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

\+ MAC.APP. 482/2017, CM APPL. 19589/2017 (for stay), CM APPL. 19590/2017 (for exemption), CM APPL. 19591/2017 (for additional evidence) and CM APPL. 19592/2017 (for delay)

TATA AIG GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr.Sameer Nandwani and Mr.P.Acharya, Advocates

Versus

PUSHPA & ORS. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 22.05.2017

1. The Award is impugned on the ground that upon the demise of the respondent's husband in a road accident, she was awarded a compensation of Rs. 38,72,901/- taking the annual income of the deceased at Rs. 3,57,472/- as per the income tax return. At the time of release of monies as awarded, the appellant insurer sought to verify the address of the respondent. Their investigator reported that an enterprise under the same name as run by the deceased husband of respondent no.1, was being run and managed on her behalf by her relatives. Therefore, there is no loss of dependency and the appellant is not liable to pay any money on this account.

2. The court is unable to accept the said contention because the loss of dependency was on account of the sudden demise of her husband in a motor vehicle accident. The running of the enterprise by the widow is her own initiative and endeavour. It is independent of her claim for compensation for

loss of support from the husband. There is no legal bar to a widow resurrecting and enhancing her financial status. Her success in her endeavours cannot be pledged to or enure to the benefit of the insurer. In the case of ***Arunaben and Ors. vs. Mehmoodbhai Imamali Kaji and Ors. AIR 1983 Guj 10,*** the Division Bench of the Gujarat High Court observed as under:

> *"17. Another question which sometimes arises is whether in determining the extent of the pecuniary loss, any deduction is required to be made for the potential earning capacity of the widow or her actual earnings derived from an occupation or employment taken up or resumed after the death. The question directly arose for consideration in Howitt v. Heads, (1972) 1 All ER 491. It was a case in which an action for damages was brought by the widow, aged 20, for the benefit of herself and her infant son on the death of her husband which occurred as a result of a road accident within three weeks of the marriage. The widow was employed before her marriage and she had continued working even after the marriage and was actually working at the time of the accident and for a few months thereafter till she delivered a posthumous child. The evidence at the trial showed that in all likelihood the widow would resume employment at some stage when it became convenient for her to make suitable arrangements for her son. Cumming-Pruce, J., who decided the case, held that no deduction in respect of the widow's capacity to earn was required to be made, although he was satisfied as a matter of probability that she would fairly soon be obtaining a significant degree of financial independence. In taking that view, the learned Judge relied upon two decisions of the High Court of Australia (Goodger v. Knapman (1924) SASR 347 and Usher v. Williams (1955) 60 WALR 69). The argument in Goodger's case was that a reduction for the widow's prospective earnings was required to be made by reason of her being relieved from the heavier part of her domestic duties and thereby set free to go out and earn something on her own account. The argument was rejected with the following observation :*

> *"I do not accede to the suggestion, as I am unable to see how liberty to work can reasonably be brought within the description of a pecuniary advantage she has derived from the death of her husband. Any money she might earn would be the result of her labour, not of his death."*

In Usher's case, a similar argument with regard to deduction was made by propounding the theory that the husband's death had released a flood of earning capacity. The theory was rejected with the following observations :

> *"In my opinion the plaintiff's ability to earn is not a gain resulting from the death of her husband ..... The widow's ability to work was always there and she could perhaps, as women do, particularly in professions, have preferred to work after marriage. The same argument that is put forward for the defendants could be applied to any woman who goes out to work through necessity to support herself and her children following her husband's death and if it can be applied to the widow there is no reason why it should not be used to diminish or extinguish the children's claims in a case where, by her efforts, she is able to support them as well as her husband did in his lifetime ..... I therefore hold that the widow's earning capacity is not to be taken into account in diminution of damages."*

This view has continued to be accepted in England not only for potential earnings but also for actual earnings before the trial (see Davies v. Whiteways (1975) QB 262 . It is true that in the Court of Appeal's decision in Cookson v. Knowles (1977) QB 913, Lord Denning, speaking for the Court, has thrown some doubt on this position by saying that while it may be argued that the widow, who was not employed at the time of the accident, is not bound to go out to work so as to reduce the award, "we are not so sure about this". It must he remembered, however, that Cookson v. Knowles was a case where the wife had been working before as well as after the death for some time so that her *earnings were already contributing to the family pool. It is in view of those facts that Lord Denning held that the dependents were not deprived of the contribution provided by the wife and that, therefore, her prospects of going out to work and earning money could not be disregarded. In terms, it was held :*

> *"But, when her earnings before his death come into the family pool so also her earning capacity after his death roust (sic) be taken into account."*

18. It appears that as in the United Kingdom and Australia, so in New Zealand, the view prevails that the dependant's own income is not relevant because such income is not a benefit in consequence of the death but a consequence of the dependant's own work or investment (see Kemp & Kemp, The Quantum of Damages, Vol. 1, 1975 Edition, page 366).

19. No decision of an Indian Court having a bearing on the point under consideration has been brought to our notice, but having regard to the view which prevails in foreign countries in similar jurisdiction, the proper principle to apply would appear to be that in determining the pecuniary loss to the dependants, no deduction should be made for the earning capacity or the actual earnings of the widow arising from her gainful employment taken up after the accidental death of her husband, because such income. is not a benefit in consequence of the death but is the result of her own labour.

20. Viewed against the aforesaid background, the deduction to the extent of 25% made by the Tribunal in the instant case from the assessed damages on the ground that the widow had received some benefit on account of the death of the deceased by procuring employment in the Corporation must be held to be unwarranted in law. Be it noted in this connection that the widow here was not working for gam (sic) before the death of her husband. She took up the employment only after . his accidental death. The question, therefore, of her earnings coming into the family pool and contributing towards her own maintenance and *that of the other dependants prior to the husband's death does not arise. The situation is thus not akin to that which obtained in Cookson v. Knowles (1977 QB 913) and no deduction can be made even on that ground, assuming without deciding that the earning in such a case would be deductible."*

3. In view of the above, and in the circumstances of this case, there is neither any provision in law nor any justification for monies earned by the widow after the award, to be deducted from the compensation amount. The loss of dependency has to be assessed with respect to the person who succumbed to the fatal motor accident. There is no merit in the appeal. Hence, along with all the pending applications, it is dismissed.

4. At request, the statutory amount of Rs.25,000/- be refunded to the appellant.

NAJMI WAZIRI, J.

MAY 22, 2017
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