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

% **Date of Decision: 03rd NOVEMBER, 2016**

+ **MAC.APP. 779/2015 & CM Nos.23284/2015, 33768/2016**

UNITED INDIA INSURANCE COMPANY LTD. Appellant

Through: Mr.Amit Gaur, Advocate

versus

SHAKUNTLA & ORS. Respondents

Through: Mr.R.K. Gautam, Mr. Jugesh
Kumar, Mr.Sagar Roy, Advocates
for respondents No.1 to 6.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.7,75,860/- has been awarded to claimants/respondents no.1 to 6.

2. On 29th November, 2012, Motiya (hereinafter referred to as 'victim') was returning from Badarpur to his home in Madangir. He was waiting for the bus at the Badarpur bus stand when DTC bus No.DL-1PC-8319 came. The victim was boarding the bus from the backdoor when the driver drove the bus whereupon the victim fell out and the bus ran over his left leg resulting in multiple fracture and grievous injuries. A rod was inserted in the left leg of the victim. The victim was the only earning member of the family comprising of his wife, four daughters, a son and mother. The injured went into depression due to the injuries suffered and committed suicide on 13th August, 2013 which resulted in death on 15th August, 2013.

3. The legal representatives of the victim filed application for compensation before the Claims Tribunal which was contested by the appellant on the ground that there was no connection between the accident and the death of the deceased. The Claims Tribunal held that the depression suffered by the victim arose out of the accident dated 29th November, 2012 as a main contributor. Para 42 of the judgment is reproduced hereunder:

“42. The commission of suicide, in itself shows that something must have weighed very heavily on the mind of the injured. His circumstances and inability to cope with, would have definitely resulted into depression, and by its very propensity and propinquity, the act of committing suicide by the injured seems to be an outcome of depression. The depression can be attributed to injuries, pain and sufferings, arising out of the accident dated 29.11.2012, as a major contributor, even if other factors like poor economic condition, stoppage of income, inability to work are also identified as factors, which ought have led the injured to commit suicide. The Tribunal, accordingly, hold that the act of injured in committing suicide has been propelled by injury, and injury related depression, and accordingly hold that the suicide dated 13.08.2015 is also on account of the post traumatic depression, arising out of the accident dated 29.11.2012. Considering, however, that there were other factors which must have weighed upon the mind of the injured, and not the injury alone, the Tribunal hold that the injury, prolonged treatment and his inability to move or walk, all arising out of accident, must have contributed to 50% of the reasons to commit suicide, if at all it is to be mathematically worked out.”

4. The deceased was aged 52 years at the time of the accident and

was self-employed. The Claims Tribunal took minimum wages of Rs.7,251/- in respect of an unskilled person, added 15% towards inflation, deducted 1/4th towards his personal expenses and applied the multiplier of 11 to compute the loss of dependency as Rs.8,25,528/-. The Claims Tribunal awarded Rs.1 lakh towards loss of consortium, Rs.2,75,000/- towards loss of love and affection, Rs.1 lakh towards loss of estate and Rs.25,000/- towards funeral expenses. The Claims Tribunal deducted 50% towards the contributory negligence of the deceased and added Rs.1,13,096/- towards the medical expenditure. Total compensation awarded is Rs.7,75,860/-.

5. Learned counsel for the appellant urged at the time of the hearing that there was no connection between the injuries suffered by the victim in the accident and his death. It is submitted that the deceased died due to the suicide and the same cannot be considered as a death arising out of the accident. It is further submitted that the compensation awarded to the respondents is on a higher side. It is further submitted that respondents no.1 to 6 are only entitled to the loss of estate.

6. Learned counsel for respondents no.1 to 6 referred to and relied upon *Venugopal Narayanan Nair v. T.L.Paulson*, AIR 2009 Ker 86 in which the Kerala High Court awarded compensation in respect of the death arising out of a suicide by an injured on account of the depression from the injuries in the accident. The Kerala High Court deducted 50% while awarding the compensation. The relevant portion of the said judgment is reproduced hereunder:

“3. ...Recently, House of Lords consisting of five members considered a similar question in *Corr (Administratrix of Corr deceased) v. IBC Vehicles Ltd.* ((2008) 2 All ER 943). Facts of the above case is that in June, 1996, the claimant's husband, C, was badly injured in a factory accident on the premises of the defendant, his employer. The defendant admitted that the accident had been caused by its negligence or breach of statutory duty. Thereafter, C suffered post-traumatic stress disorder and severe depression. Nearly six years later, in February 2002, he was being treated for depression and was admitted to hospital. He was assessed as being a significant suicide risk on 2 March 2002 and on 9 March it was noted that he had recurring thoughts of jumping from a high building. On 20 May 2002 the deceased was examined by a clinical psychologist who noted that he felt helpless and admitted to suicidal ideation. On 23 May 2002, while suffering from an episode of severe depression, C committed suicide by jumping from the top of a multi-storey car park. The claimant brought claims against the defendant including a claim under the Fatal Accidents Act, 1976. The Judge, dismissed her claim under the 1976 Act. The claimant's appeal was allowed by a majority of the Court of Appeal. It was argued in appeal that the accident occurred after about six years and it broke the chain of causation and constituted a *novus actus interveniens*, was an unreasonable act which broke the chain of causation and was the voluntary act of the deceased and so precluded by the principle *volenti non fit injuria*. All the five members were in agreement with the judgment of the Court of Appeal, but, Lord Scott of Foscote held that conduct of the victim is also not blameless and full compensation will not be available, but, only a reduced compensation need be granted as there is some act on his part also. But, that was a dissenting opinion. Lord Walker of Gestingthorpe opined as follows:

“In applying this test the court has to have regard both to blameworthiness and to what is sometimes called causal potency (*Stapley v. Gypsum Mines Ltd.*, (1953) 2 All ER 478 at 486 : (1953) AC 663 at 682). These are not precise or

mutually exclusive tests. I do not regard 'blameworthy' as an appropriate term to describe Mr. Corr's conduct when, with his judgment impaired by severe depression, he decided to end his life by jumping off a high building. That was his own decision, but it was nevertheless a natural consequence of the physical and mental suffering which he had been enduring since the accident. For my part, in agreement with Lord Bingham, I would make no reduction in the damages to be awarded under the Fatal Accidents Act, 1976."

Lord Neuberger observed as follows:

*"50. Here, the coroner found that Mr. Corr 'underwent over time a psychological change resulting in depression and anxiety not previously experienced', while Dr. Paul McLaren, the consultant psychiatrist instructed by Mrs. Corr, said in his reports that 'a critical change takes place in the balance of a sufferer's thinking, when they stop seeing the hopeless thoughts as symptoms of an illness and the depressive thinking comes to determine their reality' and concluded that 'Mr. Corr's capacity to make a reasoned and informed judgment on his future was impaired by a Severe Depressive Episode in the hours leading up to his death'. In these circumstances, there was a considerable case for the full recovery which the Court of Appeal awarded; this is also highlighted by Lloyd LJ's reasoning in *Kirkham v. Chief Constable of the Greater Manchester Police*, (1990) 3 All ER 246 at 250 : (1990) 2 QB 283 at 290, although his remarks were directed simply to an issue of *volenti non fit injuria* and it is not apparent that the issue of contributory fault raised in the notice of appeal (see (1990) 2 QB 283 at 285) was actually pursued before the court in that case.*

51. However, in my view, the existence of a causal link between an accident and depression leading to suicide, sufficient to make a defendant who is responsible for the accident liable for the suicide as one of its consequences,

does not necessarily mean that such liability should involve a 100 per cent recovery.”

It was further observed as follows:

“62. In these circumstances, there is, I accept, a powerful case for saying that, where a defendant is tortiously liable under the 1976 Act for the suicide of a person, a degree of contributory negligence (which in the absence of special factors, might well be 50 per cent) should be attributable to the deceased where he is of sound mind, but that it is inappropriate to attribute any contributory negligence to him where it can be said that he was not of sound mind. However, it seems to me that such an approach does not pay sufficient regard to what Lord Hoffmann referred to in the passage already quoted as ‘the complexity of life’. Indeed, what Lord Hoffmann had to say earlier in his opinion (1999) 3 All ER 897 at 903, (2000) 1 AC 360 at 368-369) appears to me to be even more directly in point:

The difference between being of sound and unsound mind, while appealing to lawyers who like clear-cut rules, seems to me inadequate to deal with the complexities of human psychology in the context of the stresses caused by imprisonment.’

“It was further observed as follows:

“67. In the present case, Mr. Corr's depression led him to have ‘thoughts of hopelessness’ which ‘became more difficult to resist’ before the suicide and, at the time he committed suicide, he was suffering from a disabling mental condition, namely, a severe depressive episode, which impaired his capacity to make a reasoned and informed judgment on his future. This seems to me to render the employer's case on contributory negligence plainly and significantly weaker than that of the commissioner in Reeves's case. However Mr. Corr's capacity was

‘impaired’ rather than removed, a point emphasised by the fact that neither his intellectual abilities nor his appreciation of danger had been lessened from the norm, and that he appreciated the consequences of jumping from a building.”

In the above circumstances, compensation amount was not reduced.

4. In this case, it has been in evidence that before the accident, the deceased had no depression. There is no evidence to the effect that the deceased has suffered depression leading to suicide or any other psychological disorder before the accident. He was a happy family man before the dreadful accident. The Doctor also deposed that before the accident, no such depression was reported. From the evidence, it can be seen that his severe depression and worthlessness and helplessness came after the accident in view of the accidental injuries. In his severe depressed state, he felt that he was a greater burden to his relative's life. Suicide was his decision and worthlessness and helplessness which were the result of his depression which, in turn, resulted in the suicide. Therefore, we are of the view that compensation should be given to the legal representative for the death as death was caused due to the mental depression developed consequent to the injuries, but, we are of the opinion that on the facts and circumstances of this case, a reduction can be given and only 50% of the compensation payable for the death need be granted.”

7. This Court agrees with the view of the Kerala High Court in ***Venugopal Narayanan Nair v. T.L.Paulson*** (supra). In the present case, the injured went into depression due to pain and suffering caused by the injuries suffered in the accident coupled with the severe economic condition being unable to earn for sustenance for himself and his family members comprising of his wife, four daughters, one son and mother. The Claims Tribunal has deducted 50% of the

compensation as done by Kerala High Court in *Venugopal's* case.

8. This Court is of the view that the compensation awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any reduction. The appeal is therefore dismissed.

9. Respondent no.1 is present in Court and she submits that her husband died as back as on 15th August, 2013 and no amount of compensation has been released to her till date. She further submits that she is unable to sustain and she has fixed the marriage of her daughter on 15th November, 2016.

10. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of order dated 13th October, 2015 and the said amount is lying in fixed deposit with UCO Bank, Delhi High Court Branch. The Registrar General is directed to disburse the award amount to respondents no.1 to 6 by directing UCO Bank to release Rs.1 lakh to respondent no.1, Rs.1 lakh to respondent no.6 and Rs.50,000/- each to respondents no.2 to 5 by transferring the said amount to their savings bank accounts. The balance amount be kept in 5 fixed deposits of equal amount in the name of respondent no.1 for the period 6 months, 1 year, 2 years, 3 years and 4 years.

11. The monthly interest on the FDRs shall be credited in individual savings bank account of respondent no.1.

12. At the time of maturity, the fixed deposit amount shall be automatically credited in the individual savings bank account of respondent no.1.

13. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be

provided to the respondent no.1.

14. No cheque book or debit card be issued to the claimant/respondent no.1 without permission of this Court.

15. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

16. UCO Bank, Delhi High Court Branch shall ensure that the savings bank accounts of respondents are individual accounts and not joint accounts.

17. The statutory amount be refunded back to the appellant.

18. The pending applications are disposed of.

19. The date of 14th December, 2016 is cancelled.

20. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

NOVEMBER 03, 2016
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J.R. MIDHA, J.