

(2015) 05 DEL CK 0342
In the Delhi High Court
Case No : M.A.C. App. 458 of 2015

Noorjadi Khatoon and Others

APPELLANT

Vs

Pintu Yadav and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2015) 2 ACC 935 : (2016) ACJ 500

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Rupika Singh for Navneet Goyal, for the Appellant

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The instant appeal is directed against the judgment dated 2.1.2015 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 23,24,314 was awarded in favor of the Appellants for the death of their bachelor son Mohd. Sarwar Ali Siddiqui, who suffered fatal injuries in a motor vehicular accident which occurred on 5.8.2013. The short ground raised in the instant appeal is that sum of Rs. 5,00,000 which was received by the legal representatives of the deceased Mohd. Sarwar Ali Siddiqui on account of Group Accident Insurance Policy taken by the employer is not liable to be deducted from the compensation of Rs. 28,24,314 which was payable to the Appellants.

2. It is well settled that any amount payable on account of accidental death is liable to be deducted. The Claims Tribunal referred to the judgment of the Bombay High Court in Oriental Insurance Co. Ltd. Vs. Meena Tukaram Jadhav and Others, (2014) 2 ABR 306 : (2014) 3 ALLMR 268 : (2014) 3 MhLj 840 , decided on 19.12.2013, wherein the judgment in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, (1998) 2 ACC 512 : (1999) ACJ 10 : (1998) 7 AD 269 : AIR 1998 SC 3191 : (1999) 95 CompCas 509 : (1998) 6 JT 418 : (1998) 5 SCALE 339 : (1999) 1 SCC 90 :

(1998) 1 SCR 685 Supp : (1999) 1 UJ 174 : (1998) AIRSCW 3105 : (1998) 7 Supreme 404 was discussed. The Claims Tribunal further relied on Delhi Transport Corporation Vs. Suraj Bhan and another, (2011) ACJ 2294 , which referred to the ratio in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., (2002) 2 ACC 460 : (2002) ACJ 1441 : AIR 2002 SC 2607 : (2002) 5 JT 74 : (2002) 3 PLR 281 : (2002) 5 SCALE 56 : (2002) 6 SCC 281 : (2002) 3 SCR 1176 : (2002) 2 UJ 1081 : (2002) AIRSCW 2920 : (2002) 4 Supreme 518 , to hold that the amount of compensation payable under Group Personal Accident Policy will be liable to be deducted from the amount of compensation payable.

3. This question was dealt with at great length by me in National Insurance Co. Ltd. v. R.K. Jain and Ors., IV (2012) ACC 406 : MAC APP. 346/2010, decided on 2.7.2012. I had referred to the judgments in Helen C. Rebello (Mrs.) and Ors. v. Maharashtra State Road Transport Corporation and Anr. (supra) and United India Insurance Co. Ltd. and Ors. v. Patricia Jean Mahajan and Ors. (supra) and the principles to grant compensation against a tortfeasor as laid down in State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) ACJ 1800 : AIR 2003 SC 3696 : (2003) 1 JT 601 Supp : (2003) 135 PLR 414 : (2003) 6 SCALE 113 : (2003) 7 SCC 484 : (2003) 2 SCR 245 Supp : (2003) 2 UJ 1527 : (2003) AIRSCW 4198 : (2003) 6 Supreme 206 .

4. In Helen C. Rebello (Mrs.) (supra), the Supreme Court drew distinction between receipt of money under accident insurance and life insurance policies. It was held that in case of accident policies, the full value is deductible on the ground that there was no surety or even a reasonable probability that the insured would ever suffer an accident.

5. Similarly, in Patricia Jean Mahajan and Ors. (supra), while referring to Helen C. Rebello (Mrs.), the Supreme Court held that if the receipts by the Claimants have some correlation with the accidental death, the sum shall be liable to be deducted. Paras 13 to 16 of the report in National Insurance Co. Ltd. v. R.K. Jain and Ors., MAC APP. 346/2010, decided on 2.7.2012 are extracted hereunder:

"13. Section 168 of the Act enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) ACJ 1800 : AIR 2003 SC 3696 : (2003) 1 JT 601 Supp : (2003) 135 PLR 414 : (2003) 6 SCALE 113 : (2003) 7 SCC 484 : (2003) 2 SCR 245 Supp : (2003) 2 UJ 1527 : (2003) AIRSCW 4198 : (2003) 6 Supreme 206 , the Supreme Court held as under:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just" and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same

time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just", compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

14. In *Helen C. Rebello (supra)*, the question before the Supreme Court was whether the amount received under Life Insurance Policy was liable to be deducted on the principle of balancing the loss and gain. The Supreme Court referred to the Law of Torts by Fleming and differentiated between the amount received under the Life Insurance Policy and an accident insurance policy. Amount received under Life Insurance Policy is payable to legal representatives or to the policy holder if he survives the term of the policy irrespective of the death or even because of death. It was, thus held that the payment received under the Life Insurance Policy was not deductible whereas the payment received under the personal accident insurance was deductible. The reason was that in case of payment received under the accident insurance policy, the amount was receivable only on account of death in an accident and not otherwise, whereas in case of Life Insurance Policy, the amount was receivable irrespective of the death. Thus, the fact that the payment was made under independent contract of insurance was not of much import. Moreover, the use of the word "just" in Section 168 of the Act, confers wider discretion to the Claims Tribunal. The Claims Tribunal, therefore, has to see that the compensation awarded is neither niggardly nor a source of profit. Paras 26, 27 and 28 of the report in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, (1998) 2 ACC 512 : (1999) ACJ 10 : (1998) 7 AD 269 : AIR 1998 SC 3191 : (1999) 95 CompCas 509 : (1998) 6 JT 418 : (1998) 5 SCALE 339 : (1999) 1 SCC 90 : (1998) 1 SCR 685 Supp : (1999) 1 UJ 174 : (1998) AIRSCW 3105 : (1998) 7 Supreme 404 , is extracted hereunder:

"26. This Court, in this case did observe, though did not decide, to which we refer that the use of the words, "which appears to it to be just" under Section 110-B gives wider power to the Tribunal in the matter of determination of compensation under the 1939 Act. There is another case of this Court in which

there is a passing reference to the deduction out of the compensation payable under the Motor Vehicles Act. In *N. Sivammal v. Managing Director, Pandian Roadways Corpn.* this Court held that the deduction of Rs. 10,000 receivable as monetary benefit to the widow of the pension amount, was not justified. So, though deduction of the widow's pension was not accepted but for this, no principle was discussed therein. However, having given our full consideration, we find there is a deliberate change in the language in the later Act, revealing the intent of the Legislature, viz., to confer wider discretion on the Tribunal which is not to be found in the earlier Act. Thus, any decision based on the principle applicable to the earlier Act, would not be applicable while adjudicating the compensation payable to the claimant in the later Act.

27. Fleming, in his classic work on the Law of Torts, has summed up the law on the subject in these words. This is also referred to in *Sushila Devi v. Ibrahim*:

"The pecuniary loss of such dependant can only be ascertained by balancing, on the one hand, the loss to him of future pecuniary benefit, and, on the other, any pecuniary advantage which, from whatever source, comes to him by reason of the death.... There is a vital distinction between the receipt of moneys under accident insurance and life assurance policies. In the case of accident policies, the full value is deductible on the ground that there was no certainty, or even a reasonable probability, that the insured would ever suffer an accident. But since man is certain to die, it would not be justifiable to set off the whole proceeds from a life assurance policy, since it is legitimate to assume that the widow would have received some benefit, if her husband had pre-deceased her during the currency of the policy or if the policy had matured during their joint lives. The exact extent of permissible reduction, however, is still a matter of uncertainty...."

(Emphasis supplied)

28. Fleming has also expressed that the deduction or set-off of the life insurance could not be justifiable. When he uses the words "not be justifiable" he refers to one's conscience, fairness and contrary to what is just. In this context, the use of the word "just", which was neither in the English 1846 Act nor in the Indian 1855 Act, now brought in under the 1939 Act, gains importance. This shows that the word "just" was deliberately brought in Section 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the Courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section HOB of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act

to hold that deductions were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these Courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section HOB. The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, un-equitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law....."

15. Similarly, in Patricia Jean Mahajan (*supra*), the Supreme Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between the compensation payable on account of accidental death and the amount received on account family pension and social security scheme. The Supreme Court emphasized that principle of balancing between losses and gains must have some co-relation with the accidental death by reason of which alone the Claimant had received the amounts. Paras 34 to 36 of the report are extracted hereunder:

"34. Mr. P.P. Rao, learned Counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provisions of the Fatal Accidents Acts. It is further indicated that Gobald case is a case under the Fatal Accidents Acts. For the above contention he has relied upon the observation made in Rebello case. It has also been submitted that only such benefits, which accrued to the claimants by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing a distinction between the scope of provisions of the two Acts, namely, the Motor Vehicles Act and the Fatal Accidents Act, this Court in Helen Rebello case accepted the argument that the amount of insurance policies would be payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation.

35. It may be useful to quote para 33 of the decision which reads as under:

"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 correlation 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."

The Court has observed in the last part of para 34:

"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 correlation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The Court has further referred to receipts of provident fund which is a deferred payment out of contribution made by an employee during the tenure of his service. Such an amount is payable irrespective of accidental death of the employee. The same is the position relating to family pension. There is no correlation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death, which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in para 18 of the judgment.

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. (emphasis supplied). 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 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, may be 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."

16. Thus, on the basis of the ratio in *Helen C. Rebello* (supra) and *Patricia Jean Mahajan* (supra), it can be safely concluded that only those amounts which are payable to the Claimant/Claimants by reason of death or injury in an accident are only liable to be deducted."

6. Thus, in view of above the amount paid by the employer under any group personal accident policy towards accidental death is liable to be deducted from the amount of compensation.

7. The ground of challenge is not sustainable.

8. The appeal, therefore, cannot be entertained. The same is dismissed in limine. Pending applications also stand disposed of.