



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

% **Judgment reserved on : 08 May 2024**
Judgment pronounced on : 02 July 2024

+ **MAC.APP. 186/2022**

**NANDU RAM (SINCE DECEASED) THROUGH HIS LRS &
ORS**

..... Appellants

Through: Mr. Pankaj Gupta, Adv.

versus

SH SOHAN SINGH & ORS. Respondents

Through: Mr. Pradeep Gaur and Ms.
Shweta Sinha, Advs. for R-
4/Insurance Company

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellants, who are the legal representatives/heirs of the deceased claimant Nandu Ram, are preferring this appeal under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 25.02.2022 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi², being aggrieved that the learned Tribunal has denied them just and fair compensation since the claimant died during the proceedings/trial.

FACTUAL BACKGROUND:

2. Briefly stated, the original claimant, namely Nandu Ram, met

¹ Act

² Tribunal



with a motor accident on 25.08.2014 when he was hit by the offending jeep bearing registration No. HR-67A-4044 being driven by respondent No.1/Sohan Singh, which was registered in the name of respondents No. 2 and 3 and evidently, insured for “third party risks” with respondent No.4/United India Insurance Company Ltd.

IMPUGNED JUDGMENT-CUM-AWARD:

3. The claimant/Nandu Ram suffered grievous injuries so much so that he has developed permanent disability to the extent of 58% in relation to his right upper and lower limb as per the Disability Certificate dated 09.12.2016 Ex.PW2/1 issued by the Medical Board of Babu Jagjivan Ram Memorial Hospital, Jahangir Puri, Delhi.

4. The claimant/Nandu Ram filed a claim petition seeking compensation under Section 166 r/w Section 140 of the Act. Unfortunately, he passed away on 07.05.2021 on account of some natural causes during the course of the proceeding/trial before the learned Tribunal. While the learned Tribunal decided Issue No.1 with regards to culpable rashness and negligence on the part of the respondent/driver in causing the accident in favour of the claimants, when it came to the quantum of compensation, the same was assessed as under:-

1.	Medical Expenses	Rs.	8976/-
2.	Loss of income	Rs.	42,770/-
3.	Conveyance, special diet and attendant charges	Rs.	30,000/-
	<u>Total</u>	<u>Rs.</u>	<u>81,746/-</u>
	<u>Rounded of</u>	<u>Rs.</u>	<u>82,000/-</u>



LEGAL SUBMISSIONS ADVANCED AT THE BAR:

5. It appears that the learned Tribunal was of the view that since the claimant/injured had died during the course of the proceeding/trial, it was not enjoined upon to consider grant of compensation under other pecuniary and non-pecuniary heads which were personal to the deceased. Needless to say, the liability to pay the compensation was fastened upon respondent No.4/Insurance Company. Hence, the present appeal is preferred seeking fair and just compensation, for which, heavy reliance is placed on a decision in the case of **The Oriental Insurance Company Ltd. v. Kahlon @ Jasmail Singh Kahlon**³ decided by the Supreme Court.

ANALYSIS AND DECISION:

6. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at Bar and on perusal of the relevant record including the digitized Trial Court Record, at the outset, the impugned judgment-cum-award cannot be sustained in law and requires interference in this appeal to award just and reasonable compensation to the appellants.

7. In the cited case of ***The Oriental Insurance Company v. Kahlon (supra)***, in somewhat similar factual and circumstantial narrative, the Supreme Court considered the issue of grant of compensation to the legal heirs/dependents of the deceased claimant who had died during the course of the proceedings/trial. It would be relevant to refer to the observations by the Supreme Court which go as

³ (2022) 13 SCC 494



under:-

“9. The Act is a beneficial and welfare legislation. Section 166(1) (a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.

10. In *Umed Chand* (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.

11. In *Maimuna Begum* (supra) the defence under Section 306 of the Indian Succession Act, 1925 on the old English Common Law maxim "*actio personalis moritur cum persona*" was rejected opining that it would be unjust to non-suit the heirs on that ground.



12. In **Venkatesan** (supra), the injured claimant preferred an appeal dissatisfied, but was deceased during the pendency of the appeal. Compensation came to be awarded under the Act for loss of estate keeping in mind the nature of the injuries, the treatment, the expenditure incurred and loss of income.

13. In **Surpal Singh** (supra), Justice K.S. Radhakrishnan, C.J. (as he then was), observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statutes be construed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of "*actio personalis moritur cum persona*" on the premise that it was an injury done to the person and the claim abated with his demise it was observed:

"11. The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different circumstances, which cannot be measurable in monetary terms. We are therefore in full agreement with the view expressed by the learned Single Judge of this Court in Gujarat State Road Transport Corporation's case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives,"

14. This view has subsequently been followed in a decision authored by brother Justice M.R. Shah J., (as he then was) in **Madhuben Maheshbhai Patel vs. Joseph Francis Mewan and Others**, 2015 (2) GLH 499, holding as follows:

"12....Considering the aforesaid decision of the Division Bench of this Court in the case of Surpal Singh Ladhuhba Gohil (supra); decisions of the learned Single Judge of this



Court in the case of Jenabal Widow of Abdul Karim Musa (supra) and in the case of Amrishkumar Vinodbhai (supra); and aforesaid two decisions of the learned Single Judge of the Rajasthan High Court, we are of the opinion that maxim "actio personalis moritur cum persona" on which Section 306 of the Indian Evidence Act (sic Indian Succession Act) is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned, *which would include personal expenses incurred on the treatment and other claim related to loss to the estate.* Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the claim petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove."

15. Similar view has been taken by the Punjab & Haryana High Court in *Joti Ram vs. Chamanlal*, AIR 1985 P&H 2 and the Madras High Court in *Thailammai vs. A.V. Mallayya Pillai*, 1991 ACJ 185 (Mad).

16. The view taken in *Kanamma* (supra) and *Uttam Kumar* (supra) that the claim would abate is based on a narrow interpretation of the Act which does not commend to us. The reasoning of the Gujarat High Court is more in consonance with aim, purpose and spirit of the Act and furthers its real intent and purpose which we therefore approve.

17. The injuries suffered by the deceased in the accident required prolonged hospitalization for six months. The extent of disability suffered was assessed on 16.06.2000 as 100%. The extent of disability, pursuant to physiotherapy was reassessed as 75% on 08.08.2002. In the Interregnum, the injured resigned his Job on 30.09.2001 at the age of 53 years as he found movement difficult and inconvenient without an attendant as distinct from complete immobility. The injured was possessing professional qualifications



in labour laws and Industrial relations along with a Diploma in Personnel Management. He may have had to suffer some handicap in also practicing before the labour court, but cannot be held to have suffered 100% physical disability as his capacity for rendering advisory and other work coupled with movement on a wheel chair with the aid of an attendant could still facilitate a reduced earning capacity. It cannot be held that the injured was completely left with no source of livelihood except to deplete his estate. In assessing what has been described as 'Just Compensation' under the Act, all factors including possibilities have to be kept in mind.

18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal Injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of state caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

19. In *Parminder Singh* (supra) compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. Again, in *Kajal* (supra) the injured was assessed as 100 per cent disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. The loss of income to the injured in the facts of the present case has to be assessed at 75%. In view of *Raj Kumar* (supra) there shall be no deduction towards personal expenses.

20. **We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased."**

8. Thus, without further ado, it is now a settled proposition of law that although claim for personal injuries may not survive after the death of the injured unrelated to the accident or injuries during the



pendency of the proceeding/appeal, but the claim for loss of estate has to be assessed and granted to the legal representatives/heirs of the deceased.

9. Reverting back to the instant matter, the claimant-injured/deceased was 57 years at the time of accident and evidence was brought to the fact that he was working as a labourer. The learned Tribunal has rightly considered that in the absence of any substantive evidence that he was earning Rs. 15,000/- per month, the minimum wages for an unskilled workman that were prevalent at the time of the accident should be reckoned, which was Rs. 8,554/- per month. In order to assess loss of earning capacity, 10% of such notional income is to be considered towards increase in future prospects, which comes to Rs. 855/- and therefore, the monthly notional income would come to Rs. 9,409/-

10. The annual income, after applying the multiplier of '9', would come to Rs. 10,16,172/-. (9,409 x 12 x 9) This brings us to the assessment of functional or disability vis-à-vis the whole body. At the cost of the repetition, as per the Permanent Disability Certificate dated 09.12.2016 Ex.PW2/1, the claimant/Nandu Ram had suffered 58% disability in relation to his right upper and lower limb. During the course of the proceedings/trial, PW-2/Dr. R.S. Mishra was examined, who testified that the permanent disability was such which was not likely to improve in future, and therefore, his re-assessment was not recommended. He explained that the case of the injured was that of Post Traumatic Stiffness in right wrist and right ankle. He further testified that due to the injury sustained by the injured, he would not



be able to lift heavy weight and would be experiencing moderate difficulty to remain in a standing position on affected lower limb for long duration; and that the injured would be having great difficulty in riding the bicycle as he would be experiencing difficulty in coordinating his movement of both the paddles together. PW-2 further ruled out the ability of the injured to lift or operate heavy machines, as also having difficulty in fine work of stitching as well as embroidery due to loss of grip in his right upper limb.

11. It is also pertinent to mention here that PW-1/Nand Ram in his affidavit tendered in evidence Ex.PW1/A deposed that he was working as a labourer and due to the injuries sustained in the accident, he had become dependent upon others. However, it was not explained as to what sort of labour work he was doing. There was placed no documentary evidence as to the nature of work that was being performed by him. Therefore, considering the age of the injured (since deceased), it would be appropriate if the loss of earning capacity or functional disability is reckoned at 29% *vis-a-vis* the whole body. Hence, the compensation on account of loss of earning capacity/functional disability would come to Rs. 2,94,690/- (approximately).

12. At the cost of repetition, in view of the decision in ***The Oriental Insurance Company v. Kahlon (supra)***, compensation towards personal injuries in the nature of pain and suffering, loss of amenities of life, disfigurement is not made out. At the same time, considering the nature of injuries sustained by the injured, it would be just and reasonable to enhance the amount of compensation towards



Conveyance, special diet and attendant charges, which is enhanced to Rs. 50,000/-. Taking into consideration the loss of earning capacity, the total compensation payable to the appellants/legal representatives of the deceased is tabulated hereunder:

HEADS	AMOUNT
Medical Expenses	Rs. 8,976/-
Loss of Income	Rs. 42,770/-
Conveyance, Special Diet and Attendant Charges	Rs. 50,000/-
Loss of earning capacity/functional disability	Rs. 2,94,690/-
Total	Rs. 3,96,436/-

13. Accordingly, the compensation payable to the appellants/legal representatives/heirs of the deceased in the nature of loss of estate would come to Rs. 3,96,436/-. (Rupees Three Lacs Ninety Six Thousand Four Hundred Thirty Six Only). Lastly, considering that the claim petition was instituted on 27.03.2015 and the final decision came in about seven years, this Court is not inclined to interfere with the grant of rate of interest @ 9% per annum.

14. Accordingly, the present appeal is allowed. The appellants/legal heirs of the deceased shall be entitled to a total compensation of Rs. 3,96,436/- with interest @ 9% per annum from the date of filing of the petition till realization. The compensation be paid to the appellants/claimants within four weeks from today, failing which, the Insurance Company shall be liable to pay penal interest @12% per annum from the date of this judgment till realization.



15. The present appeal is disposed of accordingly.

DHARMESH SHARMA, J.

JULY 02, 2024

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KUMAR VATS
Signing Date: 02/07/2024
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