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

Reserved on: 22.11.2023
Pronounced on: 09.01.2024

+ **MAC.APP. 160/2019 & CM APPL. 4451/2019**

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant
Through: Mr. Pankaj Gupta & Ms. Suman
Bagga, Advocates
versus

KANCHAN & ORS Respondents
Through: Mr. Mudit Chaudhary & Mr. Praveen
Yadav, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This appeal has been filed challenging the Award dated 02.07.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North-West District, Rohini Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.450520 of 2016, titled as ***Kanchan v. Yogendra Chaurasia & Ors.***

2. It was the case of the respondent no.1/Claimant before the learned Tribunal that on 13.04.2014, at about 01.15 A.M., the deceased- Sh.Puneet Saini, that is, the son of the respondent no.1, was going to Arya Nagar in his Car. As he reached near Genpact Mor, DLF Phase-1, a Trailer bearing registration no.HR-63B-4333 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner by the respondent no.2 herein, and which was moving in front of the car of the deceased,



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suddenly turned towards the Genpact Mor and negligently applied brakes without giving any prior indication, resulting in the car of the deceased hitting the Offending Vehicle from behind. Due to the impact, the deceased suffered fatal injuries. He was removed to Paras Hospital, where he was declared as brought dead.

3. The learned Tribunal, on the basis of the evidence led before it, has concluded that the accident in question took place due to the offending vehicle being driven in a rash and negligent manner by the respondent no.2 herein/its driver, and awarded a compensation of Rs.44,66,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till the date of its realisation, in favour of the respondent no. 1/Claimant.

Challenge of the Appellant:

4. The appellant challenges the Impugned Award contending that the offending vehicle has been falsely implicated in the accident.

5. The learned counsel for the appellant submits that the FIR has been registered on the basis of the statement of Sh.Rakesh Saini (PW3), who is admittedly not an eye-witness to the accident in question. In his cross-examination before the learned Tribunal, he had admitted that his statement was based only on a hearsay information.

6. He submits that the Offending Vehicle was seized by the Investigating Officer (in short 'IO'), that is, ASI Rishi Pal (PW4) only on the next morning and on his second visit to the spot of the accident. He admitted that when he first reached the spot of the accident, he did not find the offending vehicle there and that the only vehicle at the spot was the car



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of the deceased. He admitted that the offending vehicle was found only on his second visit to the spot of the accident and that too, around 500 meters away from the spot of the accident. He submits that the second visit of the PW4 would have been after 10-11 hours of the accident, as PW4, in his statement before the learned Tribunal, has stated that he went back to the spot of the accident after collecting the post-mortem report, which had been prepared only at 11:45 a.m. the next morning.

7. He submits that the Mechanical Inspection carried out on the Offending Vehicle shows that the offending vehicle was in proper working condition. He submits that it is, therefore, inconceivable that the Offending Vehicle would have been left parked only at a distance of 500 meters from the spot of the accident, though it had full opportunity to flee away.

8. The learned counsel for the appellant further submits that the Mechanical Inspection Report of the Offending Vehicle also did not show any body damage to the same. He submits that it is not believable that the offending vehicle will not be damaged in the accident in question. He submits that, on the other hand, photographs of the car driven by the deceased were not filed, and even its Mechanical Inspection was not done.

9. The learned counsel for the appellant submits that even the MLC of the deceased shows that the identity of the vehicle with which the accident had taken place, was not known.

10. He submits that, therefore, the claimant/respondent no.1 herein has failed to prove that the Offending Vehicle had caused the accident.

11. He submits that, in any case, in the absence of any eye-witness, the Claimant/respondent no. 1 had failed to prove that the accident had taken place due to the rash and negligent driving of the Offending Vehicle by the



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respondent no.2. He submits that the manner of the accident indicates that the deceased was himself negligent and has contributed to the accident, as he should have maintained a safe distance between his vehicle and the offending vehicle.

12. Placing reliance on the Regulation 23 of the Rules of the Road Regulations, 1989 and the judgement of the Supreme Court in ***Nishan Singh & Ors. v. Oriental Insurance Company Ltd. Through Regional Manager & Ors.*** (2018) 6 SCC 765, he submits that the learned Tribunal has failed to appreciate that the above provision mandates the drivers to maintain a safe distance while driving the motor vehicle on the road. He submits that the deceased was expected to maintain a safe distance, and the failure of him to do so led to the unfortunate accident. He submits that, therefore, the negligence for causing the accident cannot be attributed to the driver of the Offending Vehicle alone.

13. The learned counsel for the appellant submits that for claiming compensation under Section 166 of the Act, it is essential for the Claimant/respondent no. 1 to prove that the accident had been caused due to the negligent driving of the offending vehicle. Placing reliance on the judgment of this Court in ***New India Assurance Company Limited v. Harsh Mishra & Ors.***, Neutral Citation No.2015:DHC:5010; and ***Rina Sinha & Ors. v. Ramkesh & Ors.***, Neutral Citation No.2022:DHC:4334, the learned counsel for the appellant submits that the learned Tribunal erred in attributing negligence on the driver of the Offending Vehicle and in favour of the claimant, only on the basis of the Charge-Sheet and FIR filed under Sections 279, 304A, 427 of the Indian Penal Code, 1860 against the respondent no.2/driver of the Offending Vehicle. He submits that in the



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absence of any other evidence showing that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner, the claim petition was liable to be dismissed.

14. He submits that, in fact, in the Criminal Case no.12-VS, titled as ***State v. Yogender Chorshiya***, pending before the learned Judicial Magistrate, First Class, Gurgaon, the respondent no.2 has been acquitted of the charges filed against him, vide the judgement dated 09.02.2016.

15. The learned counsel for the appellant submits that Sh.Arun Chauhan, examined as PW-2, in his statement has admitted that the claimant has been given a sum of Rs.2,00,000/- under the Medi-Claim Policy under the Group Insurance. He submits that the deceased has not contributed by way of premium for the same. Placing reliance on the judgement of the Supreme Court in ***Helen C. Rebello vs. Maharashtra State Road Transport***, (1999) 1 SCC 90; and ***United India Insurance Co. v. Patrica Jean Mahajan & Ors.***, (2002) 6 SCC 281, he submits that, therefore, the amount received by the respondent no.1 on account of Medi-Claim deserves to be deducted from the total compensation awarded by the learned Tribunal.

Submissions of the Learned Counsel for the Respondent no.1/claimant:

16. The learned counsel for the Claimant/Respondent no.1 herein submits that the involvement of the Offending Vehicle was duly proved before the learned Tribunal. He submits that the Driver and the Owner of the Offending Vehicle, that is, the respondent nos. 2 and 3 herein, in their joint written statement filed before the learned Tribunal, did not dispute the involvement of the offending vehicle in the accident. He submits that they instead took a stand that the offending vehicle was stationary and it was the



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deceased who was driving negligently and rammed into the offending vehicle from behind.

17. The learned counsel for the respondent no.1 submits that the owner of the offending vehicle has admitted in his statement given to the police that the accident has taken place with the offending vehicle and that he was informed by the Driver of the offending vehicle, that is, the respondent no.2 herein, about the same. He submits that, therefore, the involvement of the offending vehicle was duly proved before the learned Tribunal.

18. The learned counsel for the respondent no.1 submits that the negligence of the driver of the offending vehicle has been duly proved before the learned Tribunal by placing reliance on the Mechanical Inspection Report of the Offending Vehicle and the site plan filed by the police. He submits that the manner in which the accident has taken place can be clearly seen from the Mechanical Inspection Report of the Offending Vehicle as it proves that the Rear Tail Light Indicator of the Offending Vehicle was broken and was not fitted. He submits that even the Site Plan filed by the Police before the learned Tribunal clearly shows that the offending vehicle has applied sudden brakes causing the car of the deceased to hit the said offending vehicle from behind.

19. Placing reliance on the judgment of this Court in ***Oriental Insurance Company Limited v. Geeta & Ors.*** (judgment dated 15.07.2019 passed in MAC APP 615/2018); and of the Karnataka High Court in ***The Claim Manager Shri Ram General Insurance Company v. Pushpa & Ors.*** (judgment dated 01.08.2019 passed in Miscellaneous First Appeal No.1378 of 2017), he submits that the accident took place on a highway where generally vehicles move at a considerable speed, and if the Offending



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Vehicle applies sudden brakes on a highway, then it poses a traffic hazard and accidents can happen.

20. He submits that even otherwise, the respondent nos. 2 and 3 did not appear as witnesses before the learned Tribunal in the Claim Petition, and therefore, an adverse inference was rightly drawn against them by the learned Tribunal.

21. The learned counsel for the respondent no.1, placing reliance on the judgment of this Court in ***United India Insurance Co. Ltd. v. Deepak Goel***, 2014 SCC OnLine Del 362, submits that the inquiry before the learned Tribunal is summary in nature and the learned Tribunal was to decide the claim petition on the touchstone of the preponderance of probabilities, unlike a criminal case, where the offence is to be proved beyond reasonable doubt. He submits that, in the present case, the involvement of the offending vehicle and the fact that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner, stood proved by the above standard.

22. The learned counsel for the respondent no.1 places reliance on the judgement of the Supreme Court in ***Archit Saini & Anr. v. The Oriental Insurance Company Ltd. and Ors.***, (2018) 3 SCC 365, to submit that Impugned Award suffers from no infirmity and the learned Tribunal has rightly concluded that the accident took place due to rash and negligence driving of the Offending Vehicle.

23. The learned counsel for the respondent no.1 submits that the appellant has not raised the plea of deduction of Rs.2,00,000/- on account of Medi-Claim under the Group Insurance before the learned Tribunal and even in the Memo of Appeal; the same should, therefore, not be allowed to



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be taken at this stage. He submits that even otherwise, the amount received by the respondent no. 1 is not to be deducted from the compensation determined by the learned Tribunal.

ANALYSIS & FINDINGS:

24. I have considered the submissions made by the learned counsels for the parties.

Involvement:

25. Sh.Rakesh Saini (PW3), in his statement, stated that he was informed about the accident, the manner in which the accident had taken place, and the registration number of the Offending Vehicle, by some unknown person. Though, he is not an eye-witness to the accident, it is evident from the record that he had given this information to the IO immediately upon reaching the hospital on receiving the information about the accident. It is to be kept in mind that in cases of Motor Vehicular Accidents, the family members, because of the injury/death suffered by their dear ones, are in a shock and it is not expected out of them to keep record of things for the sake of evidence.

26. There are other circumstances also that corroborate the statement of PW3. The IO - ASI Rishi Pal (PW4) found the offending vehicle in an accidental position standing at a distance of about 500 meters from the spot of the accident. It cannot be believed that the Claimant and PW3, who had lost a dear one aged only around 21 years, would rush to falsely implicate the Offending Vehicle in the accident, get the vehicle to come near the spot of the accident, and be sure that the owner and the driver admit that the accident had been caused by the said Offending Vehicle.



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27. The Driver and Owner of the Offending Vehicle, that is, the respondent nos.2 and 3 herein, in their joint Written Statement filed before the learned Tribunal have admitted the involvement of the Offending Vehicle in the accident in question, though stating that the offending vehicle was static at the time of the accident and that the accident occurred due to the negligence of the deceased and not of the respondent no.2 herein. The involvement of the Offending Vehicle in the accident cannot, therefore, be doubted.

28. The submissions made by the learned counsel for the appellant may lead to some doubt, but then the test to be applied to a claim petition filed under the Motor Vehicles Act, 1988 is only one of preponderance of probabilities and not one of proving the case beyond any reasonable doubt.

29. In ***Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors.***, (2009) 13 SCC 530, the Supreme Court has held that:

“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

30. In ***Anita Sharma v. New India Assurance Co. Ltd.***, (2021) 1 SCC 171, the Supreme Court has held as under:

“17. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometres away in an altogether



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different State. Close to the facts of the case in hand, this Court in Parmeshwari v. Amir Chand (2011) 11 SCC, viewed that :

“12. The other ground on which the High Court dismissed Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302 the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

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15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

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21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to



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find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

(Emphasis supplied)

31. In view of the above, the submission of the learned counsel for the appellant that the very involvement of the Offending Vehicle in the accident had not been proved, is found without merit and is, accordingly, rejected.

Negligence:

32. The next challenge of the appellant to the Impugned Award is towards the findings of the learned Tribunal on the issue of negligence. The learned counsel for the appellant has submitted that the deceased was himself negligent as he failed to maintain a safe distance from the Offending Vehicle. He submits that the driver has been acquitted of the charges in the criminal trial and therefore, the rash and negligent driving of the Offending Vehicle has not been proved by the claimant before the learned Tribunal.

33. I do not find any merit in the above submissions made by the learned counsel for the appellant.

34. Though the Claimant was unable to produce an eye-witness to the accident, this again cannot be said to be fatal to the claim petition. In the present case, the site plan of the accident corroborates the information received by the PW3. A Charge-Sheet has also been filed by the police against the driver of the Offending Vehicle. The driver of the offending vehicle did not appear as a witness before the learned Tribunal to give his



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version of the manner in which the accident took place. Therefore, no fault can be found in the finding of the learned Tribunal that the Claimant had been able to prove that the accident had taken place due to the rash and negligent driving of the Offending Vehicle.

35. As regards the submission of the learned counsel for the appellant that the reliance of the learned Tribunal on the FIR and Charge-Sheet to prove negligence, when the driver has been acquitted in the said criminal case, is not well-founded and cannot be accepted.

36. In *Mathew Alexander v. Mohammed Shafi & Anr.*, 2023 SCC OnLine SC 832, the Supreme Court has held as under:

“12. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

13. In this context, we could refer to judgments of this Court in the case of N.K.V. Bros. (P) Ltd. vs. M. Karumai Annal reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case



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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 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.

14. *In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law."*

37. Similarly, the plea of the learned counsel for the appellant that it was the deceased who was over-speeding and was not maintaining a safe distance from the Offending Vehicle, in the absence of any evidence in this regard, cannot be accepted. PW3, in his statement, has stated that he was



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informed that it was the Offending Vehicle which suddenly and in an unexpected manner, without any indicator, turned towards the Genpact Mor and applied sudden brakes, leading to the accident. This version is supported by the site plan of the accident. In any case, in the absence of the driver of the Offending Vehicle giving his version of the manner of the accident, the plea of the learned counsel of the appellant, cannot be accepted. Reliance in this regard is also placed on the judgment of this Court in ***Geeta & Ors.*** (supra).

38. In ***Harsh Mishra*** (supra), this Court, while reiterating that mere registration of a criminal case may not be enough to prove negligence, held that it is not always necessary that an eye-witness must be produced to prove negligence, it can be proved through other direct or indirect evidence. It was further held that there may be cases where an inference of negligence can be derived from the manner in which the accident takes place. There may also be cases where the principles of *res ipsa loquitur* may be attracted. The present case will be one of such cases.

39. In ***Rina Sinha*** (supra), the Court found the testimony of the alleged eye-witness to be doubtful. The same, therefore, shall have no application to the facts of the present case.

40. In ***Nisha Singh*** (supra), the Supreme Court found that while there was no evidence that the driver of the truck had suddenly applied the brakes in the middle of the road and regarding the exact place of occurrence of the accident, the car in which the deceased was travelling was not maintaining a safe distance and was being driven at a high speed on a narrow road. In those facts, the Supreme Court upheld the concurrent finding of the learned Tribunal and the High Court which had held that the



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accident had taken place due to the car being driven in a rash and negligent manner. This judgment would have no application to the facts of the present case.

41. In view of the above, the challenge of the appellant towards the findings of the learned Tribunal on the issue of negligence is, accordingly, rejected.

Deduction of Medi-Claim Amount from Total Compensation:

42. The next challenge of the appellant is for the deduction of the Medi-Claim amount received by the claimant under the Medi-Claim Group Insurance from the total compensation awarded.

43. The learned counsel for the appellant submits that as the deceased was not paying any premium towards the Medi-claim Policy, the amount received by the claimant against the said policy is liable to be deducted from the total compensation payable to the deceased. He submits that the claimant cannot be paid double compensation for the death of the deceased in the accident.

44. At the outset, it is noted that the above ground of challenge is not taken in the Memo of appeal. This itself may be sufficient to reject the same.

45. Even otherwise, the plea of the appellant has no merit.

46. In ***Helen C. Rebello*** (supra), the Supreme Court, considering the provisions of the Motor Vehicles Act, 1939 and specifically Section 110-B thereof, has observed as under:

“19. It is true that the aforesaid two English decisions were cases of injuries, but the principle as spelt out is equally applicable in cases of death. The English Court held that for any money coming under the



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contract of insurance, it would be unjust and unreasonable to hold that the money which he prudently spent on premiums, the benefit from it should enure to the benefit of the tortfeasor. This, we fully endorse. Under life insurance, in case one lives up to the time of maturity, after paying full premium he receives the assured money back, based on the terms of the contract. In fact, he receives less than the total premium paid. It is for this gain to the insurer it is obliged to pay to the extent the sum assured to the claimant in case of injury or death under the contract. In other words, payable only on the contingency as referred, if the contingency of injury or death does not happen, the insurer is the gainer as it receives more under premium than to pay on maturity of the policy, and in case a contingency occurs the claimant is the gainer as he receives the amount even before paying the full premium and the gain is to the proportion of the balance unpaid premium, whether it is injury or death. A large number of persons under the policy may live up to the maturity of policy by paying full premium and the contingency of injury or death may not happen. On each of such matured policies, the Life Insurance Corporation having its gain in mind enters into its business, to offer to the policy-holders in terms, in case of happening of the said contingency to pay the full amount assured, if it takes place earlier, without paying the full premium. It is this game of gain or loss the Life Insurance Corporation enters into the contract. This fact is revealed by the Preamble of the Life Insurance Corporation Act, 1956 (Act 31 of 1956), quoted hereunder:

“An Act to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto.”

20. Many invest through this policy for a variety of reasons, maybe, to secure the sum for himself as forced saving, maybe, as in India, for deduction towards his income tax liability, to secure loan by himself in case needed on a meagre interest for



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building his residence or to secure a sum in case of happening of the said contingencies etc. He enters into this contract with an open eye, as an act of wisdom, of course, not towards gain to the tortfeasor. The English Court expressing concern on this aspect in the aforesaid decision recorded: "Why should the plaintiff be left worse off than if he had never insured." Thus, the interpretation of deduction of life insurance would result into gain to the wrongdoer in proportion to the higher scale of premium paid by the insured for no contribution of his and loss to the claimant in proportion to the higher scale of premium paid, as he would have received the compensation amount without payment of any premium. Before we proceed to decide the question raised, it is necessary to refer to the decision of this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami, AIR 1962 SC 1. The passage relied upon is quoted hereunder:

"... only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

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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, correlating with the accidental death. The compensation payable under the Motor Vehicles



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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 a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, 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 to 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 moveable, immovable, shares, bank accounts, cash 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 accidental 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 forms of death. The constitution of the Motor Accident 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 the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no



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corelation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which 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 incident may be an amount liable for deduction. However, our legislature has taken note 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 and in the course of employment of an employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no corelation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any corelation with an amount earned by an individual. Principle of loss and gain has to be on the



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same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

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 correlation 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 the 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, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, 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 correlation 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 a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation



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to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the 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 receivable under the life insurance policy is contractual.

36. As we have observed, the whole scheme of the Act, in relation to the payment of compensation to the claimant, is a beneficial legislation. The intention of the legislature is made more clear by the change of language from what was in the Fatal Accidents Act, 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of the 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides that where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to the claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation in respect whereof (sic thereof) 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 on 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 been 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



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amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, 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 a 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 intents of the legislature under various provisions of the Motor Vehicles Act, 1939.”

47. It has, therefore, been held that the deceased may have taken an Insurance Policy for various reasons, and perhaps with a different motivation, and would have paid premium towards the same. Any amount received by the claimants, who are the legal heirs of the deceased would, therefore, be received under the contract entered into by the deceased and the insurer, and not only due to the death of the insured in a motor vehicular accident. Such an amount can have no co-relation with the compensation computed, as against the tort-feasor, on account of the accident.

48. The above principle was followed by the Supreme Court in the case of ***Patrica Jean Mahajan*** (supra), wherein the Court held that the amount received under the Social Security Scheme cannot be deducted. The Court *inter-alia* observed that for availing the benefit of a Social Security Scheme, the contribution comes from the different sources for constituting the fund out of which payment on account of Social Security Scheme is made; one of the constituents of the fund is tax which is deducted from the income for the said purpose. Deducting such an amount would only defeat the purpose of the Act, which is to provide ‘just compensation’ on account of the death that occurred due to a motor vehicular accident. I may quote from the judgment as under:



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“36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the



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claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.”

49. In ***Sebastiani Lakra v. National Insurance Co. Ltd.***, (2019) 17 SCC 465, the Supreme Court held that the amount received by the claimant under the Employee Family Benefit Scheme cannot be deducted from the compensation, that is, otherwise payable under Section 168 of the Act. The Court further held that the amount received under any insurance policy is also payable, not because of the death of the deceased, but because of the contract entered into between the deceased and the Insurance Company from where he took the policy. The deceased has paid the premium of such Life Insurance, and this amount would have accrued to the Estate of the deceased either on the maturity of the policy or on his death; irrespective of the manner of his death. I may quote from the judgment as under:

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased



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or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Parry v. Cleaver 1970 AC 1 the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the



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tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

17. The issue before us is whether we should deduct the amount being received by the family members under the EFB Scheme while calculating the loss of income.

18. The EFB Scheme is totally different from the rules which were under consideration of this Court in Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627. Under this Scheme, the nominee or legal heir(s) of the deceased employee have to deposit the entire amount of gratuity and all other benefits payable to them on the death of the employee.

19. In the present case, it stands proved that the claimants have deposited a sum of Rs 27,43,991 received by them on the death of the deceased with the employer and are now getting about Rs 50,082 per month. This amount of Rs 50,082 is to be paid to the legal heirs under the EFB Scheme only till date of retirement of the deceased. Even if an interest @ 12% p.a. is calculated on the amount of Rs 27,43,991, that would amount to Rs 3,30,000 per year or Rs 27,500 per month. The appellants claimants are getting about Rs 50,000 per month i.e. about Rs 22,500 per month more, but this is only to be paid for a period of about 7 years till 30-4-2021. This payment will cease thereafter.

20. The aforesaid payment is totally different to the payment made by the employer in Shashi Sharma case [(2016) 9 SCC 627] which was statutory in nature. Therefore, we hold that this amount cannot be deducted.”

50. In ***National Insurance Co. Ltd. v. Mannat Johal***, (2019) 15 SCC 260, the Supreme Court was considering whether the *ex-gratia* payment received from the employer of the deceased, being one year's gross salary,



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which was not shown to be under any Rules or Services and overall continuous assistance, can be set off against the compensation payable under the Act. The Court held that the same cannot be deducted.

51. From the above, it is apparent that compensation paid to the claimant is for the wrongful death of her son in the accident. The tortfeasor, who is primarily liable to pay such compensation, cannot claim a benefit in reduction of compensation payable by such tortfeasor, only because the deceased had, himself or through his employer, made an arrangement for providing a security to his legal heirs in case of any unforeseen happening, like an accident. Merely because the deceased himself did not pay the premium, in my opinion, is also not a relevant circumstance. Though such a premium is paid by the employer of the deceased, it is against the service that was being discharged by the deceased in his employment. How the employer frames the pay package to its employees is a matter between the employer and the employee, however, one thing is certain that even if the premium is paid by the employer, it is paid because of the relationship between the employer and the employee and for reason of such employment, it is not for the benefit of the tortfeasor.

52. In view of the above, I do not find any merit in the above challenge of the appellant to the Impugned Award. The same is, accordingly, rejected.

Conclusion:

53. In view of the above, I find no merit in the present appeal. The same is, accordingly, dismissed.



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54. This Court, vide its order dated 30.01.2019, had directed the appellant to deposit the entire awarded amount with interest accrued thereon with the learned Tribunal. It was further directed that the amount so deposited shall be converted into annual Fixed Deposit Receipts (FDRs) with automatic renewals.

55. By a subsequent order dated 10.01.2023, an amount of Rs. 5 lakhs was directed to be released in favour of the respondent no.1.

56. Now that the appeal stands dismissed, the amount lying deposited with the learned Tribunal, along with interest accrued thereon, shall be released in favour of the Claimant/respondent no. 1, in accordance with the schedule of disbursal as stipulated by the learned Tribunal in the Impugned Award, with all the amount that would have otherwise become payable as on the date of the first release, being released to the claimant forthwith.

57. The statutory amount deposited by the appellant be released in favour of the appellant along with interest accrued thereon.

58. The application is also disposed of in the above terms.

59. There shall be no order as to costs.

NAVIN CHAWLA, J.

JANUARY 9, 2024/SS/AS

Click here to check corrigendum, if any