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

Date of Decision: 14th March, 2016

+ **MAC.APP. 57/2010**

NATIONAL INSURANCE COMPANY LTD Appellant
Through Mr. Manoj Ranjan Sinha, Adv.

versus

KAPIL BANSAL Respondent
Through Ms. Aruna Mehta and Mr. Sanjiv
Mehta, Adv.

+ **MAC.APP. 318/2010**

KAPIL BANSAL Appellant
Through Ms. Aruna Mehta and Mr. Sanjiv
Mehta, Adv.

versus

PURAN MAL BANSAL & ANR Respondent
Through Mr. Manoj Ranjan Sinha, Adv. for
R-2

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals arise out of the judgment 27.10.2009 of the Motor Accident Claims Tribunal (tribunal) whereby the claim case (suit No.467/2008) instituted by the first respondent on 24.11.2005 for compensation on account of death of his mother Manju Bansal in a motor

vehicular accident that had occurred on 29.10.2004 involving Maruti car bearing registration No.DL 3CA 1597 at about 6 AM in the area of Srinagar crossing within the jurisdiction of police station Palwal, District Faridabad, Haryana was decided and compensation in the sum of ₹8,38,000/- was awarded with direction to National Insurance Company Ltd. (the appellant in MAC.APP.57/2010) to pay and indemnify in terms of the third party insurance policy valid and effective for the period in question. It may be mentioned here that by the same judgment the Tribunal had also decided another claim case suit No.468/2008 respecting the injuries suffered by the appellant herein, no appeal having been preferred in such respect.

2. According to the case set up before the tribunal, the first respondent (the claimant) along with his parents Ajay Bansal and Manju Bansal and friend Surjeet Kumar were traveling in the car from Delhi to Agra with Ajay Bansal, father of the claimant, at the wheel. In the area of Srinagar within the jurisdiction of police station Palwal District Faridabad, the car went off the road, hit against a milestone and turned turtle. As a result of this accident, all the occupants suffered injuries, Ajay Bansal and Manju Bansal succumbing thereto. The local police appears to have recorded a daily diary entry (DD No.18) wherein reference is made to the version given by the claimant, *inter alia*, about no one being responsible for the accident inasmuch as the car had gone off the road to save an animal that had suddenly come in the way. On 14.10.2005, however, the claimant addressed a communication to the SSP Faridabad (copy at the page 36 of the paper book), *inter alia*, taking the position that inquiries had been made by the local police from him when he was in shock and trauma on account

of death of his parents and injuries suffered by himself and, thus, his signatures had been taken on blank paper. He stated that the car had been driven in a rash speed by Ajay Bansal which was the reason why he could not control it when an animal had suddenly come in the way and therefore the accident occurred.

3. At the inquiry, the insurance company contested by raising the plea that the story set up about the negligence on the part of the driver (Ajay Bansal) was fabricated and that the first version in the daily diary entry was the correct one. The tribunal, however, rejected the contentions of the insurance company and concluded that the accident had indeed occurred due to negligent driving of the car by Ajay Bansal.

4. At the hearing, the insurance company has raised the same issue referring in this context to the case of *Oriental Insurance Company Ltd. v. Premalata Shukla* III (2007) ACC 54 (SC) contending that in order to maintain a claim case under Section 166 of MV Act, proof of negligent/rash driving is *sine qua non*.

5. While there can be no doubt about the fact that in order to succeed on a petition under Section 166 of MV Act, founded on the principle of no fault liability, the claimant must plead and prove that the accident had occurred due to rash/negligent driving of the offending vehicle, in the case at hand, the said proof has been duly mustered. It may be that a different version of the claimant was recorded by the local police on the date of accident. But the fact remains that it cannot be ignored that, at that stage, the claimant, a young boy of hardly 19 years of age would have been in deep shock and trauma, both his parents having perished in accident and he

himself along with his friend having suffered injuries. It cannot be ignored that the claimant was not confronted with his version in the DD entry during his cross examination. Further, it cannot also be ignored that his friend Surjeet Kumar Dutt (PW4) has also affirmed the necessary facts concerning the sequence of events leading to the accident. The evidence, thus, brought out rash driving of the car by Ajay Bansal. There is nothing in the cross-examination of PW-4 on which his statement to such effect could be doubted.

6. For above reasons, the plea about want of proof of negligence in driving cannot be accepted.

7. The insurance company then argued that the evidence on record clearly showed that the age of Manju Bansal (deceased) on the relevant date was 51 years, her date of birth being 15.08.1953 as shown by the income tax returns (ITRs) for the assessment years 2001-02 to 2004-05 (Ex.PW3/1 to PW3/4). The tribunal noted this fact and yet proceeded to find the age of 50 years given in the post mortem examination report to adopt the multiplier of 13.

8. This Court agrees with the submission that this was not a correct approach. When the more authentic proof of the age declared by the deceased herself in the ITRs was available, there was no need to go by the age mentioned in the post mortem examination report, which in the facts and circumstances, would be more on guess work. In this view the multiplier of 11 will have to be applied.

9. By his own appeal (MAC.APP.318/2010), the claimant, however, submits that the tribunal wrongly denied the benefit of future prospects since the ITRs for the four years had clearly showed that the income of the deceased from the business she had set up was progressively increasing from year to year. Reliance is placed on *Captain Singh v. Oriental Insurance Company Co. Ltd.* 2005 ACJ 910 and *Mohit Chopra v. Mohd. Israil* 2012 ACJ 2747, both judgments rendered by learned single judge of this Court to claim additional awards on account of gratuitous services rendered by the deceased (a house keeper). The claimant also submits that since the grandfather Puran Mal Bansal (respondent in both the appeals) was also one of the dependents, the deduction to the extent of 50% for personal and living expenses was not correct and that such deduction should not have been more than 1/3rd.

10. It has to be borne in mind that the deceased was 51 years old and admittedly a self employed person. By both accounts, the element of future prospects has to be kept out and rightly not taken into account by the tribunal. [*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121]

11. This court is not inclined to add any element of gratuitous services inasmuch as the deceased was a working woman who was devoting her entire energy towards the business which she had set up and was managing. Though in the pleadings reference was made to the effect that Puran Mal Bansal (respondent in the appeals) was also a dependent, this fact was not proved by any evidence at the inquiry. So much so that even at the conclusion no amount was apportioned or requested to be apportioned in

his favour. The said respondent even otherwise has not taken any interest either in the proceedings before the tribunal or in the appeals at hand before this Court. In these circumstances, the deduction on account of personal and living expenses to the extent of 50% has been correctly done by the tribunal.

12. Though it was not so argued, this Court notices that the tribunal awarded only ₹10,000/- towards loss of love and affection and ₹5,000/- each on account of funeral expenses and loss of estate. These awards are indeed inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, awards of ₹1 lakh towards loss of love and affection and ₹25,000/- each on account of loss of estate and funeral expenses deserve to be granted. In this view the award of compensation granted by the tribunal deserves to be increased by ₹1,50,000/-. Ordered accordingly. Needless to add, the award shall carry interest as levied by the tribunal.

13. By order dated 01.02.2010, the appellant had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch. By a subsequent order dated 15.09.2010, 50% out of the said deposit was allowed to be released. The Registrar General shall now release the balance deposit lying in UCO bank, Delhi High Court branch with up-to-date accrued interest to the claimant. The insurance company would undoubtedly be obliged to pay more on account of increase in the compensation. It shall deposit the balance in terms of the award modified as above with the tribunal within 30 days whereupon the same shall be released to the claimant.

14. The statutory deposit, if made, by the appellant insurance company shall be refunded.

15. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
VLD

