim so far as it relates to non-pecuniary damages, i.e. pain and suffering etc. suffered by the injured would abate on the death of the injured. The right to sue would survive in case of the pecuniary damages which could be on account of special diet, purchase of medicines, conveyance, etc.
16. Admittedly, Munish Kumar Sharma died on account of the injuries suffered in the accident. The claim for non pecuniary damages at item No. 4, referred in Para 138 of the judgment is therefore, not admissible to the legal heirs. The same is accordingly declined.

ATTENDANT CHARGES

17. It is urged by the learned counsel for the Claimants that they had to engage a nurse (Anny Ms.) from 29.04.2004 till the deceased Munish

Kumar Sharma succumbed to the injuries. She was being paid charges @ ₹400/- per day.

18. I have before me the statement of PW-3. She deposed that she was charging ₹400/- per day from 29.04.2004 till her statement was recorded on 23.07.2007. Minimum Wages of a skilled person in the year 2004 were ₹3286/- per month. Any income beyond ₹50,000/- i.e. above ₹ 4,200/- per month was taxable. It is true that the work of a qualified Nurse cannot be compared with a normal skilled worker. It would be reasonable to hold that a Nurse would have been paid a salary/remuneration at average rate of ₹250/- per day or ₹7,500/- per month.
19. From PW-2 Dr. A.N.Jha's testimony, who treated deceased Munish Kumar Sharma, from January, 2004 to June, 2005 in Apollo Hospital, it is established that the deceased Munish Kumar Sharma suffered serious head injuries, remained admitted in ICU for a long time. He underwent Tracheostomy. He was completely disabled and required conservative care and prolonged nursing. He required lifelong nursing and support and there were no chances of recovery of the patient. The Claims Tribunal, however, awarded a lumpsum compensation of ₹ 1,71,000/- towards Attendant charges which is on the lower side. I would make a provision of ₹ 4,27,500/- towards Attendant charges @ ₹7,500/- per month for 57 months.

LOSS OF DEPENDENCY

20. A feeble attempt was made by the learned counsel for the Appellant Insurance Company to urge that there was no nexus between the injuries

suffered by Munish Kumar Sharma in the accident which occurred on 10.01.2004 and his death on 04.10.2008. She stated that in the circumstances, the owner of the offending vehicle and for that matter, the Appellant Insurance Company were not liable to pay any compensation on account of loss of dependency. I have dealt with the above testimony of PW-2 Dr. A.N.Jha who deposed that the deceased was completely disabled with no possibility of him returning to normal life. The Claimants also examined PW-13 Dr. Anant Madaan from Apollo Hospital. He testified as under:-

“I have brought the summoned record with respect to Munish Kumar Sharma. He was admitted to our hospital on 26.09.2008. He was treated in the Apollo Hospital till 04.10.2008, on which date, he expired due to diffuse axonal injury with Cardiac Arrest, urine Tract infection with Septic Shock. I have brought the record of the treatment given by the hospital authorities to Munish Kumar Sharma. Copies of the same are Ex.PW-13/A (Collectively). Death Certificate of Munish Kumar Sharma was issued from the hospital, copy of the same is Ex.PW-13/B. The infection with which Munish Kumar Sharma was suffering, has resulted due to the injuries sustained by him in the accident.”

21. Thus, it is evident that the deceased Munish Kumar Sharma had died on account of the injuries suffered in the accident.
22. Coming to the deceased's income, a perusal of the Trial Court record reveals that in the Assessment Year 2004-05 the deceased returned the income of ₹2,22,060/- and in the Assessment year 2005-06 (Financial year 2004-05), the deceased returned the income of ₹1,47,000/-. The deceased Munish Kumar Sharma's Return was taken for scrutiny by the Income Tax Authorities and an addition of ₹2,29,007/- was made therein. Thus, the total income for the AY-2004-05 (previous year 2003-04) was

₹4,51,000/-. The Claims Tribunal accepted this income to compute the loss of dependency.

23. The learned counsel for the Appellant Insurance Company disputes this income on the ground that this was not the income returned by the deceased; that the ITR was filed after the death of the deceased and that this addition could be manipulated.
24. I would not agree with the submissions raised on behalf of the Appellant Insurance Company. The deceased met with his accident in January, 2004. This Return was filed in October, 2005. If the deceased wanted, he could have filed the Return for a much higher amount. In fact, the Return for the next Financial Year, i.e. that year of the death was filed on 31.10.2005. In the ITR Ex.PW-5/10 (AY-04-05) the deceased had claimed a refund of income tax of ₹1,90,382/- as tax of ₹2,31,000/- has deducted at source. Thus, there could not be any question of filing an inflated ITR. Moreover, the assessment order passed by the Income Tax Department, Ward I (II) Faridabad is available on record. The Income Tax Officer also gave detailed reasons for making an addition of ₹2,29,007/-. Thus, income for AY 2004-05 was rightly considered as ₹4,51,070/-. The ITR for the financial year, i.e. upto January, 2004 (AY-2005-06) shows that the deceased returned an income of ₹1,30,181/- from the business and profession and ₹17,550/- for short term gains. Since this income was for a period of about 9 months and 10 days, I would take the deceased's income during the full AY-2005-06 to be about ₹1,70,000/-. The average annual income of the deceased would come to ₹3,10,500/- (1,70,000/- + 4,51,000/- / 2).

25. The deceased was a self-employed person and was working as a contractor mainly for Indian Railways and Indian Oil Corporation. The Claimants would be entitled to an addition of 30% on account of inflation/future prospects on the basis of judgment in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*. There would be a liability of income tax of ₹55,000/- on its earlier stated income. Considering that there were three dependents, the loss of dependency would come to ₹31,00,066/- (3,10,500/- - 55,000/- (income tax) + 30% x 2/3 x 14).
26. It is urged that the Claims Tribunal awarded interest @ 9% per annum which was very exorbitant and excessive. This accident took place in the year 2004 when the rate of interest on long term deposits were between 5-6%. The rate of interest started firming up in the year 2007. The same were in the vicinity of 8-9% in the year 2010. On averaging out the rates of interest, it was unreasonable to award interest @ 9% per annum. The same is therefore, reduced to 7.5% per annum.
27. The compensation awarded is re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medicine & Treatment	₹9,50,000/-	₹9,50,000/-
2.	Loss of Income/Loss of Earning Power	₹ 16,25,000/-	₹ 16,25,000/-
3.	Loss of Amenities	₹ 1,50,000/-	₹ 1,50,000/-
4.	Pain and Suffering	₹ 1,50,000/-	₹ 1,50,000/-

5.	Conveyance and Special Diet	₹ 1,50,000/-	₹ 1,50,000/-
6.	Attendant Charges	₹ 1,71,000/-	₹ 4,27,500/-
7.	Loss of Dependency	₹ 34,20,000/-	₹31,00,066/-
8.	Loss of Love & Affection	₹ 75,000/-	₹ 75,000/-
9.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
10.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
11.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
	Total	₹ 67,21,000/-	₹ 66,57,566/-

28. The overall compensation is reduced from ₹67,21,000/- to ₹ 66,57,566/-.
29. Since the rate of interest has been reduced there would be change in the computation of interest as well.
30. The Appellant Insurance Company was granted stay of execution of impugned judgment on deposit of the entire amount along with interest as awarded by the Claims Tribunal. The Claimants shall be entitled to amount of ₹ 66,57,566/- alongwith interest @ 7.5% per annum from the date of the judgment till the amount was deposited in this Court in pursuance of the order dated 17.01.2011.
31. Rest of the amount along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
32. Both the Appeals are disposed of in above terms.

33. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 15, 2012

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