

(2017) 10 DEL CK 0249

In the Delhi High Court

Case No : MAC. Appeal No. 975 Of 2016, Civil Miscellaneous No. 43491 Of 2016

National Insurance Co Ltd

APPELLANT

Vs

Keshav Mehto & Ors

RESPONDENT

Date of Decision : 25-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0249

Hon'ble Judges : R.K.Gaubha, J

Bench : Single Bench

Advocate : Manu Shahalia, Praveen Walia

Final Decision : Disposed Of

Judgement

R.K.Gaubha, J

1. Pradeep Mehto, a bachelor, aged about 26 years, suffered injuries in a motor vehicular accident that occurred on 19.01.2014 due to the negligent driving of a car bearing registration no.DL-9CP-2689 admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question. His parents, first and second respondents (collectively, the claimants), filed accident claim case (old suit no.280/2014 - new MACT suit no.476647/16) on 25.03.2014.

2. The Motor Accident Claims Tribunal (Tribunal) after inquiry held the driver of the car (third respondent) responsible for the accident and thus found him and the registered owner of the car (fourth respondent), jointly and severally liable to pay the compensation. It computed compensation in the total sum of Rs.10,59,636/- and directed the appellant / insurance company to pay.

3. The insurer by the appeal at hand questions the finding on the issue of negligence submitting that the evidence showed that even the deceased while driving the motorcycle, which was one of the vehicles involved in the collision, had been negligent. It also questions the calculation of loss of dependency on the

ground that the tribunal has wrongly gone by the age of the deceased to choose the multiplier ignoring the fact that the claim is by the parents.

4. The first respondent has died on 02.08.2017. The learned counsel representing the claimants submitted copy of the death certificate. He submitted that the name of the first respondent may be deleted as the compensation deserves to be paid, now in the changed circumstances, entirely to the second respondent (mother). In these circumstances, the name of the first respondent is deleted from the array of parties.

5. The contention of the insurance company on the issue of contributory negligence cannot be accepted. The tribunal had considered this submission but rejected it for sound reasons. It is clear from the copy of the site plan which is part of the record of the tribunal (page 239) that the deceased was moving on the motorcycle from Uttam Nagar to Delhi Cantt. (i.e. from East to West direction), this journey requiring him to negotiate a T-point wherein the road in question meets another road on its southern side, the said other road leading to Block D-2, Janak Puri. The evidence clearly shows that the insured car had approached from the opposite direction and was taking a right turn. The accident occurred a few minutes prior to midnight. There is no effort made to bring on record the status of the traffic signals at the relevant point of time. Since the car driver was taking a right turn and in that process would have blocked the path of the traffic coming from the other side, it was primarily his responsibility to be more careful. In these circumstances, the plea of contributory negligence is repelled.

6. This court in MACA 467/2016, Reliance General Insurance Co. Ltd. Vs. Gomti & Ors., decided on 24.08.2017 ruled as under :-

"6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 National Insurance Co. Ltd. vs. Mohd. Siddique & Ors. decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors., (1994) 2 SCC 176 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors., (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of Reshma Kumari vs. Madan Mohan (2013) 9 SCC 65 and noting the dicta in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 67; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94 and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589, held as under:-

"16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon'ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of

multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher".

7. The tribunal has noted, that the claimant mother was 62 years old on the relevant date. Her age naturally being higher the multiplier of 7 would apply, as per the dispensation in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121."

7. The loss of dependency thus is to be recomputed with the multiplier chosen according to the age of the mother. The copy of the voter identity card (Ex. PW1/B) submitted by the claimants would show that the second respondent (mother) was 59 years old in January 2008. This would mean her age on the relevant date was 65 years. Thus, the multiplier of 7 would apply. The tribunal calculated the monthly loss of dependency after deducting the personal expenses at Rs.4459/-.

8. Therefore, the loss of dependency on which the award for compensation is to be made is calculated as $[Rs.4459 \times 12 \times 7]$ Rs.3,74,556/-, rounded off to Rs.3,75,000/- (Rupees Three Lakh and seventy five thousand only). It is noted that the tribunal has granted Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- each towards funeral charges and loss to estate. Following the dispensation in *Shriram General Insurance Co Ltd v. Usha*, MACA 160/2015, decided on 05.05.2016, the said awards are increased to Rs.1,50,000/- Rs.50,000/- and Rs.50,000/- respectively.

9. Therefore, the total compensation in the case comes to $[Rs.3,75,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-]$ Rs.6,25,000/- (Rupees Six Lakh and twenty five thousand only). The award is modified accordingly. It shall carry interest at the rate of 9% p.a. (nine percent) and shall be payable in entirety to the second respondent (mother).

10. By order dated 23.11.2016, the insurance company had been directed to deposit the awarded amount with interest with the tribunal as a pre-condition to the stay against execution. By order dated 19.07.2017, twenty five percent (25%) of the said amount was allowed to be released to the claimants. The tribunal shall now calculate the balance payable to the second respondent in terms of the modification ordered above and release the same refunding the excess in deposit to the insurance company.

11. The statutory amount shall also be refunded to the insurance company.

12. The appeal and the pending application filed therewith are disposed of in above terms.