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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th April, 2015

+ **MAC.APP. 1145/2012**

R. MURGADAS & ORS. Appellants

Through: Mr. O.P. Mannie, Advocate

versus

SATYA PAL & ANR Respondents

Through: Mr. Manish Kaushik, Advocate
with Mr. K.L. Nandwani,
Advocate for Respondent no.2

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 of Rs.85,000/- awarded in favour of the Appellants for the death of Smt. Rangamma who died in a motor vehicular accident which occurred on 19.09.2002 involving a Tempo bearing no.DL-1LA-5423.
2. During the inquiry, the Motor Accident Claims Tribunal (the Claims Tribunal) held that the accident was caused on account

of rash and negligent driving of Tempo bearing registration no. DL-1LA-5423 by its driver/Respondent Virender Yadav. It was further found that the Appellants were not financially dependent on the deceased. Relying on the judgment of this Court in *“National Insurance Company Ltd. v Mohd. Sabir & Others”* MAC APP no.103/2007 decided on 09.02.2012, the Claims Tribunal awarded a sum of Rs.50,000/- towards loss to estate, Rs.25,000/- towards love and affection and Rs.10,000/- towards funeral expenses to compute an overall compensation of Rs.85,000/-.

3. The Claims Tribunal further found that there was conscious and willful breach of terms and conditions of the insurance policy on the part of insured and accordingly, permitted Respondent New India Assurance Company Limited to pay and then to recover the compensation from the insured.
4. In the absence of any appeal by the insurance company, the driver or the owner, the finding of negligence has attained finality.

5. The finding of the Claims Tribunal that New India Assurance Company Limited is entitled to recover the compensation from the insured has also not been challenged by the insured. The same, therefore, has become final between the parties.
6. It is urged by Mr. Mannie, learned counsel for the Appellants that in *Smt. Manjuri Bera v the Oriental Insurance Company Limited & Anr.*, AIR 2007 SC 1474, the accident had taken place in the year 1998 and thus, a lump sum compensation of Rs.50,000/- towards loss to estate was granted. It is urged that in the instant case, the accident has taken place in the year 2002.
7. Relying on the judgment of Karnataka High Court in *A. Manavalagan v A. Krishnamurthy and Ors.*, I(2005) ACC 304/2005 ACJ 1992 and the judgment of this Court in *Keith Rowe v Prashant Sagar & Ors.*, MAC. APP. No.601/2007 decided on 15.01.2010, 1/3rd of the deceased's income should have been taken into consideration to award loss to estate even if the appellants were not financially dependent on the deceased. It is further contended that the compensation awarded towards loss of love and affection and funeral expenses

is on the lower side. Reliance is placed on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

8. On the other hand, the learned counsel for Respondent no.3 states that the compensation awarded is just reasonable.
9. I have the Trial Court Record before me.
10. It is well settled that even if the legal representatives of the deceased victim of a motor vehicular accident are not financially dependent on the deceased, they are entitled to compensation towards loss to estate only. The question was directly dealt with by a Division Bench of Karnataka High court in *A. Manavalagan v A. Krishnamurthy and Ors.* (*supra*) in para 19 and 20 of the judgment. The same are extracted hereunder:-

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

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms

part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

(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 of 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.

20. The following illustrations with reference to the case of a deceased who was aged 40 years with a monthly income of Rs. 9000/- will bring out the difference between cases where claimants are dependents and cases where claimants are not dependents.

(i) If the family of the deceased consists of a dependant wife and child, normally one-third will be deducted towards the personal and living expenses of the deceased. The balance of Rs. 6000/- per month (or Rs. 72000/- per annum) will be treated as contribution to the dependent family. The loss of dependency will be arrived by applying a multiplier of 14. The loss of dependency will be Rs. 10,08,000/- plus Rs. 10,000/- under the head of loss of Estate.

(ii) If the family of the deceased was larger, say consisting of dependent parents, wife and two children, necessarily the deceased would spend more on his family and the deduction towards personal and living expenses of the deceased will link to one-fifth instead of one-third (Note: In *Gulam Khader v. United India Insurance Co., Ltd.*, - ILR 2000 Kar 4416 details of this illustration have been given). Therefore the deduction toward personal and living expense would be Rs. 1800/- per month (one-fifth of Rs. 9000/-) and contribution to the family would be Rs. 7200/- per month or Rs. 86,400/- per annum. Thus loss of dependency will be Rs. 12,09,600/- (by applying the multiplier of 14). The award under the head of loss of estate would be Rs. 10000/-.

(iii) If the deceased was a bachelor with dependent parents aged 65 and 60 years, normally 50% will be deducted towards personal and living expenses of the deceased. This is because a bachelor will be more care free as he had not yet acquired a wife or child and therefore would tend to spend more on himself. There was also a possibility of the bachelor getting married in which event the contribution to parents will get reduced. Therefore the contribution to the family (parents) will be Rs. 4500/- per month or Rs. 54000/- per annum. As the multiplier will be 10 with reference to age of the mother, the loss of dependency will be Rs. 5,40,000/-. Loss of Estate would be a conventional sum of Rs. 10,000/-.

Note: The above three illustrations relate to cases where the claimants are dependants. The said illustration demonstrate that even though the income of the deceased and age of the deceased are the same, the 'loss of dependency' will vary, having regard to the number of dependants, age of the dependants and nature of dependency. The ensuing illustrations relate to cases where the legal heirs of the deceased are not dependants.

(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of 'loss of dependency' may not arise. Each will be spending from his/her earning towards his living and personal expenses. Even if both pool their income and spend from the common income pool, the position will be the same. In such a case the amount spent for personal and living expenses by each spouse from his/her income will be comparatively higher, that is three-fourth of his/her income. Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27000/- per annum, By adopting the multiplier of 14, the loss to estate will be Rs.

3,78,000/-.

Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing the expenses. As stated in *BURGESS v. FLORENCE NIGHTINGALE HOSPITAL* (1955(1) Q.B. 349), 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of onethird of the income that is Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 = 168,000/-$ and loss to estate would be $36000 \times 14 = 504,000/-$. In all Rs. 6,72,000/- will be the compensation.

(v) If the deceased was a bachelor and the claimants are two non-dependent brothers/sisters aged 47 years and 45 years with independent income, the position would be different. As the deceased did not have a 'family', the tendency would be to spend more on oneself and the savings would be hardly 15%. If the saving is taken as 15% (Rs. 1350/- per month), the annual savings would be Rs. 16,200/- which would be the multiplicand. The multiplier will be 13 with reference to the age of the claimants and the loss of estate would be Rs. 2,10,600/- per annum. Though the quantum of savings will vary from person to person, there is a need to standardise the quantum of savings for determining the loss to estate

(where the claimants are not dependants) in the absence of specific evidence to the contrary. The quantum of savings can be taken as one-third of the income of the deceased where the spouses are having a common establishment and one-fourth where the spouses are having independent establishments. The above will apply where the family consists of non-dependant spouse/children/parents. Where the claimants are non-dependant brothers/sisters claiming on behalf of the estate, the savings can be taken as 15 % of the income. The above percentages, one of course, subject to any specific evidence to the contrary led by the claimants.”

11. Turning to the facts of the instant case, in the postmortem report the age of the deceased was mentioned as 55/56 years. In the absence of any documentary evidence on record, I tend to accept the age of the deceased to be 56 years. There was no evidence with regard to the deceased's income, who was claimed to be working as a maid-servant. I shall therefore take the income of the deceased as per minimum wages payable to an unskilled worker. If the deceased was assumed to be saving $\frac{1}{3}^{\text{rd}}$ of her income, the loss to estate will be $\frac{1}{3}^{\text{rd}}$ of her income. The same, therefore, comes to Rs.96,444/- ($2679 \times \frac{1}{3}^{\text{rd}} \times 12 \times 9$).
12. In view of the judgment of Three Bench in *Rajesh & Ors. v. Rajbir Singh & Ors.* (Supra), the Appellants would further be

entitled to a sum of Rs.1,00,000/- towards love and affection and Rs.25,000/- towards funeral expenses. The overall compensation thus, comes to Rs.2,21,444/-.

13. Consequently, the compensation is enhanced by Rs.1,36,444/- which shall carry an interest @ 7.5% per annum as granted by the Claims Tribunal from the date of filing of the petition till its payment.
14. Respondent Insurance Company shall deposit the balance amount of Rs.1,36,444/- along with interest, as stated above, within six weeks in UCO Bank, Delhi High Court Branch equally in the name of four Appellants. The amount awarded shall be released to the Appellants on deposit.
15. As stated earlier, Respondent New India Assurance Company Limited has been granted recovery rights, which finding has become final between the parties. It goes without saying that Respondent New India Assurance Company Limited, who will satisfy the award, shall be entitled to recover the same from the insured Respondent Satya Pal in execution of this very

judgment without having regards to independent proceedings
for recovery.

16. The appeal is disposed of accordingly.

17. The pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 29, 2015

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