

Meena and ors Vs. Sube Singh and ors

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Court : Delhi

Decided On : Feb-08-2012

Appellant : Meena and ors

Respondent : Sube Singh and ors

Advocate for Pet/Ap. : Mr. Partap Singh, Mr. Rupender Singh, Mr. Sameer Nandwani, Mr. Arun Yadav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: 6th January, 2012 Pronounced on: 8th February, 2012 + MAC.APP. 812/2010 MEENA and ORS. Appellants Through: Mr. Partap Singh Adv. with Mr. Rupender Singh, Adv. versus SUBE SINGH and ORS. Respondents Through: Mr.Arun Yadav, Advocate for R-2. Mr. Sameer Nandwani, Adv. for R-3. WITH + MAC.APP. 30/2011 RELIANCE GEN INSURANCE CO LTD Appellant Through: Mr.Sameer Nandwani, Advocate versus MEENA and ORS Respondents Through: Mr.Pratap Singh, Advocate with Mr.Rupender Singh, Advocate for R-1 to R-4. Mr. Arun Yadav, Advocate for R-6. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J..

1. These are two Cross Appeals. MAC APP. 812/2010 has been preferred by the Claimants who are the legal representatives of MAC. APP. 812/2010 and 30/2011 *Page 1 of 17* the deceased Balbir Singh for enhancement of compensation of ` 16,42,000/- awarded for his death in an accident which took place on 03.11.2008.

In Cross Appeal MAC APP. 30/2011 Appellant Reliance General Insurance Company Limited disputes the Insurance Company's liability to pay the compensation as Respondent No.5 (Sube Singh, the driver) did not possess a valid and effective driving licence to drive the offending vehicle on the date of the accident and there was no permit to drive the tempo number HR-5C-8498. The Insurance Company avers that the quantum of compensation of ` 1,00,000/- towards the loss of love and affection was exorbitant and excessive and prays for deduction of the compensation..

2. For the sake of convenience Meena and Others in MAC APP. 812/2010 shall be referred to as the Claimants and the Appellant Reliance General Insurance Company Limited in MAC APP. 30/2011, who is the insurer of the offending vehicle HR-55C- 8498 shall be referred to as the Insurer and Respondents No.5 and 6, who are the driver and the owner of the offending vehicle shall be referred to as the driver and owner respectively..

3. While computing the loss of dependency, the Motor Accident Claims Tribunal, (the Claims Tribunal) took the deceased's salary after deducting conveyance and washing allowance as ` 12,964/-, added 30% towards future prospects as the deceased was in permanent employment with MES, Subrato Park, deducted 4500/- towards the family pension, deducted one- MAC. APP. 812/2010 and 30/2011 *Page 2 of 17* fourth towards the personal and living expenses (as per the number of dependents) and applied the multiplier of '14' to compute the loss of dependency as ` 15,12,000/-. The Claims Tribunal added a sum of ` 1,00,000/- towards the loss of love and affection to the four dependents and ` 10,000/- each towards the loss of consortium, loss to estate and funeral expenses to award overall compensation of ` 16,42,000/- with interest @ 9% per annum..

4. First of all, I shall take up MAC APP.812/2010. The contention raised on behalf of the Claimants is that a family pension of ` 4500/- was illegally deducted by the Tribunal to compute the loss of dependency..

5. On the other hand, learned counsel for the Insurer justifies the deduction of ` 4500/- on the ground that this was a gain to the Claimants on account of death and while computing the loss of dependency there has to be balancing on one

hand, the loss to the claimant of the future pecuniary benefits that would have accrued to them but for the death, with the "pecuniary advantage" which from whatever source comes to them by reason of the death. In my view, the Appeal preferred by the Claimants must succeed on the ground raised..

6. It is important to note that it is only the benefits which are received or receivable on account of accidental death which can be deducted from the pecuniary loss suffered by the Claimants. MAC. APP. 812/2010 and 30/2011 Page 3 of 17.

7. In *Helen C. Rebello v. Maharashtra SRTC*, 1999 (1) SCC 90, it was held that the amount of Provident Fund, sum payable on life insurance policy, etc. were not deductible from the amount of compensation because these sums are payable to the legal representatives of the deceased even when the death is not accidental. The distinction was made on gains on account of natural death and accidental death. It was held that whatever comes to the legal representatives by virtue of the accidental death only would be liable to be deducted. I extract Para 34 and 35 of the report hereunder, :- "34. 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, co-relating with the accidental death. The compensation payable under the Motor Vehicles 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 motor vehicle, MAC. APP. 812/2010 and 30/2011 Page 4 of 17 would not be covered under the Motor Vehicles Act. Thus, the application of general principle under the common law of

loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, 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 movable, 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 form of death. The Constitution of the Motor Accidents 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,...".

35. Thus, it would not include that which claimant receives on account of other form of deaths, which he MAC. APP. 812/2010 and 30/2011 *Page 5 of 17* 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 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 incidence 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, in the course of employment of an employee."

8. From Helen C. Rebello (*supra*) it is evident that the sums which are payable to the legal representatives only on account of the accidental death, are liable to be deducted. Other sums of money i.e. Provident Fund, Family Pension, payment under Life Insurance Policy, cash, bank balance, shares, fixed deposits, etc. which are otherwise receivable as legal heirs are not liable to be deducted..

9. A reference can also be made to a Full Bench judgment of this Court in Delhi Transport Corporation v. Meena Chaturvedi and Ors., 122 (2005) DLT 75 (FB), where it was held that the benefits such as Insurance, Provident Fund, and Pension, etc. are not to be considered while considering the payment of MAC. APP. 812/2010 and 30/2011 *Page 6 of 17* compensation to the Claimants. Para 14 of the report is extracted hereunder:- "14. In view of the aforesaid principles laid down by the Apex Court, the question is no more respondent 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."

10. The family pension is payable to the legal heirs not only on account of accidental death but also on account of natural death or death due to any disease as well. Thus, the family pension is not liable to be deducted from the deceased's income to compute the loss of dependency..

11. It has to be seen whether the Income Tax should be deducted first or after making addition of the future prospects as it may affect the quantum of compensation. I would like to extract Para 24 of the report in Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121, for ready reference: "24. In G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, this Court increased the income by nearly 100%, in Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, the income was increased only by 50% and in Abati Bezbaruah v. Geological Survey of India, (2003) 2 SCC 148, the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting

as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased MAC. APP. 812/2010 and 30/2011 *Page 7 of 17* had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words `actual salary' should be read as `actual salary less tax'). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self- employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."(underlines are mine)..

12. In *Shyamwati Sharma and Ors. v. Karan Singh and Ors*, 2010(12) SCC 378, the Supreme Court relied upon on *Sarla Verma* (supra) regarding addition of income towards future prospects and held that the actual salary (less tax) should be increased by 50% towards future prospects. The Supreme Court was clear that Tax has to be deducted from the actual salary before making addition towards future prospects but while making actual computation, in para 7 the Supreme Court deducted the Tax after making an addition of 30% in the income towards future prospects. Since the principles laid down in *Sarla Verma* were approved in para 6 of the report in *Shayamwati* (supra), I would hold that the deduction towards liability on Income Tax should be first made in the actual income and only then an MAC. APP. 812/2010 and 30/2011 *Page 8 of 17* addition is to be made towards future prospects. Para 6 and 7 of the report in *Shyamwati* (supra) are extracted as under:- "6. This Court in *Sarla Verma v. DTC* has stated the principles relating to "addition to income" towards future prospects. This Court held that wherever the deceased was below 40 years of age and had a permanent job, the actual salary (less tax) should be increased by 50% towards future prospects, to arrive at the monthly income. It also held that where the number of dependents of a deceased are in the range of 4 to 6, the deduction towards personal and living expenses of the deceased should be 25%. It further held that in regard to persons

aged 36 to 40 years, the appropriate multiplier should be.

15. We will recalculate the compensation by applying the said principles.(underlines are mine)..

7. As noticed above, the gross salary was `13,794/- per month or `1,65,528 per annum. By adding 50% towards future prospects (as the deceased was less than 40 years of age), the deemed gross income would have been `20,691/- per month or `2,48,292/- per annum. The percentage of deduction towards income tax and surcharge, taken as 30% by the High Court, does not require to be disturbed, having regard to the income. On such deduction, the net annual income of the deceased would have been `1,73,800/-. From the said sum, one-fourth (25%) had to be deducted towards the personal and living expenses of the deceased. Thus the contribution of the deceased to his family would have been `1,30,350/- per annum. By applying the multiplier of 15, the total loss of dependency will be `19,55,250/-. By adding a sum of `5000/- each under the heads of loss of consortium, loss of estate and funeral expenses, the total compensation is determined as `19,70,250/-." (underlines are mine) MAC. APP. 812/2010 and 30/2011 Page 9 of 17.

13. On applying the above principles, the loss of dependency comes as `21,15,904/- ( $\text{`12,964/-} \times 12 - \text{`556.8/- (tax)} + 30\% - \frac{1}{4} \times 14$)..

14. In addition, the Claimants are entitled to a sum `25,000/- towards loss of love and affection instead of `1,00,000/-, `10,000/- towards loss of consortium, `10,000/- towards funeral expenses and `10,000/- towards loss to estate. The total compensation thus comes to `21,70,904/- ($\text{21,15,904/-} + 55,000/-$)..

15. The overall compensation is enhanced from `16,42,000/- to `21,70,904/-. MAC APP.30/2011.

16. FIR No.260/2008 was registered in Police Station Kapashera in respect of this accident. The driving licence, photocopy of which (Ex.PW-1/17) available on Page 245 of the Trial Court Record was seized by the Investigating Officer by seizure memo dated 03.11.2008 (Ex.PW-1/8). The Insurance Company in its written

statement took the plea that it will not be liable to pay any compensation in case the offending vehicle was plied by the driver and the owner without having any valid permit and the driving licence. The Appellant Insurer filed examination-in-chief of R3W1 Navneet Goel by Affidavit Ex.R3W1/1. Navneet Goel testified that the original driving licence of the driver and permit of the offending vehicle were not enclosed in MAC. APP. 812/2010 and 30/2011 *Page 10 of 17* the Claim file. The learned counsel for the Insurance Company sent a notice under Order 12 Rule 8 CPC Ex.R3W1/A to the owner and the driver to produce the permit of the offending vehicle No.HR-55C-8498 and the driving licence of the driver in the Court on 26.02.2010. The notice was sent by registered post. The postal receipts were duly proved with the notice. They failed to produce the permit and the driving licence. The owner and the driver preferred not to contest the proceedings before the Claims Tribunal and were ordered to be proceeded ex-parte..

17. It is urged by the learned counsel for the owner and driver that the onus was on the insurer to establish that the owner committed willful breach of the terms of policy in order to avoid the liability. I have already mentioned above that the driving licence copy of which (Ex.PW-1/7) filed on record of the Claims Tribunal was seized in the criminal case was valid only for the period 15.02.2002 to 14.02.2005 and then to 02.06.2005 to 01.06.2008. The learned counsel for the owner and driver places reliance on judgment of the Supreme Court in Kamala Mangalal Vayani and Ors. v. United India Insurance Company Ltd. and Ors., 2010 ACJ 1441, and a judgment of Punjab and Haryana High Court in National Insurance Company Limited v. Raj Rani and Ors., 2009 ACJ 1684..

18. The accident took place on 03.11.2008. The driver could have got the licence renewed from any Transport Authority. These MAC. APP. 812/2010 and 30/2011 *Page 11 of 17* facts were within the special knowledge of the driver and the owner. They preferred not to respond to the notice under Order 12 Rule 8 CPC and did not produce the licence in the Court. Similarly, the permit to ply the offending vehicle was also not produced..

19. In Kamala Mangalal Vayani (supra) it was held that the onus to prove that the vehicle had a valid permit was not on the Claimants and that breach of the policy

condition is to be proved by the Insurance Company. Similarly, in *Raj Rani and Ors.(supra)*, the Insurance Company failed to produce any evidence about the breach of the terms of the policy..

20. As stated earlier, in the instant case, the Insurance Company did whatever was in its power by asking the owner and the driver to produce the permit and the licence. The driving licence seized by the police was not valid to ply the offending vehicle on the date of the accident as the same had expired five months back..

21. In the case of *National Insurance Company Limited v. Kusum Rai and Ors.*, (2006) 4 SCC 250, the offending vehicle was a taxi. Driver of the vehicle did not possess a licence to drive the commercial vehicle. Evidently, there was breach of condition of policy. The Supreme Court held that the Insurer was not liable to pay the compensation to the third party. However, in exercise of its jurisdiction under Article of 136 of the Constitution of India, the Insurer was asked to pay and recover MAC. APP. 812/2010 and 30/2011 *Page 12 of 17* from the owner as the Claimants were very poor. I would extract Paras 11, 16 and 17 of the report hereunder:- "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence. x x x x x x x x x.

16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not..

17. However, in this case the owner has not appeared. The victim was aged only 12 years. The claimants are from a poor background. They must have suffered great mental agony. Therefore, we are of the opinion that it may not be appropriate to push them into another round of litigation particularly when it may be difficult for them to secure the presence of the owner of the vehicle."

22. In *Ishwar Chandra and Ors. v. The Oriental Insurance Company Limited and Ors.*, (2007) 10 SCC 650; the driving licence of the driver expired on 27.08.1994. The same was renewed after the accident which took place on 24.08.1995. The Supreme Court referred to the provision of Section 15 of the Act and held that the renewal would not relate back to the date of the expiry. The MAC. APP. 812/2010 and 30/2011 *Page 13 of 17* Claims Tribunal awarded the compensation to the Claimants i.e. Respondents No.2 and 3 before the Supreme Court. The Respondent No.1 preferred an Appeal to the High Court. While dismissing the Appeal, the High Court granted liberty to the Oriental Insurance Company Limited to initiate appropriate proceedings against the owner and driver of the vehicle for realization of the amount which was to be paid by the Insurance Company in terms of the award to the third party-cum- Claimants, subject to establishing its case before the Tribunal. The Appeal preferred by the owner was dismissed..

23. In *National Insurance Company Limited v. Vidhyadhar Mahariwala and Ors.*, (2008) 12 SCC 701, again the driving licence had expired. The driving licence was valid for the period 29.12.2000 to 14.12.2003. It was renewed from 16.05.2005 to 15.05.2008. The accident took place on 11.06.2004. As per provision of Section 15 of the Act since the licence was not renewed within 30 days of the expiry, the licence was to be effective only from the date of the renewal. While referring to *Ishwar Chandra and Ors. (supra)*, the Supreme Court held that the Insurance Company would have no liability in the case of this nature and the Appeal filed by the Insurance Company was allowed. It was held that it was open to the Claimant to recover the amount from Respondent No.2 (i.e. the owner). MAC. APP. 812/2010 and 30/2011 *Page 14 of 17*.

24. In *Premkumari and Ors. v. Prahlad Dev and Ors.*, (2008) 3 SCC 193; the driver of the offending vehicle did not have a valid licence on the date of the accident. In fact, the driver of the vehicle was the owner's brother; willful breach of the terms of the policy was therefore established. The Claims Tribunal and the High Court exonerated the Insurance Company from its liability. The Supreme Court held that the Insurer was not liable to pay any amount. A sum of ` 50,000/- had already been paid by the Insurer. The Supreme Court directed that the Insurer could recover the same from the owner/driver and the Claimants could recover the

remaining amount from the owner/driver..

25. Similarly, in *Sardari and Ors. v. Sushil Kumar and Ors.*, (2008) 17 SCC 208, the Appeal was filed by the Claimants as the Insurer was exonerated both by the Tribunal and the High Court as the driver of the offending vehicle did not possess a valid driving licence which was admitted by the driver in his testimony before the Tribunal. The Tribunal rejected the Claim on the ground of not proving the negligence on the driver's part. The High Court granted a compensation of ` 63,000/- and asked the Claimants to recover the same from the driver and owner. The Supreme Court held that the Insurer cannot be made responsible to pay the award amount..

26. Reverting back to the facts of the instant case, the compensation awarded by the Claims Tribunal was ordered to be released by MAC. APP. 812/2010 and 30/2011 *Page 15 of 17* this Court by order dated 23.02.2011. In view of the ratio in *Kusum Rai (supra)*, *Ishwar Chandra and Ors. (supra)*, *Vidhyadhar Mahariwala and Ors. (supra)*, *Premkumari and Ors. (supra)* and *Sardari and Ors.(supra)*, the Insurance Company had no liability to pay the compensation as there was apparent breach of the terms of the policy. In the circumstances, the Insurer (Reliance General Insurance Company Limited) shall be entitled to recover the compensation already paid by it to the Claimants from the driver and owner of the offending vehicle i.e. Respondents No.5 and 6 (herein)..

27. It is important to note that in *Kusum Rai (supra)* the Insurer was asked to pay the compensation by the Supreme Court under Article 136 of the Constitution of India. In *Prem Kumari (supra)* a sum of `50,000/- had already been paid by the Insurer. The Supreme Court directed that the Insurer could recover the same from owner and driver and the Claimants could recover the remaining amount from the owner and the driver..

28. In view of the judgment cited above, the Insurer shall be entitled to recover the amount of compensation along with interest @ 7.5% per annum from the date of payment till the date of recovery of the amount from the owner and the driver..

29. The enhanced compensation of `5,28,904/- along with interest @ 7.5% per annum from the date of filing of the petition till the date of recovery shall be recoverable from Respondents No.5 MAC. APP. 812/2010 and 30/2011 *Page 16 of 17* and 6 (Sube Singh, driver and Babu Lal, owner of the offending vehicle) who are jointly and severally liable to pay the same..

30. Both the Appeals are allowed in above terms..

31. No costs. (G.P. MITTAL) JUDGE FEBRUARY 8, 2012 vk MAC. APP. 812/2010 and 30/2011 *Page 17 of 17*

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