

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

Pronounced on: 27th May, 2015

+ **MAC. APP. 159/ 2014**

THE ORIENTAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

Versus

MOHD. IDRISH AND OTHERS

..... Respondents

Through: Mr. N.K. Jha, Advocate for
Respondents no.1 & 2.

Mr. G.S. Sharma, Advocate for
Respondents no.3 and 4.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited has filed the present appeal against the judgment dated 30.11.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹6,22,248/- was awarded in favour of Respondents no.1 and 2 for the death of their bachelor son Late

Shri Mohd. Mustafa @ Mustaq, who suffered fatal injuries in a motor vehicular accident which occurred on 23.07.2007.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the Tempo TATA 407 bearing Registration no.DL-1L-A-7129 by its driver Respondent no.3. Further, the Claims Tribunal took minimum wages of an unskilled worker on the date of the accident, added 50% towards future prospects, deducted 1/2 towards personal and living expenses and applied the multiplier of 18 (as per the age of the deceased) to compute the loss of dependency at ₹5,62,248/-.
3. In addition, the Claims Tribunal awarded ₹25,000/- towards funeral expenses, ₹10,000/- towards loss to estate and ₹25,000/- towards loss of love and affection to compute the overall compensation of ₹6,22,248/-. The same was to be paid by the Appellant Insurance Company and it was granted the right to recover the amount paid from Respondent no.4 (insured) as Respondent no.3's Driving License was found to be fake and Respondent no.4 had failed to enter the witness box and explain the circumstances under which he had employed Respondent no.3.

4. The following contentions are raised by the learned counsel for the Appellant Insurance Company:-
- (i) Addition of 50% was wrongly made towards future prospects though there was no evidence with regard to permanent employment or good future prospects of the deceased;
 - (ii) The Claims Tribunal has erroneously adopted the multiplier of 18 as per the age of the deceased though the multiplier should be adopted as per the age of the mother of the deceased as the deceased was a bachelor; and
 - (iii) Award under non-pecuniary heads is made on higher side.
5. In the absence of any challenge to the finding of negligence, the same has attained finality.
6. With regard to the amount of compensation to be granted, PW1 Shri Mohd. Idrish, father of the deceased testified that his son was a non-matriculate and was employed as a helper with Respondent no.4 on TATA 407 bearing Registration no.DL-1L-A-7129 earning ₹4,500/- per month. Similarly, PW2 Shri Mohd. Anwar Ali, uncle of the deceased (with whom the deceased resided) and eye witness

to the accident deposed that his deceased nephew was employed with Respondent no.4 and was earning ₹4,500/- per month. However, both the witnesses admitted that they have no document to prove the alleged income of the deceased.

7. Thus, in the absence of any documentary proof with regard to the deceased's employment or income, I am inclined to take minimum wages of an unskilled worker at the time of the accident *i.e.* ₹3,470/- per month as the income of the deceased as taken by the Claims Tribunal.
8. Since the deceased was neither in permanent employment, nor is there any evidence available with regard to the deceased's good future prospects except the bald testimony of his father that the deceased had a bright future and he would have earned at least ₹9,000/- per month at the top of his career had he not died in the accident, no addition ought to have been made towards future prospects. (See *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.* MAC APP No. 189/2014 decided on 12.01.2015).
9. Further, as the deceased was a bachelor at the time of his accident and death, the Claims Tribunal rightly made a deduction of 1/2 towards personal and living expenses in view of *Smt. Sarla Verma*

and Ors. v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121.

10. Moreover, the question of selection of multiplier in case of death of a bachelor was dealt by me at great length in *Shriram General Insurance Co. Ltd. v. Maneesha Karnatak and Others, MAC. APP. No. 655 of 2014* decided on 20.03.2015 wherein relying upon the three Judge bench decisions of the Hon'ble Supreme Court in *U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362* and *New India Assurance Company Limited v. Shanti Pathak (Smt.) and Ors., (2007) 10 SCC 1*, it was held that the multiplier in case of a bachelor will be as per the age of the deceased or the Claimant whichever is higher.
11. In the present case, the age of the deceased's mother on the date of the accident was 38 years as per her Election Identity Card (Ex.PW1/1). Consequently, the appropriate multiplier will be 15 rather than 18 as taken by the Claims Tribunal.
12. The loss of dependency would hence, come to ₹3,12,300/- (3,470/- x 12 x 1/2 x 15). Adding ₹1,35,000/- towards non-pecuniary damages *i.e.* ₹1,00,000/- towards loss of love and affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to

estate in view of the three Judge bench decision of the Supreme Court in *Rajesh and Others v. Rajbir Singh and Others*, (2013) 9 SCC 54, the overall compensation would come to ₹4,47,300/-.

13. However, an important question which falls for consideration in the instant appeal is whether the compensation awarded to the Claimants under Section 166 of the Motor Vehicles Act, 1988 (the Act) can be less than the one permissible under Section 163A of the Act. Admittedly, the victim or the legal representatives of the deceased are entitled to compensation under Section 163A of the Act without proving any negligence on the part of the driver of the offending vehicle involved in the accident. On the other hand, this was a petition under Section 166 of the Act where negligence is required to be proved on the touchstone of preponderance of probability.
14. It is well settled by a catena of judgments that Section 166 of the Act envisages payment of compensation which is just and reasonable. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, wherein while highlighting the payment of just compensation, the Supreme Court held as under:-

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’ which in turn appears to it to be ‘just and reasonable’. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ‘just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.’ The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be ‘just’ compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of ‘just’ compensation which is the pivotal consideration. Though by use of the expression ‘which appears to it to be just’ a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression ‘just’ denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.”

15. Thus, in my view, the compensation payable to a victim of a motor

vehicular accident or to the legal representatives of the deceased who suffered fatal injuries in a motor vehicular accident under Section 166 of the Act cannot be less than one payable under Section 163A of the Act.

16. If I take the income of the deceased as ₹40,000/- per annum which is the maximum provided under Schedule II of the Act for a petition under Section 163A of the Act (and less than the minimum wages), the loss of dependency on a multiplier of 18 (the deceased being 18 years of age on the date of the accident as his date of birth as per his School Leaving Certificate/Transfer Certificate (Ex.PW1/2) was 02.01.1989) will come to ₹4,80,000/- ($40,000/- \times \frac{2}{3} \times 18$).
17. In addition, in a petition under Section 163A of the Act, the Claimants are entitled to a sum of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss to estate as per the Second Schedule of the Act. The overall compensation hence, will come to ₹4,84,500/-.
18. Since this compensation is payable without proving negligence as per the structured formula, compensation payable under Section 166 of the Act cannot be less than the compensation of ₹4,84,500/-.

19. The compensation is accordingly reduced from ₹6,22,248/- to ₹4,84,500/-.
20. By an order dated 17.02.2014, execution of the award was stayed on deposit of the entire awarded amount along with up-to-date interest accrued thereon by the Appellant and 70% of the same was ordered to be released to Respondents no.1 and 2.
21. The remaining compensation shall also be released to Respondents no.1 and 2 alongwith proportionate interest. The excess amount along with residue interest shall be refunded to the Appellant Insurance Company.
22. It may be noted that the Appellant Insurance Company proved the breach of the terms and conditions of the Insurance Policy and was therefore granted recovery rights to recover the compensation paid from Respondent no.4 (insured). The said finding has not been challenged by Respondent no.4.
23. It is therefore, directed that the Appellant Insurance Company shall be entitled to recover the compensation amount paid by it in execution of this very judgment without having recourse to independent civil proceedings from Respondent no.4.
24. The appeal is disposed of in above terms.

25. Pending applications, if any, also stand disposed of.
26. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MAY 27, 2015

sj