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

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Date of Decision: 03.12.2014

+ MAC.APP. 128/2013
MAC.APP.133/2013
MAC.APP. 150/2013
MAC.APP. 151/2013

MURTI DEVI @ MURTI & ANR. Appellants

Through Mr.O.P.Mannie, Advocate.

versus

ISLAM AND ORS. Respondents

Through Mr.K.L.Nandwani, Advocate for
Insurance Company.

+ MAC.APP. 216/2013
MAC.APP. 219/2013
MAC.APP. 230/2013
MAC.APP. 233/2013 and CM Nos. 4283/2013 & 5514/2014

H.D.F.C. ERGO GENERAL INSURANCE CO. LTD..... Appellant

Through Mr.K.L.Nandwani, Advocate.

versus

MURTI DEVI @ MURTI & ORS. Respondents

Through Mr.O.P.Mannie, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. These eight appeals arise out of a common award dated 01.09.2012. MAC APP.216/2013, 219/2013, 230/2013 and 233/2013 are filed by the Insurance Company seeking to impugn the Award. MAC. APP. 128/2013, 133/2013, 150/2013 and 151/2013 are filed by the claimants seeking MAC.APP.128/2013 & connected matters

enhancement of compensation.

2. The brief facts are that on 25.07.2010 the deceased Kuldeep, his wife deceased Smt. Sudesh with two deceased children Harsh and Lakshya were travelling in a Tata Tempo which was being driven by Kuldeep. When they reached near Durga Trading Factory, the tempo hit a stationary truck parked on the wrong side of the road without any signal or indication and without any parking lights on. All the occupants of the tempo died on the spot.

3. The Tribunal noted that an FIR has been registered under Sections 238/304A IPC against the offending vehicle, namely, the truck. A challan was filed against the driver of the offending truck. Hence, the Tribunal concluded that the accident took place due to the involvement of the offending vehicle and the petition under Section 163 A of the M.V.Act would be maintainable.

4. The Claim petition under Section 163A was filed by the parents of the deceased Sh. Kuldeep who also happen to be the father-in-law and the mother-in-law of deceased Smt. Sudesh and grandparents of the two minor deceased children.

5. In the case of Sh. Kuldeep, as per the affidavit by way of evidence of Smt.Murti Devi, the mother of the deceased, Ex.PW1/A said that the deceased was 33 years old and doing the job of a driver in private service earning Rs.40,000/- per annum. Smt. Sudesh daughter-in-law was a house wife.

6. The Tribunal deducted $\frac{1}{3}^{\text{rd}}$ for personal and living expenses of the deceased and loss of dependency was calculated at Rs.39,000/- x $\frac{2}{3}$ x 17 which is equal to Rs. 4,42,000/-. Rs. 2000/- was awarded for funeral expenses and Rs.2,500/- for loss of estate leading to a total compensation of Rs.4,46,500/-.

7. In the case of deceased Smt. Sudesh the Tribunal noted her age to be 28 years. The Tribunal awarded the same compensation of Rs.4,46,500/- as awarded in the case of deceased Sh.Kuldeep.

8. For the two minor deceased children, the Tribunal followed the judgment of the Supreme Court in the case of ***R.K.Malik vs. Kiran Pal (2009) 8 Scale 451*** and awarded a compensation of Rs.3,75,000/- each.

9. I will first deal with MAC APP.216/2013, 219/2013, 230/2013 and 233/2013 filed by the appellant Insurance Company.

10. Learned counsel appearing for the Insurance Company firstly submits that a father-in-law and mother in-law cannot file any compensation petition for the daughter-in-law. It is further urged that in the case of minor children also no loss of dependency can be awarded to the grandparents as they were not dependent upon the minor children. On the issue of compensation awarded to the minors, it is urged that the claim petition was filed under Section 163A of the M.V.Act. and the formula of Section 166 of the M.V. Act would not be applicable. It is lastly urged that the deceased who was driving the tempo was the owner of the tempo. He was negligent in the driving and the accident took place due to his negligence also. Accordingly, it is urged that there is a clear case of contributory negligence and the tempo owner has to share the liability jointly with the owner of the truck.

11. As far as the issue of daughter-in-law is concerned, under Section 15(1) of the Hindu Succession Act the property of a female Hindu dying intestate first devolve upon sons, daughters and husband and secondly upon heirs of the husband. The mother of the deceased husband Smt. Murti Devi would hence be an heir of deceased daughter-in-law. There is no merit in the said contention of

the learned counsel for the appellant that the in-laws could not file for compensation of the deceased daughter in-law.

12. Regarding the next contention of the appellant, namely, that the grandparents cannot be said to be dependents on the minor children. In this context reference may be had to Section 163A of the M.V.Act which reads as follows:-

“163A. Special provisions as to payment of compensation on structured formula basis.

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

13. The said Section has been enacted for providing speedy relief to the legal heirs of the victim. There is no requirement under Section 163A of the

M.V. Act that only those who are monetarily dependent can apply for compensation. There is no explanation given as to why the grand parents in the facts and circumstances of this case, will not be entitled to relief, especially as the compensation under Section 163A is based on a structured formula. There is clearly no merit in the said contention of the learned counsel for the Insurance Company.

14. Coming to the challenge to the adoption of the judgment of the Supreme Court in the case of ***R.K.Malik vs. Kiran Pal (supra)*** by the Tribunal to award compensation in the case of the deceased minors. In the said judgment, the Supreme Court also adopted the formula for minor children as spelt out under Section 163A of the M.V. Act read with Second Schedule. The said judgment would clearly apply. Hence there is no merit in the said contention.

15. On the issue of sharing liability between the tempo driver and the driver to the truck, as already noted above that the Tribunal has based on the FIR and the charge sheet passed the award against the owner of the offending truck. There is no reason to disagree with the said findings in the Award. There was no attempt by the Insurance Company to lead any evidence to show as to why the findings recorded in the chargesheet should not be accepted. In fact this court in the case of ***National Insurance Company Limited vs. Pushpa Rana, 2009 ACJ 287*** has already held that normally in the absence of any other evidence the charge sheet and the accompanying documents would suffice to show the culpability in a petition under Section 166 of the M.V. Act to show negligent driving of the driver of the offending vehicle.

16. Even otherwise as I have already held above, the contention of the appellant regarding the fault of the deceased in contributing to the accident,

runs contrary to the provisions of Section 163A of the Act.

17. No other issue raised or pressed.

18. In the light of the above, there is no merit in the appeals and the same are dismissed.

19. Statutory amount, if any, be refunded to the appellant-Insurance Company.

20. All interim orders stand vacated.

21. I will now deal with the appeals filed by the claimants, namely, MAC. APP. 128/2013, 133/2013, 150/2013 and 151/2013.

22. Learned counsel appearing for the appellants/claimants submits that after computing compensation amount the Tribunal has wrongly deducted 35% of the award amount on the finding that the accident took place due to the contributory negligence of the offending truck and the driver of the tempo, namely, Kuldeep.

23. A perusal of the award shows that the Tribunal notes in its award that the offending truck was parked on the wrong side of the road without any signal or indication or the parking lights in contravention of the traffic rules and regulations and the accident could have been avoided if the deceased had exercised due care and caution. It notes that the deceased was contributorily negligent to the extent of 35% and deducted 35% of the award amount.

24. It is true that the truck was standing on the wrong side of the road without any signal or indication or without parking lights on in contravention of the traffic rules and regulations. A perusal of the site plan, however, shows that the truck was parked on the one side. It is obvious that the tempo was being driven at a very fast speed and because of the impact all the occupants

have died.

25. However, the entire basis of the award is misplaced. It is settled law that while dealing with petition under Section 163A of the MV Act, the negligence of the victim is of no consequence. In the above context, reference may be had to the judgment of three-Judges Bench of the Supreme Court in ***Deepal Girishbhai Soni and others, v. United Insurance Co. Ltd., Baroda AIR 2004 SC 2107***, the Supreme Court held as follows:

66....In Section 163-A, the expression “notwithstanding anything contained in this Act or in any other law for the time being in force” has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.”

26. Hence, the settled position is that negligence on the part of the victim does not in any manner effect the liability under Section 163A of the Act. In the above context, reference may also be had to the judgment of Division Bench of Gujarat High Court in ***Bajaj Allianz General Insurance Company Ltd. v. Belaben @ Bhumikaben Yatinkumar and 4 Ors MANU/GJ/8603/2006***, wherein in para 5, 12, the Court held as follows:-

“5. In the first place, the liability of the insurer under Sections 140 and 163A of the Act is an independent statutory liability and not a common law tort liability. Liability of the owner/insurer to pay compensation under Section 163-A arises as soon as it is shown that

death/injury resulted from an accident arising from the use of a motor vehicle. If the Insurance Company is permitted to disown its liability on the ground that the driver of the sole vehicle involved in the accident was at fault, that would run counter to the clear provisions of Section 163-A and the legislative scheme in introducing Section 163-A will be frustrated. The Legislature having specifically made the question of negligence irrelevant in a petition claiming compensation under Section 163A of the Act, it is not open to the owner/Insurance Company to dispute the liability to pay compensation by raising the plea about negligence of the driver of the vehicle.

..

12. The non obstante clause at the commencement of Sub-section (1) of Section 163-A, makes the legislative intent most emphatic to give a complete go bye to the fault principle of tortious liability. When overwhelmingly large number of accidents take place on account of some error of some human being, the object of doing away with the fault principle is to remove the burden cast by the common law on the claimants for leading evidence on the question of negligence. The plight of innocent family members of an accident victim hunting for evidence to prove negligence with the help of absolute strangers in a by and large urban setting or on a deserted road not only introduces an element of uncertainty in the midst of certainty of miseries befalling on the bereaved family members of the bread winner, but it also delays the trial of the claim petition. All that the Legislature now wants the claimants to prove is -

(i) death/disablement arising from the injuries received in an accident arising out of the use of the motor vehicle in question.

(ii) age and income of the deceased in a fatal case. or

(ii) age, income, disability and actual expenses in an injury case.

While producing certificate of death/disablement and getting evidence like FIR and panchnama from the police for showing the accident and involvement of the vehicle in such accident would suffice to get a small amount of interim compensation under Section 140, the only further evidence that the claimant/s would need to get substantial compensation for loss of dependency benefit or loss of future income in an injury case under the structured formula in Section 163-A would be the evidence very much within their possession. The whole purpose of introducing the no fault liability is to remove a significant area of controversy and thereby to make the process of the claimants getting compensation for loss of dependency benefit (loss of future income in case of disablement) both certain and quicker.”

27. The above facts are also related to the judgment of the Division Bench of the Madras High Court in *Lakshmi and Pitchamaiah v. Metropolitan Transport Corporation Limited MANU/TN/0337/2011*.

28. In the light of the above, I modify the directions in the award, deducting 35% of the award amount on account of alleged contributory negligence on the part of the driver. The claimant should be entitled to the full compensation amount as awarded by the tribunal.

29. The appeals are accordingly disposed of. The Insurance Company may deposit the additional payment before the Registrar General who may release the same to the claimants in the same proportion as directed by the Tribunal.

JAYANT NATH, J

DECEMBER 03, 2014

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