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

Date of decision: 16.08.2023

+ **MAC.APP. 1006/2018 & CM APPL. 47579/2018**

TATA AIG GENERAL INSURANCE CO LTD Appellant

Through: Mr.Amit Kr Singh, Adv.

versus

SARITA & ORS

.....Respondents

Through: Mr.Sanjeev Deshwal, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 10.08.2018 passed by the learned Motor Accidents Claims Tribunal, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 5235/2016 titled ***Sh. Om Prakash through his Legal Heirs v. Sh. Rohin Mann & Ors..***

2. The claimant/respondent no.1 herein is the daughter of late Sh. Om Prakash (hereinafter referred to as the 'deceased'), who met with an accident on 13.02.2013 while returning on his bicycle. He was hit by a car being driven by the respondent no.2 herein, which is insured with the appellant.

3. The learned Tribunal on a detailed examination of the evidence led before it, has held that the accident had taken place due to the car being driven in a rash and negligent manner by

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the respondent no.2 herein, resulting in the deceased sustaining fatal injuries. There is no challenge to this finding of the learned Tribunal.

4. The appellant challenges the Impugned Award on the ground that the insurance policy for the car was issued on 13.02.2013 based on the previous insurance policy for the period from 13.02.2012 to 12.02.2013 purportedly issued by the New India Assurance Company Limited, which was later found to be fake. The learned counsel for the appellant submits that for the above reason, the appellant could not have been made liable to pay the compensation amount to the respondent no.1/claimant.

5. I am unable to find any merit in the above challenge of the appellant. The fact remains that the insurance policy was duly issued by the appellant, and the accident occurred after the issuance of the insurance policy in question. The said insurance policy was not cancelled or terminated by the appellant before the accident took place. The learned Tribunal has also discussed the above issue, observing as under:-

“40. In the present case, it is an admitted position on record that respondent no.4/insurance company not only issued cover note in respect of offending vehicle for the period in question, in favour of respondent no. 2/insured but the said cover note was also followed by policy of insurance having been issued by it. At no point of time, insurance company is shown to have acted diligently or promptly in cancelling the insurance policy. At this juncture, it may be noted that R3W1 who



is none-else but Claims Service Manager of Insurer, has deposed during his cross examination that it was not within his knowledge if any notice was served upon insured calling upon him to submit any explanation that previous insurance policy furnished by him with their insurance company, was found to be fake. He could not disclose the date when it was revealed to insurance company that previous insurance policy was fake. Not only this, he admitted that insurance policy for the period in question, was not cancelled by their company and insured was never informed about the same during the policy period. There is no dispute to the fact that the insurance policy in question remained in force till the period of its validity i.e. midnight of 12.02.14. This fact when considered in the light of the relevant part of cross examination of R3W1/1 (i.e. Officer of respondent no. 4), leads to the conclusion that the entire conduct on the part of insurance co had been negligent. While saying so, I have also taken into consideration the fact that in the written statement originally filed by respondent no. 4/insurance company on 12.07.2013, no such plea was raised by it that insurance policy for the previous year submitted by insured, was fake one. Rather, it admitted in its written statement that there was valid insurance policy issued in the name of insured/respondent no. 2 for the period from 13.22.13 to 12.02.14. It was only at the time of filing affidavit in evidence of R3W1, the insurance company came out with the aforesaid plea that insurance policy for the period in question was void as the insured managed to get the policy issued on the basis of fake insurance policy for the said offending vehicle in respect of the previous year. No explanation whatsoever has been furnished by insurance company as to what kind of verification of previous insurance policy purportedly submitted by insured with it, at the time of issuance of insurance policy for the

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period in question, had been made by it. Moreover, the said insurance policy remained in force throughout the period of its validity upto 12.02.14 and was not cancelled at all. The insured was never called upon at any point of time to furnish any explanation on this aspect or to produce any valid insurance policy of the vehicle for the previous year, during the said period. The insurance company duly accepted the insurance premium while issuing insurance policy of the vehicle for the period in question and used it for its benefit.

41. The heavy reliance placed by counsel for insurance company on unreported decision of Hon'ble Punjab & Haryana High Court in the case "Rajveer Singh Gurjar & Anr." (supra) is found to be misplaced inasmuch as the facts of the present case are found to be distinguishable from the facts of the cited decision. Moreover, the decision rendered in the cited case, proceeded on the basis of finding that there was misrepresentation and concealment of material facts within the meaning of Section 149(1) (b) of M.V Act. However, the insurance company in the present case has failed to establish that there was misrepresentation and concealment of material facts on the part of insured when nothing has been brought on record on its behalf to prove that any effort whatsoever was made on its part to verify the insurance policy for the previous year submitted by insured, which led to issuance of policy by it for the period in question. This is more so when the office copy of insurance policy (Ex. R3W1/C) also does not contain any reference to the previous insurance policy purportedly submitted by insured, as claimed on its behalf. Thus, I am of the view that in view of peculiar facts and circumstances of the present case as discussed above, insurance co /respondent no. 4 cannot be allowed to take the plea that insurance policy was void in view of Section



149 (2) (b) of M.V Act or that it is entitled to recover the compensation amount from the insured/respondent no. 2. Keeping in view the existence of valid insurance policy, respondent no. 4/insurance company becomes liable to pay the compensation amount, as it is liable to indemnify the insured. Issue no. 2 is decided accordingly.”

6. I find no infirmity in the above finding of the learned Tribunal.

7. The next challenge of the appellant to the Impugned Award is to the grant of Rs.6,99,420/- in favour of the respondent no.1 by the learned Tribunal under the head of ‘loss of estate’. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in **Manjuri Bera (Smt) v. Oriental Insurance Company Ltd. and Another**, (2007) 10 SCC 643, submits that as the respondent no.1 admittedly is the married daughter of the deceased, therefore, she is not entitled to any amount towards loss of estate of the deceased. He submits that the Supreme Court has accepted the Award of ‘loss of estate’ in favour of the married daughter only in cases of a ‘no fault liability’ as envisaged under Section 140 of the Motor Vehicles Act, 1988 (in short, ‘Act’), as was then applicable.

8. I do not find any merit in the said submission of the learned counsel for the appellant. Section 166 of the Act states that an application for compensation can be made *inter alia* by all the legal representatives of the deceased who has died as a



result of a motor vehicle accident. The savings of the deceased becomes part of his 'estate' that is inheritable by his legal representatives irrespective of whether they are dependent on him or not. Even a married daughter is entitled to a share in the 'estate' of the deceased. She would equally suffer a loss of estate on account of the untimely death of the deceased.

9. A Division Bench of the Karnataka High Court in ***A. Manavalagan v. A. Krishnamurthy & Ors.***, ILR 2004 KAR 3268, also made certain observations as to how loss of estate could be awarded:-

"19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases,



no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases."



10. In *Manjuri Bera (Smt)* (Supra), the Supreme Court recognised the above, and held as under:-

“Dr. ARIJIT PASAYAT, J.-

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned amicus curiae.

S.H. KAPADIA, J. (concurring)-

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20. In my opinion, "no-fault liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "strict liability". In the former, the compensation amount is fixed. It is Rs 50,000 in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallised amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "no-fault liability" in terms of Section 140 of the said Act. My opinion is confined only to the "no-fault liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles 9 Act, 1988."

11. Though it may be true that the above observations have been made in relation to the claim under Section 140 of the Act, as was then applicable, in my opinion, it would equally extend to the grant of compensation under Section 166 of the Act, which is 'just' to the legal representatives of the deceased who has died in a motor accident. Only because such legal representative is not financially dependent on the deceased, it would not mean that he/she has not lost on what the deceased would have added to his/her estate but for the untimely death due to the motor accident. There is a loss of estate suffered by such legal representative as well.

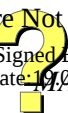


12. The Supreme Court in *National Insurance Company Limited v. Birender & Ors.*, (2020) 11 SCC 356, while emphasising on the principles discussed in *Manjuri Bera (Smt.)* (Supra), has observed as under:-

“13. In para 15 of Manjuri Bera, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.....”

(Emphasis supplied)





13. In view of the above, I find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

14. The statutory amount deposited by the appellant be released back to the appellant along with the interest accrued thereon.

15. The appellant has deposited the awarded amount with the Registrar General of this Court, which was directed to be converted into an annual fixed deposit receipt with automatic renewal. As the appeal stands dismissed, the amount so deposited, with the interest accrued thereon, be released in favour of the respondent no.1 in terms of the Impugned Award, with the amount as would have become payable as on the date of the first release being released immediately. The remaining amount, if any, shall be re-invested in the Fixed Deposit in terms of the direction of the learned Tribunal, to be released in accordance with the Schedule of release thereof stipulated in the Impugned Award.

NAVIN CHAWLA, J

AUGUST 16, 2023/rv/rp