

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

**+ MAC.A. 378/2012**

*% Judgment delivered on: 10<sup>th</sup> December, 2013*

NATIONAL INSURANCE CO LTD ..... Appellant  
Represented by: Mr. Manoj R. Sinha, Adv.

Versus

SUSHILA DEVI & ORS ..... Respondents  
Represented by: Mr. D.P.S. Dagar and  
Mr. R.P. Nafria, Advs. for R1 to R6.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Instant appeal has been preferred against the impugned award dated 08.02.2012, whereby the Id. Tribunal has granted compensation as under:

|     |                                   |   |                        |
|-----|-----------------------------------|---|------------------------|
| “1. | <i>Loss of dependency</i>         | = | <i>Rs.10,53,000/-</i>  |
| 2.  | <i>Loss of Love and Affection</i> | = | <i>Rs. 1,50,000/-</i>  |
| 3.  | <i>Funeral Expenses</i>           | = | <i>Rs. 10,000/-</i>    |
| 4.  | <i>Loss of Estate</i>             | = | <i>Rs. 10,000/-</i>    |
| 5.  | <i>Loss of Consortium</i>         | = | <i>Rs. 10,000/-</i>    |
|     | <i>Total</i>                      | = | <i>Rs.12,33,000/-</i>  |
|     | <i>Less (Interim Award vide</i>   |   |                        |
|     | <i>Order dated 30.09.2005)</i>    | = | <i>Rs. 50,000/-</i>    |
|     | <i>Total</i>                      | = | <i>Rs.11,83,000/-”</i> |

2. The brief facts of the case are that on 30.10.2004 at about 9.45 PM, deceased was returning home on his Scooter bearing no. HR-26J-

7568 from his place of work. When he reached near Village Mangla Puri, a Maruti Car bearing no. DL-2C-R-7058 being driven in a rash and negligent manner came from behind and hit the Scooter. Due to forceful impact, deceased fell down on the road and was removed to AIIMS, where Doctor declared him brought dead. Accordingly, a case was registered vide FIR no. 662/2004 at PS-Mehrauli, the same is Ex.CW1/C.

3. Ld. Counsel appearing on behalf of the appellant submitted that there was no involvement of the above noted vehicle. Same has been pleaded before the trial court just to get the compensation. He submitted that the accident took place on 30.10.2004, whereas a notice under Section 133 Cr.P.C. Ex.CW1/G was sent to the respondent no. 8/owner of the offending vehicle on 16.03.2005, i.e., after 4½ months of the accident in question.

4. Ld. Counsel submitted that on 16.03.2005, mechanical inspection of the vehicle was carried out and it was noted that damages were fresh, whereas the accident occurred 4½ months prior to the date of the mechanical inspection.

5. He further submitted that respondent no. 7, i.e., the driver of the alleged offending vehicle had taken the injured to the hospital on the humanitarian ground. It is proved from the MLC, wherein he had given the information that he brought the injured in his Maruti car bearing no. DL-2C-R-7058.

6. Respondent no.7, driver of the offending vehicle deposed before

the trial court that he along with the owner of the car, i.e., his son was coming from Gurgaon. When they reached opposite to MG Road, they found a person in an accidental condition. At the request of the villagers and on humanitarian ground, he took him to AIIMS and later on informed the Police. He alleged that in the month of December, owner of the vehicle, i.e., his son was approached by a gentleman who represented himself to be the brother of the deceased and told that they would get the compensation from the insurance company, if the blame of the accident is accepted by him, to which he denied. It was further alleged that he was threatened of a false implication. Thereafter, he received an information from PS-Mehrauli, that on the basis of a statement of an eye witness, the police had to impound their vehicle. A detailed complaint in this respect was made by respondent no. 8 / owner of the vehicle on 17.03.2005 to the police, wherein it was stated that no accident was caused by him and the allegations were false and fabricated.

7. Ld. Counsel submitted that claimant, Sushila Devi, wife of the deceased examined Sh. Arjun Sahni as PW2, who tendered his affidavit as Ex.PW2/X, wherein he stated that on 30.10.2004 at about 9.45 PM a car bearing no. DL-2C-R-7058 had hit Scooter no. HR-26-J-7568 from behind. He had seen the accident from his own eyes. He also stated that many persons were gathered at the spot and the car owner, i.e., respondent no. 8 had taken injured to the hospital. Further deposed that he sells spices in the area of Village Ghitorni, Aya Nagar and Manglapuri. On the day of accident, he was returning from

Ghitorni to his house at Dakshin Puri on his cycle. He was 10 paces behind the place of accident. He remained at the spot, till the injured was removed to the hospital. He had gone to the PS-Mehrauli on the same day and informed about the accident and number of the offending vehicle. He stated that he knew the injured before the date of accident as the said injured also used to sell the spices. Since he did not know his address, he could not inform his family members.

8. Ld. Counsel further submitted that even the ld. Counsel for the claimants argued before the ld. Tribunal that the offending vehicle had hit the scooter from behind at Mangla Puri, which per se, amounts to negligence. Respondent no. 7, after admitting the deceased in the hospital fled away without giving his address. Notice was given to the registered owner of the offending vehicle, number of which was mentioned in the MLC. Mechanical inspection of both scooter and car was got conducted by the police and fresh damages were noticed.

9. Ld. Counsel further submitted that notice to the registered owner was given by the IO after 4½ months of the accident. Accordingly, he lodged the complaint with the police about this conspiracy on 17.03.2005. The site plan placed along with charge sheet also shows that at the time of accident, scooter was on the right side, however, it should have been on the left side.

10. Ld. Counsel appearing on the behalf of the appellant has pointed out that number of the vehicle was neither mentioned in the FIR nor in DD No.58B. Therefore, there was no eye witness and the police failed

to trace the offending vehicle involved in the accident.

11. Ld. Counsel further submitted that involvement of the offending vehicle was false as there were contradictory statements of the witnesses who deposed before the court. He further submitted that had PW2 Arjun Sahni, knew the number of the offending vehicle, he would have given the number either in the DD or in the FIR. However, at both the places, the number of the offending vehicle was not mentioned.

12. Ld. Counsel appearing on behalf of the appellant further argued that towards love and affection, ld. Tribunal has granted compensation for a sum of Rs.1,50,000/- which is on a very higher side.

13. He further submitted that ld. Tribunal has wrongly granted 50% towards future prospects, as the claimants failed to prove the permanent employment of the deceased which is contrary to the dictum of *Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121*.

14. On the other hand, ld. Counsel appearing on behalf of the respondents / claimants submitted that respondent no. 7, i.e., driver of the offending vehicle in his written statement in reply to Para 23 of the Claim Petition stated that on the alleged date of the accident, answering respondent along with his son / owner of the offending vehicle was coming back from Gurgaon to Delhi. When they reached opposite to MG Road, they found a person, who had met with an accident. Therefore, on the request of the villagers as well as on the humanitarian grounds, they took the injured person to AIIMS and later

on informed the police. Thereafter, in the month of December, the owner of the vehicle was approached by one gentleman who represented himself to be the brother of the person, who had met with the said accident, that they could get the compensation from the insurance company, if the blame of the accident is taken by the answering respondents, to which he denied.

15. Ld. Counsel for the respondents / claimants has pointed out that if a person had approached him in this fashion and threatened to implead him in a false case, what had prevented him from making any complaint against such person.

16. Ld. Counsel further submitted that respondent no. 7, driver of the offending vehicle, i.e., Vinesh Khanna has submitted that on the request of Trilochan Singh, he took the injured to the hospital, but name of such person has not been mentioned in the statement. The said Trilochan Singh has filed his affidavit with the insurance company only but did not come forward for the cross-examination in the court.

17. Ld. Counsel further submitted that the police was helping the owner / driver of the offending vehicle. Therefore, despite the fact that the registration number of the vehicle being indicated in the MLC and the number of the MLC also being noted in the FIR, the police did not enquire about the accident from the owner of the offending vehicle. Therefore, having no option, PW2, Arjun Sahni approached the police station and gave the incident in writing with vehicle number and only thereafter, the police had issued notice under Section 133 Cr.P.C. to the

owner of the offending vehicle on 16.03.2005.

18. Ld. Counsel further submitted that in the absence of any eye witness, it was the primary duty of the police to approach the person, who had taken the injured to the hospital and who had given him name and registration number of his vehicle. Despite the above facts, the police failed to approach the person and continued to sleep till PW2, Arjun Sahni approached the police.

19. Ld. Counsel further submitted that above noted PW2, Arjun Sahni also sells spices and is in the same business as the deceased was. Therefore, he knew him very well, but he could not inform his family members about the incident as he did not know his address.

20. On the issue of compensation granted towards love and affection, Id. Counsel appearing on behalf of the respondents / claimants submitted that there were six dependents, i.e., wife and five children, therefore, Id. Tribunal has granted Rs.25,000/- each to all the dependants and it is not on the higher side.

21. I have heard Id. Counsels for the parties.

22. In the instant case, the accident took place on 30.10.2004 at about 9.45 pm when the deceased was returning home on his Scooter bearing no. HR-26J-7568 from his work place.

23. Arjun Sahni, PW2, an eye witness of the accident, deposed that on 30.10.2004, at about 9.45 PM, he was coming from Ghitorni on his cycle, near Mangla Puri Village, a Scooter bearing no. HR-26-J-7568

was hit from behind by a red colour Car bearing no.DL-2CR-7058. Many persons gathered at the spot. Thereafter, the driver of the Car mentioned above took the scooterist to the hospital in his car. After admitting the injured / deceased in the hospital, he fled away from there. The number of the offending vehicle was also noted in the MLC. However, he did not inform the family members of the deceased as he was not aware of his address.

24. It has also come on record that Arjun Sahni PW2 was cross-examined at length on 16.01.2012 by the counsel for respondent no. 1 but his testimony remained consistent and cogent. Although, respondent no. 1 deposed that on the request of one Trilochan Singh, he took the injured to the hospital but failed to produce the said witness to substantiate this fact.

25. Ld. Tribunal, during the proceedings sought clarification as to when the statement of PW2 was recorded by the police and why the enquiry was not made from the owner of the car, when the number of the offending vehicle had come in the MLC of the injured / deceased. The IO of the case explained that as per standing instructions of the senior officers, no enquiry was made from the person who brought the injured / deceased to the hospital.

26. PW2, Arjun Sahni, eye-witness of the case came to the police station and gave the statement to the SHO in writing. Accordingly, the supplementary statement under Section 161 Cr.P.C. was also recorded. Thereafter, the notice was given to the accused and he was arrested.

27. In the instant case, though the notice was served after 4½ months to the driver and owner of the offending vehicle, but appellant failed to prove their case before Id. Tribunal as the driver of the offending vehicle fled away from the hospital and the number of the offending vehicle had come on the MLC. The testimony of PW2, Arjun Sahni was also remained consistent during cross-examination and the appellant also failed to produce Trilochan Singh on whose alleged request the driver of the offending vehicle took the injured to the hospital. In view of the above discussion, I found no merit in this issue. Accordingly, the same is dismissed.

28. The second issue raised by the appellant is that the compensation of Rs.1,50,000/- granted towards loss of love and affection by the Id. Tribunal is also on the higher side and the Id. Tribunal has wrongly added 50% towards future prospects as the claimants failed to prove the permanent employment of the deceased.

29. Admittedly, there are six dependants, i.e., wife and five children in the present case. It is difficult to award compensation under non-pecuniary heads as there is no yardstick to measure the same. But for loss of companionship, love, care and protection etc., the spouse and the dependants are entitled to get appropriate compensation. Therefore, the learned Tribunal keeping the dependants into view has rightly granted Rs.25,000/- each towards love and affection. Hence, I do not find any discrepancy in awarding the same.

30. The issue of future prospects is no more *res-integra* as this has

been decided by the Full Bench of the Apex Court in the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** followed by this Court in the case of MAC. Appeal No.846/2011 titled as ***ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.*** Therefore, keeping in view the age of the deceased, the ld. Tribunal has rightly added 50% towards future prospects.

31. In view of above discussion, the present appeal is dismissed.

32. The Registrar General of this Court is directed to release the balance compensation in favour of the respondents / claimants with interest accrued thereon.

33. Statutory amount be released in favour of the appellant.

**SURESH KAIT, J.**

**DECEMBER 10, 2013**

*Jg*