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

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Decided on: 16th May, 2017

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MAC.APP. 460/2017

NEW INDIA ASSURANCE CO LTD.

..... Appellant

Through: Mr. C.K. Gola, Advocate.

Versus

AISHA PARVEEN & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM Nos.18448-49/2017

1. There is a delay of 47 days in filing the appeal and 19 days in re-filing it. The reason given is that the clearances had to be taken from the Head Office at Bombay, which took time in preparation of the appeal. The Court is of the view that the internal administrative reasons are not sufficient for condoning the delay especially because the appellant is a large Corporation and has been in existence for about 47 years. It is expected to have a team of lawyers or legal advisers all over the country. Hence, to say that the delay was unavoidable in the circumstances is no ground to condone the delay. However, in the interest of justice, even if latitude is given for indolence in filing the appeal and the case is taken up

to be considered on merits, as argued by the learned counsel for the appellant, the Court would note:-

MAC.APP. 460/2017 & CM Nos.18446-47/2017 & Caveat No.481/2017

2. The learned counsel for the appellant contends that the appeal is otherwise good on merits and should be heard. The Award has been impugned on the ground that since there was a head-on collision between the two motor vehicles, the likelihood of negligence on the part of both the parties ought to have been considered. Instead, the Tribunal has erroneously held only the insured vehicle as responsible. He relies upon the judgment of ***T. O. Anthony Vs. Karvarnan (2008) 3 SCC 748***.

3. The learned counsel contends that the accident took place at about 8.05 am on 06.12.2015 and the driver of the vehicle could have seen the insured truck coming from the opposite direction and the accident could have been avoided. This issue has been dealt with by the Tribunal as under:-

“9. PW1 has stated that on 06-12-2015 at about 8.05 am she alongwith her husband Dr.Mian Jaan was going from Ghaziabad to Rampur by Scorpio bearing no. UP 16 AB 7786. -The said Scorpio was being driven by the deceased Usman carefully and at a controlled speed. When they reached over bridge at Brajghat, a truck bearing no. HR 38 A 9335 came from opposite and wrong side being driven rashly and negligently and violating the traffic rules. She further stated that on seeing the truck, their driver Usman turned the Scorpio car to left side. However, the truck hit the Scoprio car. Due to the impact, they all sustained injuries. They were taken to Meerut Hospital. Dr. Miya Jaan and driver Usman could not survive and died in the hospital.

During cross-examination she stated that on the day

of accident they were going from Indrapuram to Rampur, U.P. She and her husband were on the back seat of the car. She further stated that the accident took place on the bridge. The offending truck was coming from front side. On the day of accident there was fog on the road. The truck was visible at a distance of about 10 meters. There was no divider at the spot of accident. In the present case the petitioners have filed on record the certified copy of criminal record which include FIR, charge sheet and FIR. Charge sheet was filed against the respondent no.2. Site plan also corroborates the testimony of PW-1. There is no dispute that the offending vehicle was not coming on wrong side as alleged by the witness and in the absence of any rebuttal the negligence on the part of the driver of truck i.e. respondent no.2 stands established. Even otherwise, after detailed investigation the charge sheet was filed against respondent no.2 which also raises a presumption of negligence on his part and which has not been disputed by respondent no.2 by bringing on record any other version of accident.

Thus it is established that the deceased sustained injuries in a road accident on 06.12.2015 at about 8.05 am due to rash and negligent driving by the respondent no.2, which was owned by the respondent no.1 and insured with respondent no.3.”

4. From the aforesaid what emerges is that the accident took place on the bridge over the river; the offending vehicle was being driven rashly and coming in their direction leaving them little time to move out of its way except to their own peril of hitting against the railings of the bridge and perhaps falling into the river itself. There was fog on the road and the offending vehicle could be seen only at a distance of 10 meters, leaving little time for the victim driver to take any appropriate corrective measures. Hence, the appellants contention that measures to avoid the

accident could have been taken is untenable. The liability of the insurer has been rightly established. The Court would bear in mind that two lives were lost in the accident i.e. the husband of respondent No.1 and the driver of the Scorpio motor vehicle. Keeping the aforesaid circumstances in mind, the Court is unable to come to any different conclusion than the one the Tribunal has arrived at.

5. The other ground of challenge is that the deceased was working as a Vice Chancellor in a University till about 5 days prior to his demise and was not entitled to the compensation of Rs.2,00,000/- per month because his employment as on the date of accident was not established. It was argued that the multiplier of '1' instead of '5' ought to have been taken because ordinarily a person retires at the age of 65 years. It is submitted that although a person can work up to the age of 70 years, there was no guarantee that he would be employed upto 70 years. Therefore, multiplier of 1 should be taken. In this regard, the Tribunal has reasoned as under:-

*"11. The petitioners being the legal representative of the deceased Dr.Mian Jaan shall be entitled for the compensation, in view of the settled law as decided in various judgment of Hon'ble Apex Court, and our own Hon'ble High Court of Delhi, including **Rajesh Vs. Rajvir 2013 (6) Scale 563**, the LR's of the deceased shall be entitled for compensation under pecuniary and non pecuniary heads, which are as follows:-*

S. No.	Head	Amount
1	Loss of Love & Affection	Rs.1,00,000/-
2	Loss of Consortium to the petitioner no.1	Rs.1,00,000/-
3	Funeral Expenses	Rs.25,000/-
4	Loss of Estate	Rs.10,000/-

As far as the head of Loss of Dependency is concerned, the

same is to be calculated as per the multiplier method which has been adopted as a thumb rule as per landmark judgment of **Sarla Verma vs. DTC [2009 (6) Scale 129]** and various other judgments. For calculating the Loss of Dependency, the Tribunal has to determine various factors i.e. **Age of the deceased, Income of the deceased and Multiplier applicable.**

PW1 has stated that the deceased was working in the a Vice-Chancellor. He further stated that the deceased was appointed as a Vice-Chancellor on 01.09.2012. He can serve upto the age of 70 years. He further stated that the appointment of Vice-Chancellor was as per Rules prescribed by UGC. He admitted that as per Rules, Vice-Chancellor can be served upto the age of 65 years only. But there are so many cases in various Universities where the persons of more than 65 years are working as Vice-Chancellor and the deceased was working as Vice-Chancellor in their University despite the fact that he was more than 65 years of age. He further stated that the last drawn salary of the deceased was Rs. 2,00,000/- p.m. and Rs. 50,000/- p.m. was deducted as TDS from his salary. He has proved the internal salary statement of the deceased and the TDS certificate Ex.R3W1/A (colly.). He further stated that no amount has been paid to the deceased as compensation from the University. He further stated that the salary was transferred in his account through bank transfer. During cross-examination he admitted that the date of retirement is not mentioned in the appointment letter of the deceased. He also admitted that at the time of death of deceased he was in job in the University. He stated that there are various cases where Vice-Chancellors are appointed against the UGC norms and the case of deceased Mian Jaan can be one of them.

12. It is argued on behalf of the insurance company that appointment of deceased was against the UGC norms and his appointment could have been cancelled at any point of

time, therefore, the multiplier of '5' cannot be taken in this case in these special circumstances. Though on the other hand it is argued on behalf of petitioners that once it is proved that he was serving as Vice-Chancellor and was supposed to attain the age of 70 years then this Court cannot go into the question of validity of his appointment.

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14. From the statement of R3W1 it is almost an admitted fact that the appointment of the deceased was against the UGC norms. There is nothing on record to suggest that he was supposed to work till he attains the age of 70 years except the statement of R3W1. As per his offer of appointment dated 23.08.2012 he was appointed w.e.f. 01.09.2012 initially on probation for one year period. His appointment was done when he was 62 years of age. Admittedly, the salary of the deceased was Rs. 2,00,000/- p.m. Rs. 50,000/- p.m. was being deducted, hence, his net salary can be taken as Rs. 1,50,000/- and in view of the abovementioned facts and circumstances, I am of the opinion that this Court is not supposed to go into the question of validity of appointment as Vice-Chancellor, though no proof of age of retirement has been produced by the petitioner in the form of rules of the University where the deceased was employed, in the absence of any evidence on this issue from both of the parties, I adopt the general rule and considering the age of the deceased the multiplier of '5' is adopted for calculation of loss of dependency in view of the judgment of Sarla Verma vs. DTC.”

6. The Tribunal had considered that the deceased was working as a Vice Chancellor from the age of 62 years to 65 years. He was drawing a salary of Rs.2,00,000/- per month, Rs.50,000/- was being deducted at source and his take home salary was Rs.1,50,000/-. The appellant argues that since the deceased had already attained the age of 65 years, therefore,

he could continue as a Vice Chancellor of a University only as per the terms of the UGC Rules. Furthermore, there was no letter of extension of his service with the said Private University. Nor is there any proof of payment five days' salary since after his 65th birthday.

7. Sh. Uttam Kumar (R3W1), the Human Resource Manager of the University, deposed that the date of retirement was not mentioned in the appointment letter of the deceased and he was still in the employment of the University. He further deposed that there were many cases in which Vice Chancellors were appointed against the UGC norms, that deceased continued to occupy the post of Vice Chancellor even after his 65th birthday. In other words, the deceased was employed by the University and continued to serve it till his demise. In the circumstances, the appellant's contention that a person can serve a University only upto the age of 65 years can at best be an academic argument. The Court is of the view that in motor accident claims the status of an employment of the victim has to be seen and not the legality or validity of the employment. It is also not uncommon that persons who retire as Vice Chancellors of Universities are gainfully employed as Institutional Consultants and earn respectable remuneration for such services. The Court would note that the deceased was employed and was serving the University as on the date of his demise.

8. In a motor vehicle accident case, the Court has to see what was the loss of income apropos the victim of a motor accident. The Tribunal considered that ordinarily a person can serve till the age of 70 years and accordingly it took a multiplier of 5 instead of 1. The Court finds no reason to differ with the aforesaid conclusion. After all there are many

National Commissions and Tribunals in which people serve upto the age of 70 years. Therefore, the argument that multiplier of 1 instead of 5 should have been taken by the Tribunal is untenable.

9. The last ground for impugning the Award is that the dependency was only of the widow and not of the son, therefore, half of the computed income of the deceased should have been apportioned towards his own expenses instead of one-third. The Court would notice that the deceased is survived by his widow and a son who is still a student and was dependent upon the income of the deceased. Accordingly, the Tribunal had deducted only one-third towards personal expenses of the deceased. The Court finds no reason to interfere with the said conclusion.

10. In view of the aforementioned discussion, the appeal being without merits is dismissed. All the pending applications stand disposed off accordingly.

MAY 16, 2017
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NAJMI WAZIRI, J.