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

Date of decision 22.09.2014

+ MAC.APP. 864/2014

NATIONAL INSURANCE CO LTD Appellant
Through Mr.Pankaj Seth, Advocate.

versus

BALDEV KALRA & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH,J. (ORAL)

CM No.15752/2014 (exemption)

Exemption is allowed subject to just exceptions.

MAC. APP. 864/2014 and CM No.15751/2014 (stay)

1. The present appeal is filed by the appellant Insurance Company seeking to impugn the Award dated 05.08.2014.
2. The brief facts are that on 07.07.2013 when the deceased was standing near the footpath of Metro Hospital, Lajpat Nagar, New Delhi, she was hit by the offending motorcycle said to be driven in a rash and negligent manner. The deceased sustained grievous injuries and was shifted to AIIMS Trauma Centre. She died on 09.07.2013 due to the injuries suffered in the accident.
3. The Tribunal awarded the following compensation:-

Sl.No.	Description	Amount
1	Loss of Estate	Rs.7,84,132/-
2	Funeral Expenses	Rs.25,000/-
3	Love and Affection	Rs.1,00,000/-

4	Loss of consortium	Rs.1,00,000/-
	Total	<u>Rs.10,09,132/-</u>

4. Learned counsel appearing for the appellant strenuously urges that the compensation awarded is very high. He submits that it is on record that the deceased was 61 years of age, her husband was doing a private job and was getting a pension of Rs.18,000/- per month. Both the sons and daughters were married and settled. Hence it is urged that none of the claimants was financially dependent upon the deceased and hence the claimants were not entitled to any compensation for loss of dependency. It is urged that the Tribunal has erroneously awarded Rs.7,84,132/- as loss of estate without any basis or rhyme or reason. Learned counsel further states that the said compensation awarded is contrary to the judgment of the Supreme Court in the case of *Smt.Manjuri Bera vs. The Oriental Insurance Co. Ltd. & Anr., 2007ACJ1279, MANU/SC/1978/2007*.

5. Learned counsel secondly submits that no negligence was proved by the claimants and yet the Tribunal awarded compensation. He thirdly submits that on the non-pecuniary heads of loss of consortium and loss of love and affection the award of Rs.1 lac each is also on the higher side.

6. The Tribunal concluded that the deceased was working as a TGT(English) Teacher and drawing Rs.41,248/- i.e. annual salary of Rs.4,94,976/- & less income tax the net salary was Rs.4,70,479/-. The Tribunal also concluded that neither the husband nor the sons and daughters had been dependent upon the deceased. The Tribunal relied upon an earlier judgment of this High Court in the case of *Keith Rowe vs. Prashant Sagar & Ors., 2011 ACJ 1734* to hold that there would be loss of estate in the absence of any dependency. There would be lot of saving in the estate and thus loss of estate should be taken as 1/3rd of the income of the deceased.

Based on said calculation, the Tribunal taking a multiplier of 15 awarded the loss of estate at Rs. 7,84,132/-.

7. A perusal may be had to the judgment of this Court in the case of ***Keith Rowe vs. Prashant Sagar & Ors.(supra)*** where this court in para 19 held as follows:-

“19. We may summarise the principles enunciated, thus:

....

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss or dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.”

8. Coming to the judgment cited by the learned counsel for the appellant, namely, ***Smt.Manjuri Bera vs. The Oriental Insurance Co. Ltd. & Anr.(supra)***. There is nothing in that judgment which would persuade this court to hold that it has held something contrary to the judgment of this High Court in the case of ***Keith Rowe vs. Prashant Sagar & Ors.(supra)***. That was a case in which the deceased lost his life. The deceased has no other legal heir except a married daughter. The Tribunal had dismissed the claim

petition accepting the stand of the insurer that as the claimant was not dependent upon the deceased, there was no question of any compensation being paid. The High Court approved the said judgment of the Tribunal.

9. The Supreme Court in the case of ***Smt.Manjuri Bera vs. The Oriental Insurance Co. Ltd. & Anr.(supra)*** while interpreting Sections 166 of the M.V.Act and the definition of legal heir as contained in Section 2(11) of the CPC held as follows:-

“11. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A.

12. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.”

10. Justice S.H.Kapadia in a separate and a concurrent judgment held as

follows:-

“17. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988.”

11. The Supreme Court hence held that the legal representatives of the deceased would be entitled to file application for compensation and the quantum of compensation cannot be less than what is stipulated in Section 140 of the Act.

12. The judgment of the Supreme Court in the case of *Smt.Manjuri Bera vs. The Oriental Insurance Co. Ltd. & Anr.(supra)* does not forbid the Tribunal from granting compensation for loss of estate where there is no loss of dependency of any of the legal representatives of the deceased. Loss of estate would be part of ‘just compensation’ as provided under Section 168 of MV Act. Hence, there is no merit in the first submission of the learned counsel for the appellant.

13. Coming to the submission of no proof of negligence. The Tribunal concluded that the accident took place due to the rash and negligent driving of the driver of the motorcycle. Based on the police investigation, Police

have found respondent No.6 guilty of rash and negligent driving. He has been chargesheeted for the commission of an offence under Sections 279 and 304 A IPC. No contrary evidence was led by the driver of the vehicle. Based on the judgment of the Madhya Pradesh High Court in the case of ***Basant Kaur & Ors. vs. Chattar Pal Singh & Ors. 2003 ACJ 369 MP (DB)*** and of this High Court in the case of ***National Insurance Co. Ltd. vs. Pushpa Rana 2009 ACJ 287***, the Tribunal held that the criminal record and the investigations carried out by the police would be sufficient proof to reach the conclusion that driver was negligent.

14. The Supreme Court in the case of ***N.K.V. Bros. (P) Ltd. vs. M.Karumai Ammal & Ors., AIR 1980 SC 1354 MANU/DE*** in para 3 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.....”

15. In the light of the above legal position, in my view there are no grounds to interfere with the findings of the Tribunal regarding the death having been caused due to the rash and negligent driving of respondent No.6.

16. On the issue of award of Rs.1 lac for loss of love and affection and Rs.1 lacs for loss of consortium, the said award is in consonance with the observations of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Yeramma & Ors. vs. G. Krishnamurthy & Anr.*, 2014 (10) SCALE 213.

17. Hence, there is no merit in the contention of the learned counsel for the appellant on this count.

18. The appeal is dismissed.

19. The statutory amount if deposited be refunded to the learned counsel for the appellant.

JAYANT NATH, J

SEPTEMBER 22, 2014
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