

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

+ **MAC.APP. 554/2011 & CM. NO. 11413/2011 (Stay)**

% *Judgment reserved on: 31st January, 2013*
Judgment delivered on: 13 February, 2013

NATIONAL INSURANCE CO LTD. Appellant
Through: Ms.Neerja Sachdeva, Advocate.

Versus

MONA MEHDIRATTA & ORS. Respondents
Through: Mr. Anshuman Bal, Advocate for
Respondent Nos. 1 to 4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

+ **MAC.APP. 554/2011**

1. Vide the instant appeal, the appellant has challenged the award dated 17.02.2011, whereby the learned Tribunal has awarded a total compensation as under:-

1.	<i>Compensation for loss of dependency</i>	<i>Rs.27,64,800/-</i>
2.	<i>Compensation for the loss of estate</i>	<i>Rs. 10,000/-</i>
3.	<i>Compensation for funeral expenses</i>	<i>Rs. 5,000/-</i>
4.	<i>Compensation for loss of consortium</i>	<i>Rs. 10,000/-</i>
5.	<i>Compensation for loss of love and affection</i>	<i>Rs. 40,000/-</i>
	<i>Total</i>	<i><u>Rs.28,29,800/-</u></i>

2. The instant appeal has been filed on the ground that the learned Tribunal has erred in not appreciating that it was a clear cut case of intentional violation of permit conditions and therefore, should have been given recovery rights to the appellant company in such a case.

3. Learned counsel for the appellant/Insurance Company appeared before the learned Tribunal had submitted that the offending vehicle was a commercial vehicle which was being driven in violation of permit conditions and provisions of Sections 66, 84 and 79 & 79 (2) (VIII) of MV Act.

4. While relying upon a case of *M.C. Mehta Vs. UOI, (1977) 8 SCC 770*, the learned counsel submitted that the respondent Nos.1 & 2 are guilty of violation of permit conditions on account of the grounds mentioned below:-

- a) That suitable speed control device was not fitted in the offending vehicle to ensure that vehicle is not being driven beyond the speed limit of 40 KMPL
- (b) That authorization card of driver of the offending vehicle at the time of accident has not been proved by R1 & R2.

5. It is further argued that the vehicle was being driven beyond the speed of 40 KMPH at the time of accident. To strengthen his argument, learned counsel submitted that detailed guidelines have been issued in respect of speed controlling device and authorization of drivers entitle to ply the vehicle in the case of *M.C. Mehta (supra)*. Respondent Nos. 1 and 2, i.e., the owner and the driver failed to lead any evidence to establish that vehicle was being run in accordance with the permit conditions and provisions of the Motor Vehicles Act.

6. It is further argued that despite service of notice Ex.P3W2/1 and Ex.P3W2/2, issued to the owner and driver of the offending vehicle, they failed to produce the original documents pertaining to the authorization of the driver, proof for purchasing and installing of speed governor device and the original permit.

7. Learned counsel further submitted that in these circumstances, an adverse inference should have been taken against respondent Nos. 1 and 2 and the recovery rights should have been given against the respondents mentioned above.

8. On this issue, the learned Tribunal has recorded its opinion that undisputedly, any vehicle being driven by a person other than the authorized driver, without installation of speed governor device shall be treated as being used in contravention of the permit. However, the directions by the Apex Court in *M.C. Mehta's* case (*supra*) were given in a bigger prospective to ensure system of safe traffic for all concerned. Since in the aforesaid case there was no issue relating to the recovery rights against the driver and owner of the offending vehicle, therefore, the directions issued in that case cannot be relied upon.

9. The learned Tribunal has further recorded that recovery rights in a case of MACT is a serious question of rights between the parties. Therefore, in accordance with the established norms of adversarial system of adjudication, the party who take the plea is under legal obligation to prove by way of convincing evidence. Merely because, despite issuance of notice under Order 12 Rule 8 CPC to respondent Nos. 1 and 2, they failed to produce the relevant documents, the appellant cannot claim that they have been able to discharge their burden of proof as the appellant was under legal

obligation to prove the permit violation by positive and cogent evidence.

10. The learned Tribunal has further recorded that as per the testimony of R3/W1 Shri S.P.Singh from STA Branch, Rajpura Road, Delhi, he could not tell as to whether any authorization letter was given to the authority to inform as to who would be authorized to drive vehicle in question. He further stated that respondent No.2 (therein) was the registered owner of the vehicle and the permit was issued in his name on 05.11.2008.

11. The learned Tribunal has opined that from the testimony of the aforesaid witness itself, it was not established that the offending vehicle was being run without speed governor device or being run at excessive speed or was being driven without any authorization. However, the appellant/Insurance Company was unable to answer any of these queries. They could have summoned the authorization records from the Transport Authority to establish the fact who was the authorized person to drive the offending vehicle.

12. The other ground taken by the appellant is that the learned Tribunal gravely erred in accepting the double income of the deceased.

13. The learned Tribunal has relied upon the deposition of the father of the deceased, whereby he deposed that his son was being paid Rs.6,000/- per month from his firm, namely, M/s Dinesh Leather Store and the wife of the deceased had deposed that income of the deceased from his father's firm was Rs. 7,000/- per month.

14. To this effect, documents have been filed, i.e., the balance sheet for the year ending on 31.03.2007, which was filed by the father of the deceased of his firm by showing the expenditure towards the salary as Rs.60,000/-.

15. Learned counsel for the appellant submitted that the balance sheet as

on 31.03.2008 showed the expenses towards the salary as Rs.50,000/- and, therefore, by no stretch of imagination, the testimonies of the wife and father of the deceased corroborated with the financial documents filed on record. Moreover, the aforesaid documents did not show as to how many employees were working in the said firm.

16. On this issue, the learned Tribunal has recorded his opinion by stating that according to PW1, the wife of the deceased, her husband was aged about 34 years at the time of the accident. He was working in the Capital Public School, Raghubir Nagar from 8.00 AM to 1.00 PM and was earning Rs.8,000/- per month and thereafter from 2.00 PM to 8.00 PM, he was working in the firm of his father and was getting salary of Rs.7,000/- per month. Her testimony is supported by PW2, Shri Ashok Kumar, who proved the salary slip of deceased Deepak Mehendiratta issued by the Manager of Capital Public School.

17. In addition to that, PW3, Shri Ram Dass, father of the deceased deposed that his son was working in his firm alongwith him as Sales Incharge from 2.00 PM to 8.00 PM and was getting salary of Rs.6,000/-per month.

18. The learned Tribunal has taken an inference of PW3 that the deceased was getting salary of Rs.72,000/- *per annum* from the firm of his father. Accordingly, learned Tribunal has relied upon the balance sheet of the firm filed by PW3 for the year ending on 31.03.2007, whereby the expenditure towards the salary is stated as Rs. 60,000/- and net profit as Rs.1,47,809.95.

19. Thus, learned Tribunal has recorded its opinion that the deceased was working in the school till 1.00 PM and after 1.00 PM he was free for any other job, therefore, he had been working with his father in a firm in the

name and style of 'M/s Dinesh Leather Store', whose income tax returns have also been filed.

20. The learned Tribunal has come to the conclusion that even if the salary of Rs.50,000/- is taken as a salary of the deceased from the firm of his father as per the balance sheet dated 31.03.2008, he was getting a salary from the firm of his father at least @ Rs.4,000/- per month. Therefore, the monthly income of the deceased comes to Rs.12,000/- per month (i.e. Rs.8,000/- from school + Rs.4000/-from the company of his father).

21. Learned counsel for the appellant has further argued that the learned Tribunal erred in taking the future prospects into consideration. To strengthen her arguments, she has relied upon a case of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., reported in III (2009) ACC 708 (SC)***, wherein it is established that the benefit of future prospects could be given in only those cases where the deceased was having a permanent job. However, in the present case, the deceased was working on a temporary basis.

22. Learned counsel has further argued that that learned Tribunal has also erred in deducting 1/5th of the income towards personal expenses. It is wrongly held in Para 28 of the impugned order that in the present case, the income of the deceased was being spent on himself, his wife and four children. However, it is a matter of record that the deceased had two children, wife and mother as dependants. Therefore, as per the latest judgment of ***Sarla Verma (supra)***, the deduction towards personal expenses was to be taken as 1/4th and not 1/5th.

23. On this issue, the learned Tribunal has relied upon a case decided by this Court titled as ***Union of India & Ors. Vs. M.K. Ghuman & Ors., 2010***

ACJ 391, the personal expenses of the deceased was deducted as 1/4th of his income. The learned Tribunal has further recorded that since in the present case, the income of deceased was being spent on himself, his wife and four children, therefore, it considered the personal expenses as 1/5th of his total income.

24. Lastly, the learned counsel for the appellant has argued that the learned Tribunal has also erred in granting Rs.40,000/- towards loss of love and affection, which should have been maximum Rs.25,000/- as per the case of *Sarla Verma (supra)*.

25. On the other hand, learned counsel appearing on behalf of the respondents/claimants has submitted that on the issue of double salary, the parents of the deceased and wife of the deceased have prove that he was working in a school and thereafter in the firm of his father. Since the father of the deceased has established this fact by producing the balance sheet filed before the Income Tax Department, therefore, there was no occasion for the learned Tribunal to disbelieve this fact. Consequently, while relying on the said documents, the learned Tribunal has considered the income of the deceased from the firm as Rs.4,000/-per month, instead of Rs.6,000/- per month as deposed.

26. Regarding the reduction towards personal expenses, learned counsel for the respondents/claimants submitted that this issue depends on the number of dependants. He submitted that in the present case, there were five dependants and the fifth respondent that is the father of the deceased was not considered as dependant by the learned Tribunal. Still there were four dependants.

27. He further submitted that during the pendency of the instant appeal,

the respondent No.4/mother of the deceased had died. Her name had been deleted from the array of the parties and her share was directed to be released in favour of respondent No.5, father of the deceased. Therefore, he submitted that there is no error in the impugned award passed by the learned Tribunal.

28. Learned counsel further submitted that the learned Tribunal has granted only 40,000/- towards loss of love and affection, whereas it should have been more than that as the deceased died at the age of 34 years. He has relied upon a case of ***New India Assurance Co. Ltd. Vs. Gopali & Ors., 2012 (4) TAC 353 (SC)***, wherein the Supreme Court has observed as under:-

“16. What we have observed hereinabove may not apply to rich people living in urban areas who can afford to spend a substantial amount of their income in clubs, hotels and on drinks parties. In those cases, there may be a semblance of justification in applying the rule of 1/3rd deduction but it would be wholly unrealistic to universally apply that rule in all cases. On the basis of the above discussion, we hold that the learned Single Judge of the High Court did not commit any error by not following the rule of 1/3rd deduction towards the personal expenses of the deceased. We are also of the view that the High Court was justified in determining the amount of compensation by granting 100% increase in the income of the deceased. In the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled because the employer was paying 20% of his salary as bonus per year.

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20. In the result, the appeal is dismissed. However, with a view to do complete justice to the claimants, we suo motu re-determine the amount of compensation in the following terms by applying the multiplier of 15 and hold that the claimants are

entitled to a total amount of Rs.10,63,040/-:

Amount of compensation with 12 months salary and 15 as multiplier: Rs. 5378 x 12 x 15 = Rs.9,68,040

[Rs.2,689 pm x 2= Rs. 5,378/- pm]

Compensation to Family members for loss of love & affection, deprivation of protection, social security, etc.: Rs.70,000/-

Compensation to the widow of the deceased for loss of love & affection, pains and sufferings, loss of consortium, deprivation of protection, social security, etc. : Rs.25,000/-

Total Compensation : Rs.10,63,040

[Rs.9,68,040 + Rs. 70,000 + Rs. 25,000] ”

29. Therefore, the learned counsel for the respondents/claimants submitted that the learned Tribunal has rather granted the lesser amount towards love and affection.

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

31. R3/W1 Sh. S.P. Singh from S.T.A. Branch, Rajpura Road, New Delhi could not tell as to whether any authorisation letter was given to authority as to who would be authorised to drive vehicle in question. However, he has proved that R2 (therein) was the registered owner and the permit was issued in his name on 05.11.2008. The appellant failed to prove contrary to above noted.

32. The appellant also failed to prove that the offending vehicle was being run at excessive speed or was being driven without any authorisation. In this effect, the appellant had neither summoned any record nor produced witness.

33. On the issue of double income, father of the deceased has proved the salary, being given to deceased, by producing the balance sheet filed before

the Income Tax Deptt. PW1, wife of deceased has also corroborated this fact. However, the appellant failed to prove contrary.

34. In addition, PW2 Ashok Kumar has proved the salary slip of deceased issued by Manager of Capital Public School. Considering the nature of the employment of the deceased, the Tribunal assessed the income on the basis of future prospects. Following the dictum in *Sarla Verma (supra)*, 50% increase has been given on account of future prospects. Thus, the Id. Tribunal has rightly assessed income of the deceased.

35. Admittedly, the deceased died at the very young age of 34 years. He had two children, wife and mother dependant at the time of death. Father of the deceased has rightly not been considered as dependant. Keeping in view the young age of deceased and the number of dependants, the Tribunal has rightly deducted 1/5th of his income towards personal expenses.

36. In view of the above discussion and legal position, I find no discrepancy in the award passed by the Id. Tribunal. Therefore, I am not inclined to interfere in this appeal.

37. Consequently, finding no merit, the same is hereby dismissed with no order as to costs.

38. Pursuant to order dated 03.06.2011 appellant has deposited the awarded amount as per the directions. Registrar General of this Court is directed to release the compensation amount in favour of the respondents / claimants as per the terms and conditions as enumerated in the impugned award dated 17.02.2011 passed by the Id. Tribunal.

39. Statutory amount shall also be released in favour of the appellant / Insurance Company.

CM. NO. 11413/2011 (Stay)

In view of the above instant application has become infructuous and disposed of as such.

SURESH KAIT, J.

FEBRUARY 13, 2013

sb/jg