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

Date of Decision: 16th February, 2016

+ **MAC.APP. 371/2010 & CM Nos.11024/2010 (stay), 16846/2010 (release of amount), 1985/2012 (addl. evidence) and 18609/2012 (addl. evidence)**

LALZUALA RALTE Appellant

Through: Ms. H. Hnun Poi, Adv.

versus

RAJU & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Joseph Lalchhuanliana Ralte, aged 25 years, employed with a private company described as EXL Service. Com (India) Pvt. Ltd. Gurgaon, died on account of injuries suffered in a motor vehicular accident involving truck bearing registration No.HR-26-GA-0900 (the offending vehicle) which was concededly insured against third party risk with the third respondent herein for the relevant period. At the time of the accident, the deceased was travelling on motorcycle bearing registration No.HR-51G-6800 (the motorcycle) with a friend named Albert Lallawmpuia and also suffered injuries. Two claim petitions under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) came to be preferred for compensation before the Motor Accident Claims Tribunal (the Tribunal), one on behalf of Albert

Lallawmpuia and the other by the mother of deceased Joseph Lalchhuanliana Ralte (hereinafter referred to as “the deceased”). The claim petition presented by the mother of the deceased and the claim petition on behalf of the injured Joseph Lalchhuanliana Ralte were inquired into simultaneously. The claim petition arising out of death of Joseph Lalchhuanliana Ralte resulted in judgment dated 27.04.2010 whereby compensation in the sum of Rs.9,71,000/- was granted with interest at 7.5% per annum from the date of filing of the petition (17.01.2009) till realisation.

2. The claimant (mother of the deceased) had impleaded the driver and owner of the offending vehicle as first and second respondents in addition to the insurance company as the third respondent. She had also impleaded Lalzuala Ralte (the appellant herein) as the fourth respondent, he being the father of the deceased. Noticeably, the claimant described herself as former wife of the appellant and, *inter alia*, testified on the strength of her own affidavit that her marriage with the appellant herein stood dissolved on account of divorce obtained under customary practices prevalent in the society of Mizoram (to which the parties belong), on 03.06.2002. The appellant, as the fourth respondent, had contested the claim of the mother (the fourth respondent in the appeal at hand), *inter alia*, on the ground that she had deserted him and the deceased and, thus, there was no loss of dependency for which she deserved to be compensated. Both the claimant mother and the respondent father testified during the inquiry to affirm their respective positions. The Tribunal, *inter alia*, held that the appellant had miserably failed to establish that he was dependent upon the deceased and thus concluded that he had practically not suffered any loss of love and affection, leave alone loss of dependency. Against these conclusions and observations the Tribunal apportioned Rs.10,000/- only in favour of the

appellant, granting the entire remainder amount of compensation to the claimant mother.

3. The appeal at hand was brought by the father of the deceased for enhancement and mainly to raise the question of apportionment. By order dated 04.06.2010, it was directed that upon the insurance company depositing the awarded amount, only 50% would be paid to the claimant (the fourth respondent in the appeal) and the balance shall be kept in the fixed deposit in the name of the Tribunal. The proceedings recorded thereafter show that the order has continued to be operative till date.

4. During the hearing on the appeal it was brought out that the claimant mother had also filed an appeal under Section 173 of MV Act which was registered as MAC.APP.No.386/2010. The said appeal came for consideration for the first time on 06.07.2010. The said appeal was disposed of by order dated 13.02.2010 on the basis of settlement before Mega Lok Adalat and on 24.10.2010. The Court is informed that in due course the original physical record of the said MAC.APP.No.386/2010 has been weeded out and only scanned copy of the said record is retained. Copy of the file of the said MAC.APP.No.386/2010 along with copy of the proceedings has been generated with the help of soft copy retained by the registry and made part of the record of the appeal at hand today.

5. On perusal of the record of MAC.APP.No.386/2010, mentioned above, it is noted that in her appeal under Sections 173 MV Act, the claimant mother had impleaded the appellant herein as the fourth respondent, though describing him as “performa respondent”. The proceedings recorded on the file of the said appeal show that the appellant was duly served in terms of order dated 16.07.2010 for 20 September, 2010.

The proceedings at the same time also show that the appellant appeared through counsel even without notice on 16.07.2010. But thereafter he failed to appear in the Court in the said appeal. The appeal of the claimant mother was referred to continuous Lok Adalat organised by Delhi High Court Legal Services Committee where it was taken up on 23.10.2010. On the basis of deliberations before the continuous Lok Adalat, the insurance company agreed to the award of compensation to be enhanced by ₹2,70,000/- thus raising the compensation to the consolidated sum of ₹12,41,000/-. The parties (the claimant mother and the insurance company) agreed that the matter be listed before the Mega Lok Adalat on 24.10.2010 for disposal. The proceedings recorded by the Mega Lok Adalat indicate that a formal application was made on behalf of the appellant seeking compromise to be recorded for full and final settlement for claim of the petitioner in view of what had been settled with the insurance company. The appeal thus was taken up by the Lok Adalat on the same date and disposed of by modified award granting ₹2,70,000/- over and above the amount awarded by the Tribunal with directions to the insurance company to pay the said amount in the name of the petitioner (the claimant mother) as per directions in the award within the period specified.

6. In the appeal at hand the service of the first and second respondents (the driver and owner of the offending vehicle) was dispensed with by order dated 08.03.2013, inasmuch as the insurance is admitted. The fourth respondent (the claimant mother) appeared and participated on some of the dates of hearing. It is noted from the submissions recorded on her behalf that she contested the contentions of the appellant questioning the propriety of the view taken by the Tribunal in the impugned judgment denying him any significant share in the compensation. On application moved by the

claimant mother (the fourth respondent), she was allowed to lead evidence for purposes of consideration of the appeal at hand under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC). In terms of the said liberty granted witness Zeaul Jafri, working as Assistant Manager - Legal & Compliance, Corporate HR with Exl. Service.com (India) Private Limited (RW1) was examined on 23.08.2012 and cross-examined by the appellant on 15.10.2012. The effort on the part of the claimant mother (the fourth respondent) through the said exercise was essentially to bring on record the nomination left behind by the deceased in respect of his assets or claims with the employer company.

7. In the wake of above mentioned additional evidence brought on record by the claimant mother, the appellant sought similar opportunity which was granted and thus directions were given by the Court, *inter alia*, by orders dated 07.01.2013 and 08.03.2013 for the requisite record to be produced by Employees Provident Fund Organization (EPFO). Thus, PF form No.2 left behind by the deceased in terms of the employees pension scheme of EPFO was produced in the court on 14.05.2013 indicating that the deceased had nominated his sister Coreen Zochhuankimi. This is in sharp contrast to what was brought out through the evidence of RW1 earlier to the effect that original nomination form of the deceased was not traceable with the employer company.

8. Though the appeal was preferred also to seek enhancement of compensation awarded by the Tribunal in the impugned judgment, given the enhancement already accorded by way of settlement in the Lok Adalat in the course of MAC.APP.No.386/2010, the only point pressed at the hearing on the appeal at hand is that of apportionment of compensation.

9. The relevant contentions and evidence on the above noted issue as submitted before the Tribunal by the claimant mother are noted in (para numbers 12 to 14 of) the impugned judgment as under :

“12. Lalsawmliani Ex. W/o R. Lalzuala Ralte, mother of deceased Joseph and petitioner in suit no. 43/09 entered the witness box as PW-4 and deposed on affidavit which she proved as Ex. PW-4/A. She testified on oath the assertions made in her affidavit stating that her son Joseph sustained fatal injuries in the accident due to the rash and negligent driving by R-1. She stated that deceased was residing at Double Storey, Vijay Nagar and employed with EXL Service.com (1) Pvt. Ltd. at Gurgaon and was getting a salary of Rs. 12,000/- per month, the entire amount which he was drawing, was spending towards the family expenses. She also stated that she had got divorced from her husband on 03.06.2002 under Customary Practice of Mizoram Society in the presence of 4 witnesses (2 witnesses from both the sides) and that after the divorce, her ex-husband i.e. R-4 remarried and is residing separately at B-68, Chhinga Veng, Aizwal, Mizoram and had no concern with her or the deceased. It was stated that she and her daughter were dependent upon the income of Joseph. She brought on record photocopy of her passport Ex. PW-4/1, copy of divorce papers is Ex. PW-4/2 and the death certificate of the deceased is Ex. PW-4/3. She also brought on record I Card of the deceased as mark A, college I-Card as mark B, bank passbook of the deceased mark C, admission certificate of SSC examination 2008 as mark D, copy of appointment letter of the deceased as mark E and copy of office I Card of the deceased as mark F.

13. In her cross examination, she stated that she was not working but used to earn Rs. 8,000/- as rent from the shops owned by her in Mizoram. She also stated that she was earning Rs. Two to Three Lacs per transaction from the supply work. She admitted that she was not an eye witness of the accident and had received a telephonic call from her uncle about the accident on 08.10.2008. At the time of accident, deceased was doing correspondence course simultaneously but denied that he was not earning Rs. 12,000/- per month. She denied that

deceased had sustained fatal injuries due to his own negligence as he was not wearing a protective head gear at the time of accident, nor the head lights of his motorcycle were on, nor he applied any breaks to maintain proper distance from the truck. She denied that all the funeral expenses and the traveling expenses of the deceased were borne by her.

14. In her further cross examination on behalf of R-3, she stated gone out of India about 10 times, first time in 2003. She stated that the deceased was working since 2006 with Wipro in Calcutta. She denied that deceased had not been working and that documents mark A to F were fabricated documents, she denied that she was not financially dependent upon the deceased but admitted that father of the deceased was not dependent upon him. she admitted that deceased was living in a rented accommodation in Delhi and paying Rs. 2,000/- to Rs. 2,200/- as rent, she stated that deceased was residing separately from her as well as from R-4.”

10. As mentioned earlier, the appellant also participated in the inquiry by offering his own evidence. The sum and substance of his evidence is noted in the impugned judgment (in paras 22 and 23) as under :

“22. R-4 Mr. R Lalzuala (Respondent no. 4 in petition no. 43/09) entered the witness box and deposed on affidavit which he proved as Ex. R4W1/A. He deposed that he was father of the deceased Joseph Lalchhuanliana Ralte. He stated that he was a permanent resident of Mizoram and that mother of the petitioner i.e. (petitioner no.1 in petition no. 43/09) had deserted him and deceased in the year 2001 and since then the deceased was under his custody and their daughter Coreen Zochhuankimi was under the custody of the petitioner. He deposed that he had been fulfilling all the needs and desires of the deceased to the best of his capacity even though he was in great financial difficulty and had got the deceased educated at one of the premier school at St. Pauls School, Darjeeling and had borne all the expenditure. The deceased was admitted at Hrangbana College at Aizwal, Mizoram and thereafter in the year 2004, the deceased had taken admission in ARSD College, Delhi.

He deposed that he waited three years for petitioner no. 1 to come back but in vein and thereafter he applied for remarriage license from the church in accordance with law. He stated that the deceased was residing at double storey and paying rent of Rs. 4,000/- per month, working in EXL Service.Com(1) Pvt. Ltd. drawing a salary of Rs. 18,000/- per month. He stated that dead body of the deceased was handed over to paternal uncle of the deceased and that the last rites were performed by him and that he had incurred Rs. 1,83,038/- as funeral expenses. He also stated that the court of Mizoram had issued a heirship certificate in favour of R-4. He stated that he was entitled to compensation in respect of the deceased Joseph. He brought on record his passport Ex. R4W1/1, passport of the deceased Ex. R4W1/2, original letter written by village Councel/President is Ex. R4W1/3, college library card of the deceased is Ex. R4W1/4, photograph of R-5 and deceased is Ex. R4W1/5, copy of admission tickets from DU for 2005 is Ex. R4W1/6, copy of admission tickets from DU for 2004 is Ex. R4W1/7, copy of admission tickets from DU for 2007 is Ex. R4W1/8, original correspondence of Saint Pauls School. Darjeeling to the respondent is Ex. R4W1/9, attested copy of refundment of money to the respondent by the school is Ex. R4W1/10, certified copy of ISC certificate issued by the Registrar of the school is Ex. R4W1/11, original remarriage license issued by the Church is Ex. R4W1/12, copy of diary dated 08.06.2001 of the deceased's grandfather is Ex. R4W1/13, copy of rent receipts issued by the owner of the house is mark A, original employment agreement issued by EXL Services which is duly signed by the deceased is Ex. R4W1/14 colly. (total 10 pages), computerized copy of the salary slip of the deceased is Ex. R4W1/15 colly. (total 2 pages), attested copy of the FIR is Ex. R4W1/16, attested copy of MLC is Ex. R4W1/17, attested copy of the postmortem report is Ex. R4W1/18, originals of handing over of the dead body of the deceased to his paternal uncle is Ex. R4W1/18A, photograph taken for the final funeral service at Mizoram House, Delhi is Ex. R4W1/19, original airway bill for the month of October 08 is Ex. R4W1/20, certified copy of the certificate of embalming of the deceased is Ex. R4W1/21, original receipt of payment of bills for the embalming is Ex.

R4W1/22, original receipt of coffin is Ex. R4W1/23, copies of two booking tickets of R-4 are colly, mark B, original receipt of bank payments dated 08.10.2008 and 14.10.2008 are Ex. R4W1/24 colly., original Heirship Certificate is Ex. R4W1/25, certified copy of family register maintained by the Church is Ex. R4W1/26, certified copy of the register maintained by the Church in detail about the death of people living in the jurisdiction is Ex. R4W1/27 colly, (total 16 pages), certified copy of the certificate issued by the Church certifying that the deceased is living in their jurisdiction is Ex. R4W1/28, original bills for expenditure incurred by respondent no.4 are Ex. R4W1/29 colly, (total 10 bills), newspaper dated 08.10.2009 published in remembrance of the death anniversary of the deceased is Ex. R4W1/30.

23. In his cross examination, he stated that he did not remember the exact date when the passport of the deceased was issued or whether it was issued before the divorce with the petitioner or after the divorce. He also stated that the letter written by the Village Council/President Ex. R4W1/3 has not been issued by the court but he denied that the Village Council has not authority to issue any custody certificate but admitted that the said certificate had been issued after the death of the deceased. He admitted that his sister namely R Vanlalchami was a Magistrate in Aizwal. He stated that he had not filed any petition for issuance of Heirship Certificate Ex. R4W1/25 but admitted that the same had been issued after the death of his son. On being asked as to what was the meaning of the term legal heirs, which means it was the only father. He further stated that what was to be established by him by this certificate that he has procured it at the advise of his friends. He again stated that he want to establish that he was father of the deceased. He further stated that he had not taken divorce from his wife but admitted that he had got remarried with C. Lalhlimpuii in February 2006 and had a so from his second marriage namely Abel Lalpekhula, who was born in 2009. He denied that he has celebrated the function of new born child at the time of condolence of his deceased son. He denied that his father was the church elder brother but stated that he did not remember the name of the institution where his daughter Coreen is studying. He stated that his daughter is presently

residing outside and not in the hostel but he did not send any amount of education expenses to his daughter nor he know how much is being paid and by whom. He volunteered that he once sent Rs. 12,000/- to his daughter. He admitted that the dead body of the deceased was firstly taken to the place of the petitioner but denied that he never financially supported his deceased son towards education. He denied that his deceased son was residing with him prior to his death. He denied that he had filed false and fabricated documents in the court.”

11. The claim of the appellant as a dependent on the deceased was rejected by the Tribunal on the following reason :

“It was the contention on behalf of the petitioner that deceased was living separately but after the divorce of petitioner with R-4 in 2002, R-4 had remarried and had never cared for the children who had always been with her and that she was financially and emotionally dependent upon the deceased and that R-4 had no concern whatsoever, leave alone, being dependent upon the deceased. On the other hand, R-4 brought on record several documents to show that the deceased was living with him since his passport had the address of R-4 and that R-4 had given the best of education to the deceased. However, R-4 was unable to establish, that he was in any ways, dependent upon the deceased, financially. It was an admitted fact by R-4 that he had remarried and had a son from the second marriage. It was also an admitted fact that the deceased was not giving any money to R-4 from his salary. Learned counsel for R-4 has brought on record translations of certain laws prevalent in Mizo Tribe to the effect that after the divorce had been entered into between a couple, there were certain formalities which had to be adhered to and complied with, by the parting couple. The Heirship Certificate was also brought on record by R-4 only for the purpose to show that he was the father of the deceased. It may be noted that this fact is not in dispute. The Heirship Certificate, in this case, is without any meaning since the law of compensation under Motor Vehicle Act does not go as per the legal heirs but it is bound by

the principle of legal representatives. As far as, legal representatives are concerned, it was the admitted version of R-4 himself that he had remarried and was living separately with his new family while the petitioner, his son and daughter were living in Delhi and were fending for themselves.

The law of the land is formulated by legislations and is interpreted by the courts. The Apex Court in Sarla Verma vs. DTC, VI (2009) Scale 129 has held that in the event of the death of a man, the father of the deceased would not be a dependent unless proved to the contrary, but the mother of the deceased would be considered to be a dependent.

In the instant case, R-4 has miserably failed to establish that he was dependent upon the deceased and if I may observe so, it is quite apparent that R-4 was never in touch with the deceased after the divorce with the petitioner and after his second marriage and therefore would not have practically suffered any loss of love and affection also, leave alone loss of dependency. Accordingly, R-4 is held not to be a dependent upon the deceased in the instant case.”

12. It is the argument on behalf of the appellant that after the divorce taken by the fourth respondent (the claimant mother), it is the appellant who held the custody of the deceased and since he had brought him up, the mother being a person of sufficient means, not dependent on the deceased son, she having taken the custody of the daughter, the claim petition could not have been decided with major apportionment of the compensation in her favour. It is argued that the Tribunal fell into error by applying the Hindu Law of inheritance even though the parties follow Christian faith and, thus, *inter se* rights should be governed by Indian Succession Act or customs and practices of the Mizoram society to which they belong. It is submitted that even in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, it was directed that the dependency loss has to be

calculated in the manner determined in the said case though “subject to evidence to the contrary”.

13. In the considered opinion of this Court, both parties have not properly understood the concept of dependency which is the subject matter of determination in a case based on liability in torts, as codified by Section 166 of the MV Act. The law of inheritance has basically no role to play in such cases. It is the financial and other dependence which governs the rights of the parties involved.

14. As noted by the Tribunal in the aforequoted paragraphs of the impugned judgment, both the appellant and the claimant mother had fallen apart in 2002. That was the year when the claimant mother stated that she had taken a divorce from the appellant under the customary law. Though the appellant would not admit divorce and instead stated that the wife (the claimant mother) had actually deserted him, he conceded in the course of his submissions and evidence that he himself had remarried and there has been a child born to him from out of the second wedlock. Be that as it may, the fact remains that the son was major on the date of death. In this view, the question of his custody at the time of divorce is inconsequential.

15. The evidence clearly shows that neither the mother nor the father were actually living with him at the time he died. In the facts and circumstances this Court agrees with the contentions of the appellant that he has been unfairly denied meaningful share in the compensation. The grant of Rs.10,000/- only from out of the compensation computed is pittance. In the given facts and circumstances, at least 25% of the awarded amount should have been apportioned in favour of the appellant. Suitable correction needs to be made in this regard, particularly in the face of the fact that the

mother in her independent appeal (MAC.APP.No.386/2010) seems to have secured enhancement of the compensation, behind the back of the appellant inasmuch as the fact that there was another party claiming rights in the compensation was withheld by her from the Lok Adalat and the appellant's status was wrongly described as merely that of proforma respondent.

16. Thus, the impugned judgment is modified to the effect that from out of the compensation awarded, as enhanced by settlement before Lok Adalat in the course of MAC.APP.No.386/2010 instead of mere Rs.10,000/-, 25% (Twenty Five per cent) with proportionate interest shall be payable to the appellant.

17. The Tribunal is directed to deal with the deposit made by the insurance company in terms of the order dated 04.06.2010, accordingly releasing the share of the claimant to him by appropriate instrument and for paying the balance to the claimant mother (the fourth respondent).

18. The appeal is disposed of in above terms. Copy of this judgment be given *dasti* to all sides.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016
VLD