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

Decided on: 30th October, 2017

+ **MAC APPEAL 459/2017 & CM No. 18305/2017 & CM No.
18307/2017(delay)**

MEENA DEVI & ANR. Appellant
Through: **Mr. Manoj Bhandari, Adv.**

versus

SHIV DUTT & ORS. Respondents
Through: **Ms. Neha Jain (proxy) for Mr.
Ravin Rao, Advs. for R1 & R2.
Mr. Pankaj Gupta Bagga for
Ms. Suman Bagga, Adv. for R3.**

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

JUDGMENT (ORAL)

1. On the accident claim case (petition no. 76601/2016) instituted on 14.08.2013 by the appellants (collectively, the claimants), the Motor Accident Claims Tribunal, by judgment dated 19.09.2016, awarded compensation under section 166 of the Motor Vehicles Act, 1988 in the sum of Rs. 42,66,660/-, fastening the liability on the third respondent (the insurer) to pay with interest, the said amount being the compensation on account of death of their bachelor son Sapan Gupta in motor vehicular accident that had occurred on 17.06.2013, after deducting an amount of Rs.14,80,585/- which was admitted to have

been received by the appellants on account of the said death in terms of personal accident insurance policy which had been earlier taken out by the employer of the deceased from a general insurance company, the same having not been deducted from the salary of the deceased. The motor vehicular accident which had given rise to the cause of action involved negligent driving of truck bearing registration no. HP-12A-5821 by the first respondent, it being vehicle registered in the name of second respondent and at his instance, the third respondent admittedly had issued the insurance policy covering third party risk for the period in question.

2. By the appeal at hand, the claimants assailed the view taken by the tribunal deducting Rs.14,80,585/- from the total compensation which was calculated in the sum of Rs.57,47,245/-, it inclusive of awards under the heads of loss of financial dependency, loss of love and affection, loss of funeral expenses and loss of estate.

3. Reliance is placed by the appellants (the claimants) on the decisions of the Supreme Court in *Helen C. Rebello Vs. Maharashtra Road Transport Corporation* (1999) 1 SCC 90, and *United India Insurance Company Vs. Patricia J. Mahajan* (2002) 6 SCC 281 as also decision of a learned single judge of this Court in FAO No. 161/1994 decided on 25/05/2010 titled *Delhi Transport Corporation Vs. Sushma Bhatnagar*. *Per contra*, the third respondent (insurer), which contests the appeal, relies on the decision of *Helen C. Rebello* (supra) and also on a decision of a bench of three Hon'ble judges of Supreme Court in *Reliance Insurance Company Vs. Shashi Sharma & Ors.* (2016) 9 SCC 627 to argue that the view taken by the tribunal in

deducting the aforementioned amount from the compensation is correct in as much as such pecuniary advantage had come in the hands of the claimants only on account of accidental death, unlike other benefits as may have been recovered under other contingencies illustratively on account of payment of gratuity, life insurance etc.

4. The only question required to be addressed in the present appeal is as to whether the amount received by the dependents in the fatal accident claim case under the personal accident insurance policy is to be treated as such pecuniary advantage, the inclusion of which would be in nature of double gains and therefore, impermissible.

5. In *Helen C. Rebello* case (supra) decided by a bench of two Hon'ble judges the question before the Supreme Court was as to whether it would be permissible to disallow the deduction of the amount receivable by the dependants of the deceased towards life insurance policy from out of the amount of compensation payable under the Motor Vehicles Act. The observations of the Court (in para 32 to 35) on the subject are of import and, therefore, quoted as under:-

“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 his 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, movable, 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 Accidents 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 co-relation 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 co-relation 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 co-relation 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.

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured and is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares fixed deposits, etc. though are all a pecuniary advantage

receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

(emphasis supplied)

6. In *Patricia J. Mahajan* (supra), another bench of two Hon'ble judges of the Supreme Court again considered the issue as to whether the amount of life insurance was to be deducted from the amount of compensation payable to the claimants or not. The Court referred to the previous decision in *Helen C. Rebello* (supra) and answered the issue in negative, thereby affirming the earlier view, adding that such deduction could not be made even for the reason that the receipt of the insurance amount had been accelerated due to the premature death of the insurer.

7. The case of *Sushma Bhatnagar* (supra), decided by learned single judge of this Court, involved similar questions about deduction of amounts received by the dependants after the death of the person in question in motor vehicular accident, such amounts received being in terms of the group insurance scheme, gratuity and payment for death on duty from the employer. The learned judge observed that the claim of compensation under the Motor Vehicles Act is independent of other benefits granted to the dependants of deceased by the employer of the deceased and would have been received even in case of “*natural death*”.

8. The decision in *Shashi Sharma* (supra) was rendered by a bench of three Hon’ble judges of the Supreme Court. The prime issue for consideration was as to whether compensation received from the government under (2006) rules for compassionate assistance to the dependants of the deceased government employees was to be deducted from the total compensation or not. The court noticed a conflict of opinion between two co-ordinate benches, one represented by the view taken in case of *Helen C. Rebello* (supra), and the other reported as *Bhakra Beas Management Board Vs. Kanta Agarwal* 2008 11 SCC 366. After noting the afore-quoted observations in *Helen C. Rebello* (supra), it has held thus:-

25. The claimants are legitimately entitled to claim for the loss of “pay and wages” of the deceased government employee against the tortfeasor or insurance company, as the case may be, covered by the first part of Rule 5 under the 1988 Act. The claimants or dependants of the deceased government employee (employed by the State of Haryana),

however, cannot set up a claim for the same subject falling under the first part of Rule 5—“pay and allowances”, which are receivable by them from employer (the State) under Rule 5(1) of the 2006 Rules. In that, if the deceased employee was to survive the motor accident injury, he would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of “pay and wages” of the deceased government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants.

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26. Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of ex gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of “pay and allowances” in the form of ex gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the 2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not expressly enable the dependants of the deceased government employee to claim similar amount from the tortfeasor or insurance company because of the accidental death of the deceased

government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receivable by the dependants of the deceased government employee under the 2006 Rules towards the head financial assistance equivalent to “pay and other allowances” that was last drawn by the deceased government employee in the normal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other benefits is concerned, if the deceased government employee had survived the accident can still be pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, life insurance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government employee, applying the principle expounded in Helen C. Rebello [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] and Patricia Jean Mahajan [United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] cases”.

(emphasis supplied)

9. The larger bench of the Supreme Court in *Shashi Sharma*(supra), thus, has affirmed the view taken in the case of *Helen C. Rebello* (supra).

10. The pecuniary advantage has to be co-related with the “accidental death”. Since the amount received by the claimants in the present case was paid to them under the personal accident policy taken out by the employer, its inclusion again in the compensation would result in largesse or double advantage which is impermissible. Such amount would have not come in the hands of the claimants but for the death in the accident, this unlike a claim in the nature of gratuity, life insurance etc.

11. In the foregoing facts and circumstances, the view taken by the tribunal cannot be faulted.

12. The appeal is, therefore, dismissed.

OCTOBER 30, 2017
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R.K.GAUBA, J.