

\$-11

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th January, 2015

+ **MAC.APP. 1101/2012**

NATIONAL INSURANCE COMPANY

..... Appellant

Through: Ms. Arpan Wadhawan,
Advocate

versus

RAJNI & ORS.

..... Respondents

Through: Mr. Abdul Wazid, Advocate
with Mr. Javed Ahmed,
Advocate for Respondents no.1
to 4.

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 against judgment dated 26.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.35,43,800/- was awarded in favour of Respondents no.1 to 4 for the death of Sandeep Yadav, who died in a motor vehicular accident which occurred on 15.07.2007.
2. During inquiry, the Claims Tribunal found that the accident in question occurred on account of composite negligence of TSR

no.DL-1RG-2138 and DTC bus no.DL-1PB-7341. The Claims Tribunal found that deceased Sandeep Yadav was getting a salary of Rs.15,242/- per month and was in permanent employment of Employees State Insurance Corporation(ESIC). The Claims Tribunal therefore, made addition of 50% towards future prospects, deducted 1/4th towards personal and living expenses, and applied a multiplier of 17 as per the age of the deceased to compute the loss of dependency as Rs.35,08,800/-. The Claims Tribunal further awarded certain amount towards non-pecuniary damages to compute the overall compensation as Rs.35,43,800/-.

3. The judgment is challenged on the following grounds:
 - (i) There was no negligence on the part of the driver of DTC bus no.DL-1PB-7341 which was insured with the Appellant. Thus, it was not a case of composite negligence and the Appellant was not liable to pay the compensation;
 - (ii) Widow of the deceased was given compassionate employment by ESIC. The aspect of employment on compassionate ground ought to have been taken into consideration while computing the loss of dependency as widow of the deceased admitted in cross-examination that she was getting a salary of Rs.12,000/- per month on the date of her cross-examination.

4. On the other hand, the learned counsel for the Respondents supports the impugned judgment.

NEGLIGENCE:

5. While dealing with the issue of negligence, the Claims Tribunal held as under:

“IO/ASI J.S. Rathore of PS Paschim Vihar has filed the entire documents pertaining to the lodging of FIR viz. No.552/07, dated 15.07.2007. As per the investigation conducted under FIR, TSR No. DL-1RG-2138 had collided with the motorcycle driven by the deceased bearing No.DL-1SP-3040 and in consequence thereof the motorcycle came under the DTC bus bearing registration No.DL-1PB-7341 thereby causing his demise. Keeping in view the fact that in fact it was the TSR which had initiated the accident and had in his rashness and unmindful driving, caused collision with the motorcycle driven by the deceased in as much as making him lose control over the motorcycle causing it to come in front of the DTC bus No.DL-1PB-7341 and the DTC bus being driven at a speed which did not have control over its speed as well as the vehicle trampled over the deceased by the rear wheel. The deceased was removed to Sanjay Gandhi Memorial Hospital by the PCR van where the Doctor declared him dead. Keeping in view that both the vehicles had caused the accident in their rashness and unmindful driving, causing collision and trampling of the deceased thereby causing the untimely demise of the deceased. Hence the issue is decided in favour of petitioners and against the respondents jointly and severally that Sandeep Yadav had sustained injuries due to rash and negligent driving of respondent No.1 while driving the TSR and negligent driving of Respondent No.4 Ajeet

Singh, driving DTC bus bearing No.DL-1PB-7341.”

6. It is evident that although the initial collision was between the TSR and the motorcycle because of rash and negligent driving of the TSR driving, but at the same time it is evident that DTC bus no.DL-1PB-7341 was also being driven at a high speed. Had the DTC bus being driven at a controllable speed while maintaining reasonable distance, the life of deceased Sandeep Yadav could have been saved. In my opinion, the Claims Tribunal rightly held that there was composite negligence on the part of TSR no.DL-1RG-2138 and DTC bus no.DL-1PB-7341. In case of composite negligence, the injured can claim compensation from either all or anyone of the tortfeasors. (See *New India Assurance Co. Ltd. v. Vivek Thakur and Ors.*, (MAC APP No.692/2007) decided on 11.05.2012). Thus, while making the Appellant Insurance Company liable to pay entire compensation, it was permitted to recover 50% of the award amount from the owner of the TSR. To that extent, the impugned judgment cannot be faulted.
7. As far as employment of Smt. Rajni, widow of deceased Sandeep Yadav on compensate ground is concerned, the issue was gone in great detail by me while deciding *National Insurance Co. Ltd v. Charanjeet Kaur @ Simmi & Ors*, (MAC. APP.734/2010) decided 16.07.2012 which squarely covers the instant case. Paras 3 to 8 of the report are extracted hereunder:

“3. Section 168 of the Act enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should it be a pittance. In State of Haryana v. Jasbir Kaur, (2003) 7 SCC 484, 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.”

4. In *Bhakra Beas Management Board (supra)*, the Supreme Court largely relied on *United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors.*, (2002) 6 SCC 281, a three Judges Bench decision in *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1; and *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999)1 SCC 90.

5. In *Helen C. Rebello (supra)*, the question before the Supreme Court was whether the amount received under Life Insurance Policy was liable to be deducted on the principle of balancing the loss and gain. The Supreme Court referred to the *Law of Torts by Fleming* and differentiated between the amount received under the Life Insurance Policy and an Accident Insurance Policy. It was, thus held that the payment received under the Life Insurance Policy was not deductible whereas the payment received under the Personal Accident Insurance was deductible. The reason was that in case of payment received under the accident insurance policy, the amount was receivable only on account of death in an accident and not otherwise, whereas in case of Life Insurance Policy, the amount was receivable irrespective of the death. Thus, the fact that the payment was made under independent contract of insurance was not of much import. Moreover, the use of the word “just” in Section 168 of the Act, confers wider discretion to the Claims Tribunal. The Claims Tribunal, therefore, has to see that the compensation awarded is neither niggardly nor a source of profit. Paras 26, 27, 28, 32, 33 and 34 of the report in *Helen C. Rebello (supra)* are extracted hereunder:

“26. This Court, in this case did observe, though did not decide, to which we refer that the use of the words, “which appears to it to be just” under Section 110-B gives wider power to the Tribunal in the matter of determination of compensation under the 1939 Act. There is another case of this Court in which there is a

passing reference to the deduction out of the compensation payable under the Motor Vehicles Act. In N. Sivammal v. Managing Director, Pandian Roadways Corpn. this Court held that the deduction of Rs 10,000 receivable as monetary benefit to the widow of the pension amount, was not justified. So, though deduction of the widow's pension was not accepted but for this, no principle was discussed therein. However, having given our full consideration, we find there is a deliberate change in the language in the later Act, revealing the intent of the legislature, viz., to confer wider discretion on the Tribunal which is not to be found in the earlier Act. Thus, any decision based on the principle applicable to the earlier Act, would not be applicable while adjudicating the compensation payable to the claimant in the later Act.

27. Fleming, in his classic work on the Law of Torts, has summed up the law on the subject in these words. This is also referred to in Sushila Devi v. Ibrahim:

*“The pecuniary loss of such dependant can only be ascertained by balancing, on the one hand, the loss to him of future pecuniary benefit, and, on the other, any pecuniary advantage which, from whatever source, comes to him by reason of the death. ... **There is a vital distinction between the receipt of moneys under accident insurance and life assurance policies. In the case of accident policies, the full value is deductible on the ground that there was no certainty, or even a reasonable probability, that the insured would ever suffer an accident. But since man is certain to die, it would not be justifiable to set off the whole proceeds from a life assurance policy, since it is legitimate to assume that the widow would have received some benefit, if her husband had pre-deceased her during the currency of the policy or if the policy had matured during their joint lives. The***

exact extent of permissible reduction, however, is still a matter of uncertainty....” (emphasis supplied)

28. Fleming has also expressed that the deduction or set-off of the life insurance could not be justifiable. When he uses the words “not be justifiable” he refers to one's conscience, fairness and contrary to what is just. In this context, the use of the word “just”, which was neither in the English 1846 Act nor in the Indian 1855 Act, now brought in under the 1939 Act, gains importance. This shows that the word “just” was deliberately brought in Section 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that deductions were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language

of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section 110-B. The word “just”, as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law.....”

x x x x x x x x x x

32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the “pecuniary advantage” which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident,

through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words “pecuniary advantage” from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the “pecuniary advantage” resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

“... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ...”.

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee."

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to

be the “pecuniary gain” only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.”

6. In para 33 of the report, the Supreme Court clarified that it would not include the pecuniary advantage which the Claimant receives on account of other forms of death. In other words, any pecuniary advantage received by the legal representatives which had no co-relation with the accidental death, was not to be deducted from the pecuniary loss suffered by the Claimants.

7. Similarly, in Patricia Jean Mahajan (supra), the Supreme Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between the compensation payable on account of accidental death and death on account of illness or otherwise. The Supreme Court emphasized that the principle of balancing between losses and gains must have some co-relation with the accidental death by reason of which alone the Claimant had received the amounts. Paras 34 and 36 of the report are extracted hereunder:

“34. Shri P.P. Rao, learned counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provisions of the Fatal Accidents Acts. It is further indicated that

Gobald case is a case under the Fatal Accidents Acts. For the above contention he has relied upon the observation made in Rebello case. It has also been submitted that only such benefits, which accrued to the claimants by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing a distinction between the scope of provisions of the two Acts, namely, the Motor Vehicles Act and the Fatal Accidents Act, this Court in Helen Rebello case accepted the argument that the amount of insurance policies would be payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation.

x x x x x x x x x x

36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. (emphasis supplied). According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be

deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns."

8. Thus, on the basis of the ratio in Helen C. Rebello (supra) and Patricia Jean Mahajan (supra), it can be safely concluded that only those amounts which are payable to the Claimant/Claimants only by reason of death or injury in an accident are liable to be deducted.”

8. It is nowhere the case of the Appellant that the deceased's widow got employment on account of accidental death. Widow or other legal heirs of deceased in case of employment in certain Departments are given appointment on compassionate ground where a Government Servant dies in harness or has retired on medical ground. Thus, appointment of Rajni(widow of deceased Sandeep Yadav) did not have any relation with the death in the accident.
9. It may also be noted that deceased Sandeep Yadav was working as a Technician ECG. It has not been brought on record whether Rajni was offered employment as a Grade 'D' employee or as an LDC. I would not comment on the circumstances under which Respondent Rajni had to accept the employment as a Grade 'D' employee/LDC while her husband was working as a Technician ECG in the same office. Moreover, the children and parents of deceased Sandeep Yadav would lose on account of gratuitous services rendered by their mother/daughter-in-law. Rajni would be paid salary not because of her husband's death, but because of her work being

performed by her as an employee of ESIC. In view of this, it cannot be said that the salary paid to Rajni or any portion thereof would be deductible from the loss of dependency granted to the Respondents.

10. The appeal has therefore, to fail; the same is accordingly dismissed.
11. Pending applications also stand disposed of.
12. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 29, 2015
pst