

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Motor Vehicles Act, 1988

MAC App. No.138 of 2007

Judgment reserved on: 1st December, 2008

Judgment delivered on: 5th December, 2008

National Assurance Co. Ltd.
Regional Office No.1
Jeevan Bharti Building
124, Connaught Circus
New Delhi-110001

....Appellant

Through: Pradeep Gaur and Associates.

Versus

1. Smt. Neelam
Widow of late Sh. Jagjit Singh

2. Kumari Sarbjit Kaur
D/o late Sh. Jagjit Singh

3. Kumari Pavneet Kaur
D/o Late Sh. Jagjit Singh

4. Shri Gurdial Singh
S/o Shri Prithi Singh

5. Smt. Lajwanti
W/o Shri Gurdial Singh

All r/o 1129-A,
Maruti Vihar, Gurgaon
Haryana

6. Raj Pal
S/o Sh. Jagga Ram
R/o 18/3,
Arya Samaj Road, Karol Bagh
New Delhi.

7. PTC Clearing and Forwarding Agency,
18/3, Arya Samaj Road, Karol Bagh,
New Delhi.
Also at Vivek Automobile, Mehta Building,
Ground Floor, Bhikaji Cama Place,
New Delhi-110066
Through: Nemo

....Respondents.

V.B.Gupta, J.

1. Present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as "Act") has been filed by the appellant-Insurance Company against the award dated 23rd December, 2006 passed by Shri D.K.Sharma, Judge, MACT, Delhi (for short as "Tribunal").

2. The brief facts of this case are that deceased Shri Jagjit Singh aged about 34 years died in road accident on 8th December, 1996 while driving two wheeler scooter bearing no. DL-4SL-5468. The accident took place as the offending vehicle bearing no. HR-47-3727 was parked on the wrong side with head lights off. The deceased was taken to the hospital where he was declared dead.

3. The offending vehicle is owned by Respondent no.7 whereas, Respondent no.6 was the driver of the offending vehicle. This vehicle was insured with the appellant-insurance company.

4. Vide impugned judgment the tribunal passed an award for a sum of Rs. 20,50,000/- in favour of claimants and against appellant and respondent no.6 and 7.

5. It has been contended by learned counsel for appellant that the compensation awarded by Tribunal is on very much higher side. It has wrongly taken into consideration that the deceased was receiving Rs.4,000/-

per month as production incentive, ignoring the statement of the PW4 who stated that production incentive is different every month depending upon production.

6. The other contention is that the widow and the children are getting family pension and moreover, the widow has got a job in Maruti Udyog Ltd. where her husband was working, on compassionate grounds.

7. It is also contended that the driver of offending vehicle was not holding a valid and effective driving licence at the time of accident. Despite service, neither the owner nor driver appeared nor they contested the matter on merits before the Tribunal. Notices under Order 12 rule 8, CPC were sent through registered post at the address of driver and owner but same could not be served.

8. Lastly, the Tribunal considered the future increase in income whereas, the witness examined on behalf of the claimant did not say a single word regarding future increase in income of the deceased.

9. In support of his contention the learned counsel for appellant has cited the decision of the Apex Court in *Oriental Insurance Co. Ltd. v. Jashuben and others*, 2008 ACJ 1097.

10. On the other hand, it has been contended by the learned counsel for the owner that the onus, was upon the appellant to prove that the driver was not holding a valid driving licence but the appellant has failed to discharge the onus, which was upon him. Secondly, notice under Order 12 Rule 8 CPC has not been served either on the driver or owner.

11. Learned Counsel for the claimants contended that the Tribunal has rightly taken monthly income of the deceased which has been proved on record. There is no ambiguity or infirmity in the judgment of the Tribunal.

12. Though it is correct that the respondents i.e. owner and the driver, did not contest the claim petition before the Tribunal, but the initial onus is upon the appellant to show that the driver was not having a valid and effective driving licence.

13. Before delving with the contentions of the appellant counsel, it is relevant to reproduce herein the relevant sections of the Act.

14. Section 3 of the Act reads as under; “Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do. (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.” Section 181 of the Act reads as under; “Driving vehicles in contravention of section 3 or section 4.- Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

15. Chapter XI of the Act, providing compulsory insurance of vehicles against third party risks are a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

16. Section 149 of the Act provides as follows; “Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) x x x (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely: (a) x x x x (i) x x x x (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualifications; (iii) x x x x

17. In a plethora of cases, the Apex Court and various High Courts have held that, if there is a condition in the insurance policy that only a licensed driver

is to drive the vehicle, the insurance company would not be liable in case there is a breach.

18. There could be no doubt that in order to escape liability, not only it should be proved that the driver of the vehicle was not having a licence at the time of the accident, but also the insurance company should prove that the driver was disqualified from holding or obtaining a licence or never had any licence at all. Merely proving that on the date of the accident, the driver did not have a licence, is not enough to hold that the insurance company is not liable for claim. The onus of proving that the driver of the vehicle never had a licence or was disqualified from holding a licence is on the insurance company.

19. The Apex Court in *Narcinva V. Kamat and Anr. v. Alfredo Antonia Doe Martins and Ors.* [1985 ACJ 397], observed; “When the Insurance Company complains of a breach of the term of contract, which would permit it to disown its liability under the contract of insurance, the burden is squarely on the Insurance Company to prove that the breach has been committed by the other party to the contract. The rest in such a situation would be 'who would fail, if no such evidence is led'. With this principle of law in view, the evidence has to be judged. Merely non-production of licence or non-examination of the driver of the vehicle is not enough nor any adverse inference can be drawn against the person holding that because of non-examination of the driver or non-production of the licence, the burden is discharged by a mere question in cross examination nor the owner is under any obligation to furnish the evidence so as to enable the Insurance Company not to riggle out its liability under the contract of insurance.”

20. When the Insurance Company takes the plea that it is not liable to pay compensation or to indemnify the insured as the driver was not holding a valid licence for driving the vehicle on the date of the accident and the vehicle was being driven in breach of the terms of the policy, the Insurance Company has to discharge the burden by placing legal and cogent evidence before the Tribunal (see *Narcinva V. Alfredo (supra)*) : and a Division Bench case of this Court in *Shajadibai v. Babookhan and Ors.* Vol. (1) 1988 ACC 24).

21. The Tribunal in this regard has held: “In the present case the Insurance Company has brought evidence on record that Driving Licence No.R 8641 which was seized from the driver of the offending vehicle has not been

issued and renewed by RTA Karnal. However, the Insurance company has not brought any evidence on the record so as to prove that there was willful breach of condition on the part of the owner/insured. The Insurance Company even did not prove the notice u/o 12 rule 8 C.P.C sent to the Insured/driver. Merely by bringing evidence on record that the driver was holding a fake license, the Insurance company cannot be absolved from its liability, in absence of cogent and reliable evidence. In the cross examination, the licensing clerk admitted that he has not brought the record as to the renewal of the license therefore the possibility that this license might have been renewed cannot be totally ruled out. In the circumstances, I consider that Insurance Company in view of discussion made herein above cannot be exonerated from its liability.”

22. I do not find any reason to disagree with the findings of the tribunal on this ground as the onus was on the appellant-Insurance company to prove this fact and it has failed to discharge its onus and as such the appellant, cannot be exonerated from its liability.

23. Now coming to quantum, the monthly salary of the deceased has been proved as Rs. 11,000/- per month and it includes, production incentive also.

24. As per the statement of PW4 Shri Om Prakash, Assistant, Maruti Udyog Ltd., the salary includes incentive and deductions. Production incentive is different every month depending on production of the company. The witness has filed “Production Incentive Record” of one year production of the company which is Ex. PW4/A. He also stated that the deceased was holding a pensionable post and his wife and two children are getting pension as per EPF pension scheme.

25. As per the production incentive record Ex. PW4/A for the year 1996, the total production incentive paid to the deceased during this year, was about Rs. 52,730/- which comes to be a little more than Rs. 4000/- per month.

26. Therefore, the Tribunal has rightly considered the production incentive in the salary of the deceased.

27. The important question for consideration is when the widow of deceased and her two children are getting family pension amounting to Rs. 3200/- per month and the widow has also been given a job by the Maruti Udyog Ltd. on compassionate grounds, can these benefits are required to be

correspondingly reduced from the amount of total compensation payable or not”

28. In *Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corpn. and another*, AIR 1998 SC 3191, about pensionary benefits, the Apex Court in para 16 referred to the case of *the Grand Trunk Railway of Canada v. Jennings*, (1888) 13 AC 800 and held as under:- “At the Common Law, pecuniary benefits from insurance policies, whatever the source, and pension schemes whether contributory or non-contributory, were deducted. The various English Courts' decisions reveal the unsettled state of adjudication regarding the deductions from the compensation payable under the Fatal Accidents Act, 1846. Various divergent opinions were expressed, some favourable to the claimant to exclude any sum payable on life insurance or pensions from deduction out of the compensation payable to the claimant and other not to deduct till, as aforesaid, the matter was set at rest by various legislations culminating into the Fatal Accidents Act, 1959. Till before this, within the limitation of the restrictive language of the Act and in the absence of any motivating and guiding words under the statute the general principles under the common law was applied to ascertain the pecuniary loss and gain. Thus, the 'pecuniary advantage' from whatever source comes to the claimant by reason of the death, was interpreted giving its widest meaning. This amplitude of large sphere has been the cause of concern of the Courts, Legislative and the Jurists and reference to the insurance, pension, gratuity etc. whether it is a pecuniary gain deductible, if it is, whether one's conscience, equity and fairness are eroded, specially if it is applied with reference to the provisions of Motor Vehicles Act” To salvage from this onslaught, some decisions declined to interpret for deduction and some other, even after holding deductible, expressed their conscience in favour of the sufferer. This we find both in the English decisions and the Indian decisions.” The Apex Court further in para 36 has pointed out about the family pension as under; “Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two.”

29. This Court in *Delhi Transport Corporation v. Meena Chaturvedi and others*, 2006 ACJ 406, held that deductions on account of life insurance, provident fund, pension, etc. are not admissible in view of the decision of the Apex Court in *Helen C. Rebello (supra)*.

30. In case of N.Sivammal and others v. The Managing Director, Pandian Roadways Corpn. and another, AIR 1985 106, the Apex Court pointed out that the reduction of monetary benefit of pension from the amount of compensation is without justification.

31. In Savitri Devi and Ors. v. Pala Ram and Ors., II (2000) ACC 152 (DB), the Punjab and Haryana High Court has taken the view that the pension/family pension payable to the widow could not be taken into consideration for reducing the dependency of the claimants.

32. In view of the aforesaid principles laid down by the various judgments, the question is no more res integra and the Tribunal exercising jurisdiction under the Motor Vehicles Act is required to consider the payment of damages/compensation to the person concerned on the basis of income and the loss that others would suffer irrespective of benefits, such as, insurance, provident fund, pension, etc.

33. As regards the widow getting job on compassionate grounds, our own High court has held in Nirmala Sharma v. Raja Ram, AIR 1982 Del. 233 that: "If the heir has joined service her salary cannot be taken into consideration or deducted from the amount of compensation payable to her."

34. Karnataka High Court in Lalitha and another v. Dashanbhat Haribansh Bhat and others, AIR 1998 Kar. 344 that: "In our view, the Tribunal has gravely erred in denying the compensation under the head 'loss of dependency' to appellant 1 because of her appointment on compassionate grounds in the place of the deceased. The Tribunal erred in recording a finding that the salary earned by appellant 1 would compensate for the loss of salary which was being earned by the deceased. Whatever salary she got after employment was in lieu of services rendered by her. The same does not mean that there was no loss of dependency. While the husband was earning she must have employed herself gainfully in the house-hold work. Salary earned by the deceased was in lieu of the services rendered by him and because of his death loss was caused to the estate resulting in loss of dependency to the appellants. Salary earned by appellant 1 was due to the work put in by her and could not be adjusted or treated as compensation for the loss of earning of the deceased. Salary earned by appellant 1 could not be equated with the compensation she was entitled to on account of the death of her husband. While determining the compensation under the head loss of

dependency/loss to the estate, the Courts have to examine as to what was the loss caused to the estate of the deceased or to the dependants for the income which was contributed by the deceased to them. To the extent of loss of the income which was being contributed by the deceased to the dependants, the dependants are entitled to be compensated. Simply because one of the family members was given employment in the place of the deceased on compassionate grounds, the loss of dependency would not be off-set against the income earned by the dependents from the appointment given to him/her on compassionate grounds. The income earned by the dependant would be for the services rendered by him/her independently of the loss to the estate caused due to the death of the deceased.”

35. In the light of the above decisions, the contention of the appellant stands rejected.

36. Thus, I do not find any illegality or infirmity in the impugned judgment of the Tribunal. The compensation awarded in this case is just, fair and equitable.

37. Hence, the present appeal is dismissed. 38. No order as to costs.

39. Trial Court record be sent back.

Sd/-
V.B.GUPTA, J.