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

Date of decision:19.11.2014

+ **MAC.APP. 236/2013**

THE NEW INDIA ASSURANCE CO LTD Appellant

Through Mr.Pankaj Seth and Mr.Shoumik
Mazumdar, Advs.

versus

ISHWARI DEVI AND ORS Respondents

Through Ms.Monica Phartyal, Adv. for
Mr.S.N.Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present appeal the appellant seeks to impugn the Award dated 9.1.2013. The brief facts which led to filing of the claim petition and thereafter the present appeal are that the deceased Pradeep Kumar Kaushik met with a fatal accident on 11.10.2010 at 3.00 am on Jaipur-Delhi National Highway. The deceased was a pillion rider on the motorcycle driven by Deepak Dabral respondent No.2. They were coming to Delhi from Jaipur via Jaipur-Delhi National Highway. It is averred that respondent No.2 was driving the motorcycle in a rash and negligent manner. Opposite B D M Hospital, Kotputli a man came in front of the motorcycle and to save him respondent No.2 turned the motorcycle to the right side but due to the high speed he lost control of the motorcycle and hit the divider. The occupants of the motorcycle fell on the road and the pillion rider Pradeep Kumar Kaushik sustained fatal injuries.

2. Based on the evidence on record the Tribunal concluded that the accident took place due to the rash and negligent driving of respondent No.2.

3. On compensation the Tribunal awarded compensation totalling upto Rs.7,44,088/- break-up of which reads as follows:-

“Loss of dependency	Rs.7,04,088/-
On account of love and affection	Rs.25,000/-
<u>Funeral expenses</u>	<u>Rs.15,000/-</u>
<u>Total</u>	<u>Rs.7,44,088/-”</u>

4. Learned counsel appearing for the appellant submits that there is absolutely no evidence to prove that the accident took place due to the rash and negligent driving of respondent No.2. He relies upon the statement made by PW-2 Ajay Singh on whose evidence the Tribunal has relied upon heavily to contend that in his statement under section 161 Cr.PC before the police he has not mentioned anything about the accident taking place due to the negligence of respondent No.2. He also relies upon statement of the uncle of the deceased who has in his statement said that nobody is at fault and the matter be closed. He also submits that after the FIR the police filed a closure report and respondent No.2 was not subjected to any criminal prosecution. Hence, he submits that the testimony relied upon by the Tribunal in the impugned award of PW-2 is erroneous and he is a witness who cannot be believed.

5. He further submits that the Tribunal while computing loss of dependency has assessed the income of the deceased based on the minimum wages for a matriculate at Rs.6,448/-. Thereafter the Tribunal has enhanced the compensation by 30% on account of future prospects. He submits that

there are no grounds to award future prospects in this case.

6. I may first look at the evidence of PW-2 Shri Ajay Singh. He states that alongwith his friends on 11.10.2010 he was coming to Delhi from Jaipur. The other motorcycle was ahead of their motorcycle in which Pradeep Kumar Kaushik/the deceased was sitting as a pillion rider and respondent No.2 was driving the same. The second motorcycle was following the first motorcycle and he was driving the second motorcycle with Vivek sitting on the pillion. He further states that respondent No.2 was driving the motorcycle in a rash and negligent manner with uncontrolled high speed and even after warning was given to him to drive at a normal speed he continued to drive the motorcycle in a reckless manner at a very high speed. At Kotputli as a man came in front of the motorcycle, to save him respondent No.2 turned the motorcycle to the right side but due to its high speed he lost control and the motorcycle hit against the divider with great impact. The occupants of the motorcycle fell down and the deceased died. There is no cross examination of the said witness on the said evidence saying that respondent No.2 was driving the motorcycle in a rash and negligent manner.

7. I will now come to the statement of PW-2 Ajay Singh recorded under section 161 Cr.PC. In his statement he does not state that respondent No.2 was driving the vehicle at a high speed. He only points out that the accident took place as somebody came in front of the motorcycle and to save him, the motorcycle was turned to the right and hit the divider.

8. I have to compare the evidence of PW2 before the Tribunal and the statement before the police under section 161 Cr.PC. I may note that the evidence of PW-2 before the Tribunal is unrebutted. There is no cross

examination carried out. Statement under section 161 Cr.PC is recorded on 11.10.2010. It is not exactly contrary to the evidence before the Tribunal. It is obvious from his said statement that four friends were coming back from Jaipur, namely, Ajay Singh, Vivek, Pradeep and Deepak. Statement is recorded on the date of the accident at the police station. In those circumstances, he most likely was afraid of implicating his friend/respondent No.2 in a criminal case. There are no reasons to disbelieve the evidence before the Tribunal.

9. As far as the closure report is concerned it is settled law that the extent of proof required for prosecution in a criminal case is of much higher level. The Tribunal and Civil courts can certainly come at a conclusion of facts which are different from the criminal court. Reference may be had to the judgment of the Supreme Court in *Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.*, AIR 2005 SCC 2119.

10. I may also note that the autopsy report mentions the condition of the body as follows:-

- “(i) Lacerated wound of 3 x 1 x bone deep & 2 x 1 x bone deep on left parietal region and top of scalp
- (ii) Depressed fracture of parietal bone of left side.
- (iii) Fracture depressed fracture of left frontal and temporal bone and roof of orbit
- (iv) Amputated right great toe.
- (v) Abrasion of 2 x 1 cm on right knee
- (vi) Lacerated wound of 2 x 1 x ms deep on IInd toe of right foot.
- (vii) Contusion of 2 x1 cm below right eye and contusion of 2 x 1 cm around the left eye with swelling pupil B/L dilated and fixed not reacting to light.”

11. A perusal of the autopsy report would show that the nature of injuries that were suffered by the deceased would indicate that the motorcycle was being driven at a very high speed. I may also take note of the fact that the accident took place at 3 am in the morning when vehicular traffic is thinner. The evidence clearly indicates that respondent No.2 was driving the vehicle at a very high speed.

12. Further, respondent No.2 has not entered as a witness in the proceedings. This Court in the case of ***Cholamandalam MS General Insurance Co. Ltd. vs. Smt. Kamlesh and Ors. 2009 (3) AD (Delhi) 310*** has held that where a driver of the offending vehicle does not enter the witness box adverse inference can be drawn against the driver. The negligence of respondent No.2 is quite clear.

13. Reference may also be had to the judgment of the Supreme Court in the case of ***N.K.V. Bros. (P) Ltd. vs. M. Karumai Ammal and Ors., AIR 1980 SC 1354*** in relevant portion of Para 3, the Court held as follows:-

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'. Indeed, the State must seriously

consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The states must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many states are unjustly indifferent in this regard.”

14. In the light of the above legal position and facts I see no merits in the present contention.

15. As far as future prospects are concerned, this court has by following several judgments of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54, *V. Mekala vs. M. Malathi & Anr* 2014 ACJ 1441 and *Smt. Savita vs. Bindar Singh & Ors.* (2014) 4 SCC 505 has been awarding future prospects. Accordingly, there is no merit in this contention.

16. There is no merit in the appeal. Same is dismissed.

CM No. 20436/2013

17. This is an application seeking condonation of delay of 168 days in filing of the cross-objections.

18. It is averred that the main appeal filed by the Insurance Company is still pending and no prejudice would be caused in case the delay is condoned.

19. It is submitted that it is only on legal advice that the claimants have decided to file cross-objections and hence the delay.

20. For the reasons stated in the application, the same is allowed and the delay is condoned.

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21. These are cross-objections by way of an application i.e CM No. 20435/2013 which may be registered as a separate appeal.

22. Learned counsel appearing for the claimants/appellants in this case seeks enhancement of compensation awarded on two grounds. It is firstly submitted that the deceased was 19 years old and the multiplier should be 18 whereas the Tribunal has wrongly applied a multiplier of 14 based on the age of the parents of the deceased. It is secondly submitted that the Tribunal after having assessed the income of the deceased based on minimum wages applicable for a matriculate at Rs.6,448/- has enhanced the same by 30% for computing future prospects. It is submitted relying upon various judgments of this court following the judgment of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** that the assessed income should have been enhanced for future prospects @ 50%.

23. Coming to the issue of multiplier, learned counsel appearing for the appellant Insurance Company has relied upon the judgment of the Supreme Court in the case of ***Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma 2014 (11) SCALE 427*** which was a case where the deceased was a 19 year old bachelor and a student of medicine. The Tribunal after taking the notional income as Rs.18,000/- deducted 1/3rd towards personal expenses and applied the multiplier of 13 based on the age of the parents of the deceased for the calculation of loss of dependency. No challenge was made on the issue of the applicable multiplier. Thus, the abovesaid judgment does not overrule the earlier judgments of the Supreme

Court.

24. Reference may be had to the judgment of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** MANU/DE/0715/2014; 2014 (142) DRJ 303 held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

25. This Court in the said case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** (*supra*) relied on the judgments of the Supreme Court in case of ***M. Mansoor vs. United India Insurance Co. Ltd.***, MANU/SC/1042 which judgment further relying on the judgment of the Supreme Court in the case ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*** MANU/SC/0537/2012 held as follows:-

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation.”

26. ***M. Mansoor vs. United India Insurance Co. Ltd*** (*supra*) was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*** (*supra*) the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17.

27. I may further note a judgment dated 2.4.2014 of this Court in MAC APP.761/2012 ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.*** where the deceased was 24 years. The Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased as he was a bachelor.

This court relying upon the judgment in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)*** applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

28. In view of the said judgment passed by this Court, following the judgments of the Supreme Court, the Tribunal erred in not taking the age of the deceased to consider the appropriate multiplier.

29. Hence, the appropriate multiplier to be used would be 18 given the deceased was 19 years of age on the date of the accident.

30. As far as future prospects are concerned, this court has by following several judgments of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.,(supra), V. Mekala vs. M. Malathi & Anr 2014 ACJ 1441*** and ***Smt. Savita vs. Bindar Singh & Ors. (2014) 4 SCC 505*** has been awarding future prospects. Accordingly, for purposes of computing loss of dependency, the salary of the deceased is increased by 50% keeping in view that the deceased was 19 years old at the time of the accident.

31. Accordingly, loss of dependency would now be Rs.10,44,576/- [(Rs.6,448/- + 50%) – 1/2 x 12 x 18). Total compensation would read as follows:-

(i) Loss of Dependency	:	Rs.10,44,576/-
(ii) Loss of love and affection	:	Rs.25,000/-
(iii) Funeral expenses	:	<u>Rs.15,000/-</u>
Total	:	<u>Rs.10,84,576/-</u>

32. Insurance company may deposit the enhanced compensation amount

with interest @ 7.5% per annum from the date of filing of claim petition till deposit before the Registrar General of this court within six weeks. On receipt of the said amount, the same shall be released to the claimants proportionately as per the directions in the Award.

33. The appeal stands disposed of.

34. All interim orders stand vacated.

35. Statutory amount, if any, be refunded to the Insurance Company.

JAYANT NATH, J

NOVEMBER 19, 2014

n/rb