



2023:DHC:8433



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

%

Reserved on : 06<sup>th</sup> November, 2023

Pronounced on: 23<sup>rd</sup> November, 2023

**+ MAC.APP. 885/2015, CM APPL. 27450/2015 & CM APPL. 3877/2016.**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate.

versus

POONAM RANA & ORS ..... Respondents

Through: Mr. Dinesh Kumar and Ms. Bhavna,  
Advocates for Respondent nos. 1 to 4.

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. This petition has been filed assailing the impugned award dated 7<sup>th</sup> August, 2015 in MACT 366/2013 tilted as ***Smt. Poonam Rana & Ors. v. Dilip Mahato & Ors.***, passed by the Ld. Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi. As per the impugned award, the appellant was directed to pay an amount of Rs.44,21,835/- along with interest at the rate of 9% per annum from the date of the institution of the petition i.e. 5<sup>th</sup> February, 2013 till the date of realization as compensation to the respondents.

2. The appellant is an insurance company. Respondent nos. 1 to 4 filed claim petitions under sections 140 and 166 of the Motor Vehicles Act, 1988



2023:DHC:8433



(MV Act) seeking compensation from respondent nos. 5 and 6 and the appellant herein owing to the accident which occurred on 24<sup>th</sup> November, 2012, wherein deceased Deepak Rana (husband of respondent no.1) suffered grievous injuries and later passed away.

3. The accident occurred at about 11:45 AM at Pooth Khurd, Firki Road Crossing near Rajeev Vatika, Balraj Farm House, Delhi. FIR No.390/2012 under sections 279/304A of Indian Penal Code, 1860 (IPC) was registered at PS Bawana against respondent nos. 5 and 6, respectively driver and the owner of the offending vehicle (Truck bearing No. DL 1CB 7115). As per the claimants, the deceased was proceeding towards Pooth Khurd Village, when at about 11:45 a.m the offending vehicle, driven rashly and negligently by its driver, came from the front side and hit the deceased. The deceased fell on the road sustaining grievous injuries, was moved to MV Hospital, but could not survive and succumbed to the injuries.

4. Respondent nos. 5 and 6 herein, opted not to defend the claim petition, and their defence was struck off *vide* order dated 29<sup>th</sup> July, 2013. The appellant herein contested the case. Issues were framed and evidence was led of the widow of the deceased (PW-1) and the eyewitness Ct. Shashi (PW-2), while no witnesses from the defendant side were examined.

5. Mr. A K Soni, learned counsel for the appellant assailed the award on three principal grounds: *firstly*, there was contributory negligence by respondent no.1 driver which should be taken into account; *secondly*, the claimants were held to be entitled to reimbursement of tuition fees at Rs.1,250/- per child per month till the child attains the age of 18 years; which was based



2023:DHC:8433



on a certificate which was not proved in the proceedings and *thirdly*, the wife of the deceased was given employment by the MCD and therefore, is a mitigating factor.

6. In response, learned counsel for the respondent has contended that there was no evidence led relating to contributory negligence and the issue was not canvassed by the appellant before the Ld. MACT. *Secondly*, as regards the certificate, there was no evidence from the appellant to state that it was forged or fabricated, and *thirdly*, as regards the mitigating factor of the wife being granted employment by the MCD, it was not a ground in the appeal, rather it was only contended that she was ‘*entitled*’ to appointment on compassionate grounds.

7. A perusal of the impugned award bears out that in the cross-examination of PW-2, he had denied the suggestion that the accident took place due to the negligence of the deceased. Even though the truck, the offending vehicle, was not being driven on the wrong side, as per him the accident occurred in the process of taking sharp turn by the truck at a high speed. There is no reference to the contributory negligence in the written arguments filed in the claim petition.

8. As regards the certificate issued by the MCD, it forms part of the LCR and has been issued by the CMO (M&TB) North-DMC, of the Health Department, dated 30<sup>th</sup> December, 2014. The said certificate states as under:

*“This is to certify that Mr. Deepak Rana (Expired on dated 24.11.2012) s/o Late Sh. Sukhbir Singh who was working as a peon at Bawana Polyclinic under administrative control of Addl. DHA*



2023:DHC:8433



*(M&TB) had claimed Tuition Fee Reimbursement (TFR) for Rs. 13100/- on account of reimbursement of two children for the period April 2012 to September 2012 @ Rs.1250/- per child per month.*

*This issues against the representation for the same from his dependent wife.*

*CMO (M&TB)/  
North DMC”*

9. It had been contended in the claim petition that the deceased was entitled to reimbursement of the tuition fees and that the said facility is available in MCD and pursuant to the same facility, the certificate duly issued by NDMC was put on record. It is an official document/ certificate of which the Ld. Judge, MACT took judicial notice of and even though the signatory of the same was not brought to give his testimony, does not make the certificate invalid specially there is nothing on record to refute the same. Moreover, an amount of Rs.1,250/- per month per child as tuition reimbursement is a reasonable figure, which in any event would be assumed, as expense for the minor children of the deceased.

10. In this regard finding in the impugned award is noted as under:

*“7. Ld counsel for petitioners has also argued that the deceased was also entitled to reimbursement of tuition fees @1250/-per child per month and the said facility is available in MCD till the child attains the age of 18 years. Certificate dated 30.12.2014 issued by CMO(M &TB), North DMC, has also been filed in support of the said claim. In view of the certificate duly issued by NDMC, it is believed that the deceased was entitled to claim reimbursement of education fee @1250/- per child. From*



2023:DHC:8433



*the copy of birth certificate of daughter of-deceased which forms the part of DAR, it is revealed that her date of birth is 11.09.1999 and date of birth of his son is 16.05.2003. Thus, it is established that the daughter of deceased was 13 years 2months old and son was 9years 6month old at the time of accident, Hence, deceased would have got reimbursement of Rs.1250 x 58 = 72,500/- towards tuition fee of daughter and Rs.1250 X114 = 1,42,500/-towards tuition fee of son. Hence, I also award Rs.1,42,500+72,500/-= 2,15,000/-towards tuition fee.”*

11. Considering that there were two minor children at the relevant time who had to be taken care of by the wife of the deceased and were 13 and 9 years of age at the time of the accident, in any event, in the opinion of this Court it was justified to grant these amounts for their said tuition considering the normal course of events. Additional expense is always there for education of children and an amount of Rs.1,250/- per month would not be unreasonable by any stretch of imagination.

12. This would also be in consonance with observations of Hon’ble Supreme Court regarding scope and object of motor accident claims jurisprudence. Hon’ble Supreme Court in **N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal**, (1980) 3 SCC 457 held that:

*“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners*



2023:DHC:8433



*do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”*

(emphasis added)

13. In ***Brahampal v. National Insurance Co.***, (2021) 6 SCC 512, Hon’ble Supreme Court held:

*“8. Similarly, this Court in ***Vimla Devi v. National Insurance Co. Ltd.*** [*Vimla Devi v. National Insurance**

Signature Not Verified

Digitally Signed  
By: MANISH KUMAR  
Signing Date: 24.11.2023  
16:07:35

MAC APP 885/2015

6/9



2023:DHC:8433



*Co. Ltd., (2019) 2 SCC 186 : (2019) 1 SCC (Civ) 282 : (2019) 1 SCC (Cri) 503] while interpreting the provisions of the Act held that strict compliance of procedures can be relaxed in order to ensure that victims receive just compensation. This Court observed therein: (SCC pp. 188-89, para 15)*

*“15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.”*

(emphasis added)

14. In ***Mathew Alexander Vs. Mohammed Shafi and Anr.***, a Judgment dated 13.07.2023 of Hon’ble Supreme Court, in Criminal Appeal No. 1931 of 2023 (Arising out of SLP (Crl.) No. 8211 of 2022) held:

*“ 9. .... Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi vs. Himachal Road Transport Corporation (“Bimla Devi”), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be*



2023:DHC:8433



*established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.”*

(emphasis added)

15. As regards the mitigating factor of the wife being granted employment by the MCD, the said ground was not taken up in the appeal. The only reference is in ground (h) of the appeal where it is stated that “*respondent no.1 was entitled to be appointed on compassionate ground*”.

16. The appellant has not put forward any evidence that respondent no.1 has been engaged by the MCD in place of the deceased, on compassionate grounds. Therefore, this issue cannot be taken as a mitigating factor for diluting the said award. Even in the cross-examination of the PW-1 (wife of the deceased) on behalf of the insurance company, she stated that MCD had not given her any employment after her husband’s passing away.

17. In view of the above, this Court finds that the grounds canvassed by the appellant are not borne out and the appeal is accordingly dismissed. Accompanying applications are accordingly disposed of.

18. *Vide* order dated 20<sup>th</sup> November, 2015 of this Court, the awarded amount was directed to be deposited and 50% of the same was directed to be released



2023:DHC:8433



while the remaining 50% was directed to be kept in the form of interest-bearing FDR.

19. In view of the dismissal of the present appeal, the balance amount is directed to be released in favour of the respondent nos. 1 to 4 in terms of the award dated 7<sup>th</sup> August, 2015.

**(ANISH DAYAL)**  
**JUDGE**

**NOVEMBER 23, 2023/sm**

Signature Not Verified

Digitally Signed  
By: MANISH KUMAR  
Signing Date: 24.11.2023  
16:07:35

**MAC APP 885/2015**

**9/9**