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

Decided on: 18th July, 2017

+ MAC.APP. 431/2016 and CM No.19522/2016

NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Manu Shahalia, Advocate

versus

MOHAMMED SIDDIQUE & ORS Respondents
Through: Mr. Puneet Kumar, Advocate for
R-1 & 2

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

JUDGMENT (ORAL)

1. Mohd. Khalid, a bachelor, aged about 23 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 05.09.2008, statedly on account of rash driving of car bearing no.DL-3CAZ-1365 (the car) by the third respondent herein. The car was owned by the fourth respondent and admittedly insured against third party risk for the period in question with the appellant / insurance company (insurer). The first and second respondents (claimants), the parents of the deceased, instituted accident claim case (suit no.239/2009). The tribunal held inquiry and, by judgment dated 08.03.2016, accepted the case of death having occurred due to rash driving of the car, rejecting the plea of contributory negligence on the part of the deceased. The tribunal assessed compensation in the sum of

Rs.11,66,800/-, it being inclusive of loss of dependency calculated as Rs.10,36,800/- with non-pecuniary damages in the sum of Rs.1 Lakh towards loss of love and affection, Rs.20,000/- towards funeral expenses and Rs.10,000/- towards loss to estate having been added. The insurance company was directed to pay the compensation with interest at the rate of 9% p.a.

2. The insurer, by the appeal at hand, reiterates the plea of contributory negligence. The evidence clearly shows that the deceased was riding on the pillion of a motor cycle bearing no.DL-4SB-J-9060 (motorcycle) driven by Mohd. Shoeib (PW-3). The motor cycle rider (PW-3), appearing as an eye-witness, testified to the sequence of events but also stated that besides Mohd. Khalid, one Mohd. Sajid was also riding on the pillion. It is this element which is referred to by the insurance company as proof of contributory negligence.

3. The evidence of PW-3 brought out that when the motor-cycle had reached near Metro Station Rohini East, a car following signaled its intention to overtake and when the motor-cyclist (PW-3) gave way, the car in question came from behind and hit against the motor-cycle. The fact that the motor-cycle was hit from behind has been referred by the tribunal to reject the plea of negligent driving.

4. On careful assessment of the evidence led, this court finds substance in the plea of the insurance company. While it is correct that the offending car had no business to strike from behind against the motor-cycle moving ahead of it, even if the motor cycle was changing lane to allow another vehicle to overtake, the fact that a motor vehicle

meant for only two persons to ride was carrying, besides the driver, two persons on the pillion would undoubtedly have added to the imbalance. This element of negligence will have to be factored in while calculating the compensation that is awarded. The deceased having agreed to ride on the pillion with another person must be attributed contributory negligence to the extent of 10%, which consequently will have to be discounted.

5. The claimants had pleaded that the deceased was working for gain with a private entity, M/s. Chandra Apparels at a salary of Rs.9,600/- p.m. The salary certificate (Ex. PW1/8) was submitted as proof but Raj Kumar Pandey (PW-2), presented as the proprietor of the said entity, during his deposition, conceded that he had no corresponding record to substantiate either the employment of the deceased or the emoluments earned by him from such service. He claimed that the payment was made in cash. No records of the payments were kept nor any returns submitted even with Income Tax Authorities. When called upon to prove the vouchers against which salary was claimed to have been paid, he vaguely pleaded that the said record had been destroyed as the company had been wound up. Such evidence cannot be accepted.

6. In these circumstances, the income will have to be assessed on the basis of minimum wages. It is conceded by the counsel for the claimant that the deceased was not a matriculate. There is no proof of he being a skilled or semi-skilled worker. In these circumstances minimum wages of unskilled workers, as on 07.09.2008, at Rs.3,683/- per month will be the benchmark.

7. The tribunal calculated the loss of dependency on the multiplier of 18 going by the age of the deceased. The contention of the appellant insurance company is that per the settled law it is the age of the deceased or that of the claimants whichever is higher which is to regulate the choice of the multiplier. Reliance in this context is placed on decisions of the Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.*, (1994) 2 SCC 176 and *U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors.*, (1996) 4 SCC 362. It, therefore, seeks recalculation with multiplier adopted on basis of age of claimants.

8. On the other hand, reliance is placed on *Munna Lal Jain and Anr. vs. Vipin Kumar Sharma and Ors.*, JT 2015 (5) SC1 by the claimants to argue that the approach of the tribunal was correct.

9. In *Susamma Thomas* (supra), a decision rendered by a bench of two Hon'ble Judges of the Supreme Court, the law on the subject of determination and calculation of compensation in fatal accident actions was settled and the court observed thus:-

“13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.”

(emphasis supplied)

10. Similar questions had arisen before a bench of three Hon'ble Judges in the case of *Trilok Chandra and Ors.* (supra) and the court referred with approval to the decision in *Susamma Thomas* (supra), particularly quoting the above extracted observations respecting the basis of the choice of the multiplier picked up according to the “age of the deceased (or that of the claimants, whichever is higher)” and then observed thus:-

“15. We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed

has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation.....”

(emphasis supplied)

11. The decision in *Munna Lal Jain* (supra), also by a bench of three Hon’ble Judges referred, in the above context (*i.e.*, choice of multiplier) to the earlier decision of a bench of three Hon’ble Judges reported as *Reshma Kumari vs. Madan Mohan* (2013) 9 SCC 65, which, in turn, was based on previous ruling of a bench of two Hon’ble Judges reported as *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

12. In *Sarla Verma* (supra), while pointing out the requisite determinates for arriving at the loss of dependency, it was observed that besides the proof of income and information about the number of dependents, the claimants are expected to establish the age of the deceased, for “*the multiplier to be applied with reference to the age of the deceased*” (para 18). The issue as to whether age of the claimants would or would not have effect, as was envisaged in *Susamma Thomas* (supra), and reiterated in *Trilok Chandra and Ors.* (supra), was neither raised, nor considered, nor adjudicated upon.

13. In *Reshma Kumari* (supra), while quoting the observations to above effect in *Sarla Verma* (supra), the impact of the age of the claimants, where it is found to be higher than that of the deceased, did not come up for consideration. Though, while referring to the decision in *Sarla Verma* (supra) and *Reshma Kumari* (supra), the court

in *Munna Lal Jain*. (supra) did dilate on possible reasons for the age of the deceased to be the reference point, the fact remains that the decisions in *Reshma Kumari* (supra), and *Munna Lal Jain* (supra) are of benches of co-equal strength as compared to *Trilok Chandra and Ors.* (supra).

14. The predicament, thus, is as to whether the ruling in *Trilok Chandra* (supra) continues to be binding or the view taken in *Reshma Kumari* (supra) and *Munna Lal Jain* (supra) supersedes or overrules it. On an agnate issue of element of future prospects of increase in the income in cases of those “self-employed”, or working on “fixed salary”, divergence of opinion in the decisions in *Reshma Kumari* (supra), and *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, has been noticed and since both were rendered by benches of co-equal strength it stands referred to a larger bench in cases reported as *Sanjay Verma v. Haryana Roadways* (2014) 3 SCC 210, *National Insurance Company Ltd. v. Pushpa & Ors.* (2015) 9 SCC 166, and *Shashikala v. Gangalakshamma* (2015) 9 SCC 150. This court, thus, by decision dated 22.01.2016 MAC.APP.No.956/2012, titled *Sunil Kumar Vs. Pyar Mohd. & Ors.*, has decided to follow the law declared by the ruling prior in time till the larger bench renders its decision for reasons set out along the lines stated hereinafter.

15. In *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC 673 in para 12, the Supreme Court observed as under:-

“12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the

case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh [(1989) 2 SCC 754] and Hansoli Devi [(2002) 7 SCC 273].”

19. In *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94 in para 27, the Supreme Court observed as under:-

“27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2(c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench.”

20. In *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589 while holding that the decision of the co-ordinate bench is binding on the subsequent bench of equal strength, the Supreme Court held that the bench of coordinate strength can only make a reference to a larger bench. In para 9 of the report, the court held as under:-

“9. It may be noted that the decision in S.N. Narula case [(2011) 4 SCC 591] was prior to the decision in T.V. Patel case [(2007) 4 SCC 785: (2007) 2 SCC (L&S) 98] . It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case [(2011) 4 SCC 591] was not noticed in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the latter decision is a judgment per incuriam. The decision in S.N. Narula case [(2011) 4 SCC 591] was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”

16. Since the decision in *Trilok Chandra and Ors.*, (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in *Reshma Kumari* (supra) and *Munna Lal Jain* (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher.

17. As per the copy of the ration card (at page 161 of the tribunal’s record), the first respondent (father) was born in 1960 while the second respondent (mother) was born in 1963. Taking the age of the mother (43 years) as the basis, her dependency being more and consequently for longer period, applying the table in *Sarla Verma* (supra), the multiplier of 14 would apply. Thus, after deducting 50% towards personal expenses of the deceased, the loss of dependency is

calculated as (Rs.3,683/2 x 12 x 14) Rs.3,09,372/-, rounded off to Rs.3,10,000/-.

18. The claimants, however, submit that the non-pecuniary damages awarded by the impugned judgment are inadequate. Having regard to the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the grievance is found to be partially correct. The award on account of loss of love and affection at Rs.1 Lakh is appropriate, but the non-pecuniary damages on account of funeral expenses and loss to estate are on the lower side. Therefore, the same are increased to Rs. 25,000/- each.

19. Thus, the total compensation comes to (Rs.3,10,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-) Rs.4,60,000/-. Since the contributory negligence to the extent of 10% has to be taken into account, the total compensation payable in the case is (Rs.4,60,000/- reduced by Rs.46,000/-) Rs.4,14,000/-. The award is modified accordingly. It shall carry interest as levied by the Tribunal.

20. By order dated 23.05.2016, the appellant insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal within thirty days and, upon such deposit, 50% of the said awarded amount was allowed to be released, the balance directed to be kept in interest bearing account, initially for a period of one year with provision for auto-renewal.

21. The balance shall now be refunded to the insurance company which shall also be entitled to have the actual liability determined in

terms of the award as modified above and have the excess payment, if any, recovered from out of the amount kept in fixed deposit.

22. The statutory amount, if deposited, shall be refunded.

23. The appeal and the pending application are disposed of in above terms.

JULY 18, 2017

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R.K.GAUBA, J.

