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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd February, 2015

+ **MAC.APP.1000/2012**

GANGA DEVI & ORS. Appellants

Through: Mr. Maya Ram, Adv.

versus

SANJEEV SHARMA & ORS. Respondents

Through: Mr. J.P.N.Shahi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation and for setting aside the finding that the cause of death of deceased Mahesh Chander was not on account of the injuries suffered in a motor vehicular accident which occurred on 21.12.2006.
2. A Claim Petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (the M.V. Act) for grant of compensation for injuries suffered by Mahesh Chander and consequent death was preferred by the Appellants against the driver, owner and insurer of the offending vehicle, a tempo traveler bearing registration no.DL-IVA-5302.

3. On appreciation of evidence, the Motor Accident Claims Tribunal (the Claims Tribunal) found that the accident was caused because of rash and negligent driving of the tempo traveler. The Claims Tribunal proceeded to award compensation of Rs.1,30,300/- in favour of the Appellants. The Claims Tribunal held that although deceased Mahesh Chander had suffered dangerous injuries in the motor vehicular accident which occurred on 21.12.2006 but the Appellants had failed to establish that death was the proximate cause of the injuries suffered in the accident and therefore, it awarded the compensation as stated above.
4. The following contentions are raised on behalf of the Appellants:-
 - (i) It is true that postmortem examination on the dead body was not conducted. At the same time, from the nature of injuries proved on record and the death report given by Dr. Matlub Alam Khan from Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, it was sufficiently established that deceased Mahesh Chander died on

10.01.2007 on account of the dangerous injuries suffered by him in the motor vehicular accident on 21.12.2006; and

- (ii) Deceased Mahesh Chander had an income of Rs.10,000/- per month. He was survived by 7 dependants. The Appellants are entitled to compensation towards loss of dependency and under non-pecuniary heads in terms of the judgment of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

5. On the other hand, learned counsel for the Oriental Insurance Company Limited urges that since the Appellants failed to establish that death was the proximate cause of the accident, the Claims Tribunal rightly did not award any compensation towards loss of dependency.

CAUSE OF DAETH

6. It is established from the documents placed on record that immediately after the accident deceased Mahesh Chander was

removed to Indian Spinal Injuries Centre, Vasant Kunj, New Delhi. He was found to have suffered dangerous head injuries and was consequently admitted in ICU. Various endorsements recorded on the MLC reveal that at least till 26.12.2006, 7:00 p.m., deceased Mahesh Chander was unfit to make a statement. It appears that deceased Mahesh Chander recovered and was discharged from the hospital on 05.01.2007. However, his condition deteriorated on 10.01.2007. Consequently, he was again removed to Indian Spinal Injuries Centre, Vasant Kunj, New Delhi and was declared brought dead by Dr. Matlub Alam Khan as per the death certificate Annexure A-7 placed on record. While dealing with the cause of death, the Claims Tribunal held as under:-

“20. The third and last witness examined on behalf of petitioner was Dr. Dhruv Kumar Chaturvedi as PW 3. This witness was summoned to prove Discharge Summary of Indian Spinal Injuries Centre which was exhibited as Ex.PW 3/A.

21. As per Discharge Summary, the final diagnosis is described as RTA with head injury (acute SDH left fronto-Temporo-Parietal region and mass effect on left lateral ventricle and mid brain with mild mid line shift to right with bilateral multiple focal Hemorrhagic, contusion with cerebral oedema) with bilateral pleural effusion with known

case of coronary artery disease with old IWMI (STEMI).

22. As per Discharge Summary, the patient had progressed well gradually and NCCT head done on 3.1.2007 revealed near total regression of SDH with resolution of haemorrhage and no shift of mid line structures was seen. It stated in the Discharge Summary that at the time of discharge patient is conscious but slightly disoriented, afebrile, accepting orally, no vomiting or seizure present, passing normal stools and urine and haemodynamically stable.

23. PW 3 stated in his statement that the deceased was admitted in the Indian Spinal Injuries Centre on 21.12.2006 with the history of sustaining injuries in a road side accident and he remained on treatment till 05.01.2007 and was discharged on the said date. He identified his signatures on the Discharge Summary at point A. He further stated that at the time of discharge, the condition of Sh. Mahesh Chander was stable. As per the Discharge Summary, the patient was having some heart ailment. PW – 3 stated that “ I cannot say with certainty as to whether the injuries for which he was treated in our hospital was the exact cause of his death.”

7. Dr. Dhruv Kumar Chaturvedi (PW-3) was examined by the Appellants to prove the discharge summary. Admittedly, Dr. Dhruv Kumar Chaturvedi did not examine deceased Mahesh Chander when he was brought to the hospital when his condition deteriorated on 10.01.2007. Therefore, he could not

have given any definite opinion about the cause of death. Unfortunately, the observations made by PW-3 that *“I cannot say with certainty as to whether the injuries for which he was treated in our hospital was the exact cause of his death”* were out of the context to hold that the deceased’s death was not on account of the injuries suffered in the accident. Regrettably, the Claims Tribunal completely closed its eyes to the dangerous head injuries suffered by the deceased in the accident as was observed and stated in the discharge summary and extracted above from para 21 of the impugned judgment.

8. It is quite strange that although the death report which discloses the cause of death by Dr. Matlub Alam Khan from Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, was available on record, the same was not even referred to in the impugned judgment. From the injuries suffered by deceased Mahesh Chander as evident in MLC Ex.PW-1/4, Discharge summary Ex.PW-3/A and the death report dated 10.01.2007 at 5:35 a.m., it is clearly established that deceased Mahesh Chander died on account of the injuries suffered in the accident on 21.12.2006. It may be noted that not even an iota of evidence was produced to

contradict the above stated evidence. Consequently, the Appellants are entitled to compensation in addition to the compensation awarded to them for the expenditure on treatment, special diet, *etc.*

COMPENSATION

9. In her Affidavit Ex.P-1/A, Appellant Ganga Devi, deceased's widow testified that her husband was plying taxi at IGI airport and was earning ₹ 8,000/- to ₹10,000/- per month from his two taxies. In cross-examination, she stated that her husband used to give her ₹10,000/- to ₹11,000/- per month for household expenses. Appellant no.1 was not confronted about the contradictions in the examination-in-chief and the cross-examination. Appellant Ganga Devi claimed in cross-examination that her husband was a Science graduate but no certificate with regard to the deceased's qualification was placed on record. At the same time, it was not disputed that deceased Mahesh Chander used to ply taxi. There is proof of just one taxi in the shape of registration certificate Ex.P-1/11

placed on record. Therefore, it can very well be concluded that deceased Mahesh Chander owned one taxi which he used to ply.

10. In December, 2006, at the time of the accident, the minimum wages of a skilled worker were ₹3695/- per month and the wages of a Graduate were ₹4031/- per month. As stated above, documentary evidence with regard to deceased's qualification was not proved by the Appellants. In the year 2006, at the time of Mahesh Chander's death, I will assume the income of a taxi driver who owns his own taxi to be ₹250/- per day. On taking working days as 25 in a month, the monthly income will come to ₹6250/-
11. Deceased Mahesh Chander was born in 1954 and was aged about 52 years on the date of the accident. He was survived by 7 dependants. Deduction towards personal and living expenses therefore, will be $\frac{1}{5}^{\text{th}}$. The loss of dependency accordingly on a multiplier of 11 will come to ₹6,60,000/- ($6250/- \times 12 \times \frac{4}{5} \times 11$).
12. In addition, the Appellants would be entitled to a compensation of ₹1,00,000/- each towards loss of love and affection and loss

of consortium and ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.

13. The Appellants are further entitled to a sum of ₹1,30,300/- towards treatment, *etc.* as granted by the Claims Tribunal.
14. The overall compensation hence, comes to ₹10,25,300/-.
15. The enhanced compensation of ₹8,95,000/- shall carry interest @ 7.5% per annum from the date of filing the Claim Petition till its payment.
16. 10% each of the awarded compensation shall go to the Appellants no.2 to 7. Rest 40% shall enure for the benefit of Appellant no.1.
17. 50% of the compensation payable to Appellants no.2 to 7 shall be held in fixed deposit for one year. Rest 50% shall be released on deposit.
18. 75% of the compensation payable to Appellant no.1 shall be held in fixed deposit for a period of two years, four years and six years proportionately. Rest 25% shall be released on deposit.

19. Compensation payable to Appellants no.5 and 6 shall be held in fixed deposit till they attain the age of 21 years. However, the Appellants will be entitled to have premature withdrawal for the purpose of their studies or for immediate need by approaching the Claims Tribunal.
20. Respondent Oriental Insurance Company shall deposit the enhanced compensation along with proportionate interest within a period of six weeks, failing which the Appellants shall be entitled to interest @ 12% per annum from the date of this judgment.
21. The appeal is allowed in above terms.
22. Pending applications, if any, stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 23, 2015

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