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

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Decided on: 31.07.2019

+ **MAC.APP. 976/2018 & CM Nos. 46122/2018, 15243/2019, 34195/2019**

ORIENTAL INSURANCE CO LTD.

..... Appellant

Through: Mr. S.P. Jain, Mr. Himanshu Gambhir, Mr. Nar Singh and Mr. Pushkar Singh Kanwal, Advocates.

Versus

ZAIXHU XIE & ORS (M/S QUALCOMM INDIA PVT LTD)

..... Respondents

Through: Mr. Arvind Chaudhary, Advocate for Respondent Nos. 1& 2.

Mr. Ram Kavar, Advocate for Mr. Amit Kumar Gupta, Advocate for Respondent No.4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. *Ni hao mama, ni hao baba* ("hello mama, hello papa" in Chinese), are greetings the respondent parents will never hear again from their son. Indeed, they have not so heard from him for well over a decade. Their son Xie Xiaochao, a resident of Guangzhou, Peoples' Republic of China, was a little over 34 and half years of age. He was working as Marketing Manager with M/s Qualcomm Wireless Semiconductor Technologies Limited. He was visiting India in connection with the business of the said company. On 14th May 2008, while returning from Agra to Delhi, at

about 11 p.m, a speeding truck crashed into his Maruti Esteem car on National Highway Number 2, near Palwal, Haryana, causing him multiple fatal injuries. He was rushed to a hospital but breathed his last before any medical care could be administered to him. The offending truck was being driven in a rash and negligent manner and at such high speed that it crossed the central verge, went over to the other side of the highway and crashed into the right side of the Maruti Esteem car. An FIR bearing no. 213/2008, for offences punishable under sections 229/38/304A IPC, was registered by Police Station Sadar, Palwal, Haryana. The offending truck and victim's damaged car were seized from the spot by the police. The nature of the accident and the cause of death stood established.

2. The aggrieved aged parents of the deceased sought compensation under sections 166 and 140 of the Motor Vehicles Act, 1988 for an amount of Rs.30,54,90,060/-. By order dated 1st July 2018 in Suit Number 440 of 2008 (Unique Case ID No.DLCT01-000644-2008) the learned MACT has awarded about 13% of the claimed amount, along with interest thereon.
3. The award is impugned by the insurer on the grounds that:
 - i. the parents were not financially dependent upon their deceased son;
 - ii. multiplier according to the age of the claimants ought to have been applied, instead of multiplier corresponding to the age of the deceased;
 - iii. the deduction of income should have been tax at the rate of 45% instead of 30%;

- iv. the New Year Bonus and Monthly Bonus could not be considered as a constant factor, as bonus was a variable, dependent upon the performance of the employee and the revenue generated by the company; it could not be considered part of the fixed income of the deceased; therefore these bonus amounts ought not to have been taken out from the computation of loss of income;
- v. travel allowance and meal allowance are personal in nature to the employee, therefore the same thought to have been deducted from the salary;
- vi. for the long period of trial, the insurer should not be saddled with payment of interest at 9% per annum, and
- vii. right of recovery ought to have been granted against the owner of the truck because the vehicle was being driven in breach of policy conditions i.e. its driver did not have a valid driving license.

Income Tax Deduction:

4. The learned counsel for the appellant contends that as per the last salary certificate, the tax payable by the deceased was 45%, therefore while computing the income of the deceased, 45% ought to be deducted towards income tax. However, this argument is immediately refuted by Mr. Chaudhary, the learned counsel for the respondents, by referring to the statement of Ms. Weiran Chen (PW5) who had deposed that the deceased fell in the tax bracket of 30%, as is evident from his basic salary certificate. The said document shows that the salary was the same as in the previous month i.e. RMB 43,470. The deceased was paid merely 14 days salary in the month of May, 2008 as he had expired on 14.05.2008.

5. The Court would note that the extra amounts added to the salary of the deceased in the month of May, 2008 were terminal benefits, as a consequence of his demise. 'Pay Leave Encashment' of RMB772 and Performance Bonus of RMB52,164, both would be encashable and at any time and were not necessarily upon his death. They formed part of his earned assets. The Pay Leave was encashed, added to his salary and income tax was deducted at the rate of 45% because of the corresponding enhancement of his payout that month. PW5 has also stated in her testimony that in the People's Republic of China, income tax is payable month-wise and income tax deduction is made accordingly.

6. In view of the above, the Court concludes that income tax at the rate of 30% would be applicable to the deceased because the salary of the deceased had not enhanced. A mere enhancement because of encashment of Leave Pay and other terminal benefits augmented the final pay out for the month of May, on which 45% income tax was deducted as per the that months taxable amount. The appellant seeks deduction from the computation of income, of meal allowances @ RMB 729.60 and the travelling allowances @ RMB 773.46, claiming them to be personal in nature to the employee. The Court is of the view that these monies form part of the pay package of the employee. He may save some of it or spend from it on his parents. Besides he being unmarried, half of his earnings were in any case deducted towards his personal living expenses. A second deduction would not be fair. The appellants argument is untenable. The impugned order also has reasoned that these allowances, which are part of one's

income, only increase the purchasing power of the individual, who may save some of it.

Bonus:

7. To the appellants contention that the bonuses were variables and should be deducted from the salary, the respondents contend that the New Year Bonus is clearly equivalent to one month's salary, which in any case, is to be paid to the employee on the New Year Day and this amount is taxable; hence, the same will necessarily have to be included in the salary of the deceased. The May and November, 2007 bonuses were RMB 24,872 and RMB 51,733 respectively.

8. As regards basic salary bonus, the learned counsel for the respondents submits that, the deceased employee had shown consistent good performance for two consecutive semesters and was promoted from Marketing Senior Manager to Marketing Staff Manager from 01.11.2007, thereby increasing his salary first by half and thereafter by one and a half times. Correspondingly, his bonus was increased from RMB24,872 to RMB51,733 and RMB52,164 in May, 2008. Therefore, this payment was automatically linked to the basic salary as well as the performance of the employee. The pre-promotion basic salary of the deceased was RMB35,962 and the post-promotion salary was RMB43,470. The court is of the view that insofar as the New Year Bonus was a fixed and inevitable payout to the employee equivalent to a months salary, it cannot be deducted. Similarly, RMB24,872 and RMB51,733 were bonuses for May and November, 2007 respectively and were included in the salary of January, 2008. Similarly, the salary certificate of May, 2008 includes a performance bonus of RMB

52,164. These bonuses had been duly established as corresponding to the employee's last salary. These bonuses formed a part of the salary scheme. The amounts have been proven as a part of the employee's salary, they are not variables but fixed, in the facts of the case. Therefore, the same cannot be deducted from the computation of loss.

Dependency:

9. The appellant argues that the parents of the deceased never proved their dependency on the deceased. The father was receiving a monthly pension of RMB5,625 while the mother was getting RMB11,700 per month. Both were also getting RMB30 per month as old-age pension from their government. However, the learned counsel for the respondents submits that Guangzhou City, where the parents of the deceased live, is a financial and commercial city, where the cost of living, including residential rent, transportation, is higher than for a resident in a village. In 2007-08 RMB exchange rate at 6.5 it would convert to Rs.112,612/-. While for some in India it may be good enough, but what has to be seen is the level of medical care, housing, comfort and amenities and other support for elderly people that such money could fetch in an expensive commercial city outside India. The parents are educated and have lived a full life and participated in public life. The father was working with a shipping company and the mother is receiving the aforesaid old age pension, which ofcourse comes with concomitant age-related diseases requiring regular medical assistance. Indeed, the father of the deceased has deposed that they visit the doctor quite frequently and each visit costs then approximately RMB1,000. Surely the amounts they were receiving as pension would not be sufficient to take care

of their old age needs. Their testimony that they were financially dependent upon the deceased son has not been controverted.

10. Apropos dependency, the learned counsel for the respondents reiterates that Guangzhou is an expensive city, the parents are above 70 years of age and the monies being received by them are not sufficient to take care of their day-to-day needs and that they, not only need the financial assistance, but other requisites for medical care and transport as well. The claimants have stated in the claim petition that they were fully dependent upon their deceased son. In particular, they have stated that:-

“the deceased was unmarried and has left behind the petitioners, who are his father and mother of the deceased.... the petitioners are financially dependent upon the deceased.”

(emphasis supplied)

11. This averment has been asserted in the evidence by way of affidavit of February, 2011, wherein it has been stated that:-

“11. I state that the petitioners are entitled to the claims in para 23(x) of our claim petition. The claim petition is correct and it bears our signature.”

12. In other words, the claimants have claimed that they were dependent upon the deceased for their well-being and day-to-day living expenses. This averment, assertion and deposition has not been disputed or cross-examined by the appellant – Insurance Company before the learned Tribunal. In the cross-examination, the only question put to the parents of the deceased was whether their claim for financial dependency was incorrect. However, both

of them denied the suggestion and re-iterated their own position that they were dependent upon their son.

13. Apropos dependency, the claimants refer to Para xi of the Claim Petition (at page 339 of the LCR, corresponding page 214 of the e-file), which reads as under:-

“(vi) That before the accident, the Petitioners and the deceased were leading a very happy and prosperous life. The accident and the resultant death of the deceased have not only caused grief, mental pain, agony and suffering to the Petitioners but they have also been deprived of the love and affection of a son. The petitioners have been deprived of various privileges and facilities available to the deceased. The said privileges and facilities available to the petitioners cannot be quantified.”

14. Apropos the claim of dependency, the learned counsel for the claimants no. 1 and 2 relies to the following judgments:

- i. *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors., 2018 SCCOnline SC 1546;*
- ii. *Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai, 1987 SCR (3) 404;*
- iii. *Manjuri Bera vs. Oriental Insurance Co. Pvt. Ltd., (2007) 10 SCC 643.*

15. In other words, the claimants have averred that they were used to certain standard and quality of life which was largely dependent upon the support

being provided by their son who was doing fairly well in life, but this support they would now be deprived of. This averment has been asserted in the testimony of the parents, as noted hereinabove, that the averments of the claim petition are true. The appellant/insurer has neither questioned nor otherwise proven the said testimony to be untrue. It cannot raise an issue about it now.

16. The impugned order has rightly reasoned that both parents being over 70 years old, not working anywhere, regularly expending monies on medical care, would surely face depletion of their pension amount. Guangzhou being a financial and commercial city in China, the cost of living would naturally be high. Their pension amount could not be stated to be sufficient to take care of the needs. Therefore, it could not be said that they were not financially dependent upon their deceased son. The son was earning fairly respectably, he was a unmarried and would have ensured that his parents were provided with a more than basic level of amenities and that they were housed in an accommodation and received due medical care and personal comforts and amenities, commensurate to his status and to their old-age needs. The claimants' dependency is made out. For the aforesaid reasons, the court finds no reason to conclude otherwise.

17. The claimants have sought compensation not only for pecuniary loss but also other non-pecuniary losses such as 'loss of love and affection' and 'filial consortium' on the basis of *Magma* (supra), decided on 18.09.2018, wherein the Supreme Court awarded Rs.40,000/- and Rs.50,000/- to each of the dependants for 'loss of consortium' and 'loss of love and affection', respectively. The same principle shall be applied to the present claimants as

well. Accordingly, claimants are entitled to compensation of Rs.50,000/- and Rs. 40,000/- each on account of 'loss of filial consortium' and 'loss of love and affection', respectively.

Respondents' contention that the insurance amount of USD100,000/- should not be deducted:

18. The claimants, the aged parents of the deceased, have received an amount of USD100,000/- on account of the unfortunate demise of their son in a road accident in India.

19. This amount was accrued only on account of death by the accident and not as a life insurance policy, which the parents would have otherwise received if their son had not passed away in a road accident. The deceased had not contributed to the premium of the said accident policy, the employer had taken that policy. It was not an investment by the deceased. Insofar as the aforesaid amount was contingent upon the demise in an accident, the amount would be deductible from the computation of compensation as awarded in the impugned order, because compensation for the same loss cannot be paid twice over. In view of the decision of the Supreme Court in *Helen C. Rebello (MRS) & Ors. vs. Maharashtra State Road Transport Corporation & Anr., (1999) 1 SCC 90*, the said relief cannot be granted to the respondents. The said judgement held *inter alia*,:-

“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 this 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, co-relating 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 motor vehicle. would not be covered under the Motor Vehicles Act. Thus the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, 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 of 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, case 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 accident 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 form 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 claimant receives on account other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that 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 incidence may be an amount liable for deduction. However, our legislature has taken not 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, in the course of employment of an employee.

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, 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 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 insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, 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 similar and same plane having nexus inter so 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 has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As

aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can 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 received under the life insurance policy is contractual.

36. As we have observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is addition to any other right to claim compensation respect whereof under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no

hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these consideration we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the legislature under various provisions of the Motor Vehicles Act, 1939.”

Rate of Interest:

20. The learned counsel for the appellant argues that interest at the rate of 9% *per annum* is on the higher side because the claimants took eight years to complete their evidence and on their own application it was reopened and thereafter the claimants completed their evidence. The said argument is untenable because if there was a delay on account of the claimants and if a case for denial of interest had been made out, the learned Tribunal would have so noted. However, it had obviously found just cause for permitting the aged parents to lead due evidence because the claimants and other persons, whose testimonies were led, were based in the People’s Republic of China. Their travelling and other arrangements obviously took the time, that it did. The case for reduction of the interest rate from 9% to 6% is not made out because the Supreme Court in *Parminder Singh vs. New India Assurance Co. Ltd. & Ors.* Civil Appeal No. 5123/2019, dated 01.07.2019, has awarded the rate of interest at 9% *per annum*.

21. The learned counsel for the appellant submits that in *Smt. Shantaben & Ors. vs. National Power Transport & Anr.* 2019 SCCOnline SC 483, the Supreme Court has reasonably awarded interest at the rate of 6% *per annum* from the date of filing of the claim petition.

22. The lesser interest rate was awarded in the peculiar circumstances of that case, which are distinguishable in the present case. The Supreme Court had reasoned that the reduction of interest was only on account of the fact that the compensation amount had been enhanced. Hence, it was deemed just and proper, in the peculiar circumstances of that case, to reduce the rate of interest from 12% to 6%. In other words, a reduction in the rate of interest would be contingent upon the facts of each case. It has been specifically noted as under:-

“9.2 It is noticed that the Tribunal has awarded interest @ 12% p.a. but, in the overall circumstances of the case and looking to the enhancement allowed in this appeal, it appears just and proper to provide that the enhanced amount of compensation shall be deposited by the respondent No. 2-insurer with the Tribunal within 30 days from the date of this judgment failing which, it shall carry interest @ 6% p.a. from the date of filing of the claim petition.”

Multiplier:

23. The appellant's next contention is that the multiplier applied in the present case should be on the basis of age of the parents and not that of the deceased. He refers to the judgment of the Supreme Court in *United India Insurance Co. Ltd. & Ors. vs. Patricia Jean Mahajan & Ors.*, (2002) 6 SCC 281. The Court, however, would note that the facts of that case were

different as it took into consideration the economic conditions prevailing in the country; furthermore, the compensation had two components i.e. (i) payment to the parents in India and (ii) to the widow and two daughters in the United States. The said judgment was passed in the year 2002 relating to a motor accident fatality, which happened in 1995. The Supreme Court specifically noted that such balancing was done because of the peculiar facts of that case and taking into consideration the quantum of the compensation, the disparity in the economic conditions and the relative degree of affluence between the two countries. The judgment had reasoned as under:-

“19. In the present case we find that the parents of the deceased were 69/ 73 years. Two daughters were aged 17 and 19 years. Main question, which strikes to us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 226297 Dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs. 47 comes to Rs. 10.38 crores and with multiplier of 13 at the conversion rate of Rs. 30 the amount came to Rs. 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of

the country where most of the dependent beneficiaries reside. Two of the dependants namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that parents are residing in India in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. purchase factor of 10 years, We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench, We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier. We have already given our reasons in the discussion held above.”

24. In any case, now the issue stands settled in ***National Insurance Company vs. Pranay Sethi (2017) 16 SCC 680***, wherein the Supreme Court has held that for computing compensation, the applicable multiplier shall be on the basis of the age of the deceased. The relevant portion reads as under:-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.”

25. In this regard, Mr. Chaudhary, the learned counsel for the respondents also relies upon *M/s. Royal Sundaram Alliance Insurance Company Ltd. vs. Mandala Yadagari Goud & Ors. (2019) 5 SCC 554*, to emphasize that the multiplier is to be based on the age of the deceased and not on the age of the claimants/parents of the deceased. It held inter alia, as under:-

“8. The judicial pronouncements of this Court have endeavoured to devise a standard formula, so far as possible, in respect of the calculation of the amount of compensation qua various components. The amount of compensation determined is to be paid to the claimants who are dependents in case of a death of a person based on what the deceased would have contributed to their support. The amount thus received by the dependents in turn becomes a part of the estate as they may live longer or may be younger than the age limits taken into account for calculation of a multiplier to be applied in such a situation. In the context of liability to pay compensation on the principle of no fault, as enunciated under Section 140 of the Motor Vehicles Act, 1988, thus, it was observed by this Court that even if there is no loss of dependency, the quantification cannot be below that amount and to that extent the amount would form a part of the estate of the deceased.

9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is

trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”

26. In view of the above, the appellant's argument for change of multiplier is untenable and is rejected.

Right of Recovery:

27. Lastly, the appellant seeks rights of recovery against the insured/owner of the offending motor vehicle. Such right has already been granted against the driver. The latter was holding a driving licence bearing no. MP-30R-2008-0018175, purportedly issued by the Transport Office, Bhind, Madhya Pradesh. The appellant's private investigator - R1W3 had testified that the said licence was fake. R1W2, an official of the said

Transport Authority, had testified that as per the records the said licence was never issued in favour of the driver viz. Mr. Narinder Parihar. The learned Tribunal had declined this relief on the ground that, the insurer had not proven that the owner had knowledge that the driving licence was fake.

28. The owner of the vehicle did not lead any evidence. He says “he did not come to know about the proceedings of the present claim case and could not appear in person or contest the case before the learned MACT at Delhi or engage any counsel in that respect”. Hence, the claim proceedings before the learned Tribunal were conducted in his absence. The court is of the view that, non-service of notice of the claim proceedings, would result in miscarriage of justice. However, to prove this and to make good his such grievance, he should have initiated appropriate remedies. Such application has not been shown.

29. Alternatively, the owner contends that the insurer’s contention is untenable, because it has long settled his Own Damage (OD) claim and paid him claim monies, regarding damages to the truck. He had taken a comprehensive insurance policy. The documents submitted for the OD claim included the same driving licence to which no objection was raised. Therefore, once the driving licence had been accepted by the insurer as valid for the OD claim, lodged at the insurer’s Gwalior office in 2008, it cannot be suspected or rejected for third-party statutory claims under the Motor Vehicles Act.

30. Lastly, the owner submits that the said driving licence in the name of Mr. Narinder Parihar the driver, with his photograph and Housing Colony Bhind, address, is still shown on the web-site of Madhya Pradesh Transport

Authority. A screenshot of the same has been annexed to his reply, which is also filed under Order XLI Rule 22 CPC as Cross Objection to the present appeal.

31. The owner has not shown from the record that he was not served notice of the proceedings. If that were shown, the case could have been remanded for re-examination on the limited issue of the conflict with the testimony of R1W2, the official of the Transport Authority and the website screenshot of the said Authority.

32. It is possible that after settling the OD claim the insurer did a thorough examination of the documents. Perhaps, because the compensation claim was for over Rs.30.54 crores. When was the OD claim settled? What was the time lapse between such settlement and filing of the claim petition? What action was initiated by the insurer against its official(s) for settling the OD claim based on a fake driving licence, is not known. These facts should have been brought on record by the owner. In his present reply he however, contends that he had seen the said driving license, tested the driving skills of the driver and then employed him. This averment should have been made before the learned Tribunal. In the absence of such earlier averment, it cannot be assumed that the owner had been misled by the driver by a fake licence. For any employer to get shelter of the principles outlined in ***United India Insurance Co. Ltd. vs. Lehu & Ors. AIR 2003 SC 1292*** and ***Pepsu Road Transport Corporation vs. National Insurance Co. (2013) 10 SCC 217***, the insured would have to, at least, state that he had been shown a driving licence which he believed to be valid and that he was satisfied with the driving skills of the prospective employee. That not being the position in

this case, the insured cannot be said to have protection of being misled. Therefore, respondent no. 3 insured/ owner of the vehicle, too shall be liable for the vehicle being driven by a person without having a valid driving licence. Accordingly, the appellant is entitled to right of recovery against the owner - respondent no.3.

Reimbursement of cost of carriage of mortal remains:

33. The claimants seek repayment of the amounts expended towards carriage of the body of the deceased from India to People's Republic of China for which a bill of US\$7610 was paid as per Exh.R (at page 586). The bill is not in dispute. The learned counsel for the appellant submits that in terms of the judgment in *Pranay Sethi (supra)*, the amount payable towards funeral expenses would only be Rs.15,000/-, which has been granted. However, the present case concerns a foreign national who died in a motor vehicular accident in India, his mortal remains had to be transported to his country viz. People's Republic of China, for last rites. Without such transport of the mortal remains there would be no funeral. This being an exceptional circumstance, it would be only just to reimburse the cost of carriage. Therefore, the amount expended towards the same shall be borne by the appellant. The said amount of USD7,610/- is awarded to the claimants as transportation costs.

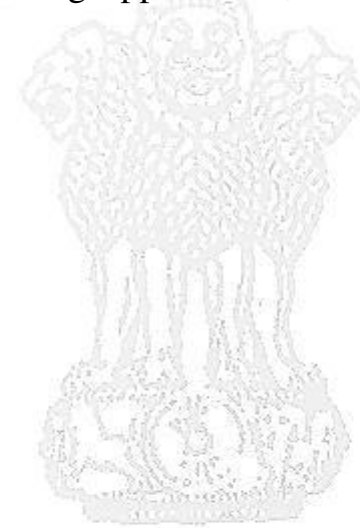
34. In para 11(ii) of the impugned order the learned Tribunal has correctly examined in detail the various components of the salary of the deceased. The computation of compensation in para 11(vii) cannot be faulted either because it is based on settled principles. There will however be an addition of USD7,610/- (reimbursement) and Rs.180,000/- (nonpecuniary compensation) together with interest thereon @9% p.a. from the date of the

award. The awarded amount is said to be lying deposited in a Bank. Some of the monies have been remitted to the claimants, the remaining amounts alongwith interest accrued thereon, will be paid/released to the respondents – claimants by the Bank. The shortfall, shall be deposited with the same Bank, by the appellant within four weeks of receipt of this order, for further remittance to the claimants.

35. Since the appellant has succeeded in part, let the statutory amount of Rs. 25,000/- alongwith interest accrued thereon, be returned to the appellant. The appeal, alongwith pending applications, is disposed-off in the above terms.

NAJMI WAZIRI, J.

JULY 31, 2019
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