

**(2014) 07 DEL CK 0228**

**Delhi High Court**

**Case No:** MAC. APP. 517/2014

National Insurance Co. Ltd.

APPELLANT

Vs

Huma Kala

RESPONDENT

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**Date of Decision:** July 2, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 304A, 337

**Citation:** (2014) 3 ACC 625 : (2014) 6 AD 288

**Hon'ble Judges:** Suresh Kait, J

**Bench:** Single Bench

**Advocate:** Shantha Devi Raman and Mukul Thakur, Advocate for the Appellant; Varun Sarin and Anil Sharma, Advocate for the Respondent

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### **Judgement**

Suresh Kait, J.

C.M. APPL. 9735/2014 (for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

C.M. APPL. 9734/2014 (for delay)

In view of the averments made in the application, the delay of 79 days in filing the instant appeal is condoned.

The application stands disposed of.

MAC. APP. 517/2014

1. Notice issued to respondent Nos. 1 to 7.

2. Mr. Varun Sarin, learned counsel accepts notice on behalf of respondent Nos. 1 to 7.

3. With the consent of the learned counsel for the parties, the appeal is heard for final disposal.

4. Vide the present appeal the appellant/Insurance Company has assailed the award dated 06.02.2013 whereby learned Tribunal awarded compensation for an amount of Rs. 15,13,800/- with interest @ 9% per annum from the date of filing the claim petition till realisation of the amount.

5. Ms. Shantha Devi Raman, learned counsel appearing on behalf of the appellant submits that the alleged offending vehicle was hit by Scooty bearing No. RJ14-41M-4265 (TVS Scooter) from behind despite that the learned Tribunal has not assessed contributory negligence on the part of the deceased.

6. On this issue, she has referred the inspection report of the offending vehicle No. UP-17T-2467 make Tata Indica car wherein the damage has been shown as under:-

1. Rear bumper scratches;
2. Left side rear back light broken;
3. Left side rear Qtr panel dented/pressed;
4. Brakes OK;
5. Vehicle on road.

7. Learned counsel for the appellant also referred the mechanical inspection report of the Scooty No. RJ14-41M-4265 (TVS Scooter), which got damaged as under:-

1. Front show damages/floor damaged/cover damaged;
2. Front head light assembly damaged/cover damaged;
3. Left side clutch lever damaged;
4. Brakes all;
5. Vehicle off road.

8. Learned counsel further submits that the FIR was registered on the statement of Vishnu, who stated that on 25th September, 2012 he was going to meet his brother at Gurgaon on Scooty No. RJ14-41M-4265 (TVS Scooter) being driven by his cousin brother Dal Bhadur. He was a pillion rider. It was 1:30 a.m. (night) when they reached near Chhatarpur CDR chowk where one Indica car bearing No. UP-17T-2467 came from behind and hit by left rear side and due to sudden jerk his cousin brother fell on the road, which not only damaged the Scooter but also caused grievous injuries to his brother. He was taken by PCR to Trauma Centre AIIMS where he died on the same day i.e. 25.09.2012 the date of accident.

9. Learned counsel further argued that the deceased was a tea vendor. He claimed to be earning Rs. 12,000/- per month. Since, the claimant could not prove his salary,

learned Tribunal assessed his income as Rs. 7,748/- applicable to semi-skilled worker.

10. Ms. Raman, learned counsel has raised the issue that a tea vendor cannot be a semi-skilled worker. She points out that it is nowhere indicated in the Minimum Wages Act that a tea vendor comes under the category of semi-skilled worker. She submits that the compensation should be reduced while assessing the income of the deceased as Rs. 7,020/- per month as applicable to unskilled worker.

11. I have heard learned counsel for the parties.

12. As far as issue of contributory negligence is concerned, I have perused the FIR, which is on record at page 65 as Annexure-5 registered on the statement of Vishnu, who was a pillion rider and brother of the deceased. The statement of Vishnu was recorded on the same day and the FIR was registered wherein he stated that the offending vehicle i.e. Indica car No. UP-17T-2467 hit the Scooty No. RJ14-41M-4265 (TVS Scooter) from behind on the left side.

13. On perusal of inspection report of both the vehicles as mentioned above, the damages on the Scooty are on front side and damages on the car i.e. offending vehicle on rear left side. It is important to note that both the vehicles were moving on the same direction on MG Road coming from Andheria Mod and the one hit the another near Chhatarpur CDR chowk. It is further important to note that as per the site-plan, which is produced by the counsel appearing on behalf of the appellant, the offending vehicle hit the Scooty from behind from the rear left side. PW-2 Vishnu, who clearly states that the car had come from behind and hit the Scooty to its left front side.

14. In view of the facts recorded above, the learned Tribunal came to the conclusion that there were damages on the rear portion of car and in view of the cogent and consistent testimony of PW-2, the reasonable inference which can be drawn in the present case is that the accident occurred due to negligent and rash driving by respondent No. 8.

15. PW-1 has proved the MLC of the deceased Exhibit PW-1/2 and his post-mortem Exhibit PW-1/3. PW-2 proved his MCL Exhibit PW-2/2 and discharge summary Exhibit PW-2/3, which shows that PW-2 sustained simple injuries while the injuries on the person of the deceased proved to be fatal.

16. In para 4 of the award the learned Tribunal has recorded that the respondents did not examine any witness.

17. Keeping in view the statement of PW-2 Vishnu, the FIR, damages on both the vehicles and the site-plan, which is prepared in case FIR No. 400/2012 dated 25.09.2012 under Sections 279, 337 and 304A IPC at P.S. Mehrauli, Delhi, I do not find any substance on the issue that the deceased was negligent in causing the accident.

18. As far as the issue of income assessed by the learned Tribunal, Mr. Varun Sarin, learned counsel appearing on behalf of the respondent/claimant has no dispute to the arguments advanced by learned counsel appearing on behalf of the appellant.

19. In view of the statement made by Mr. Sarin, learned counsel, income of the deceased is reduced to Rs. 7,020/-.

20. At this stage learned counsel appearing on behalf of the respondents/claimants submits that though the claimants have not filed any cross-appeals, however, this Court has jurisdiction to see whether the compensation is just and fair.

21. He further submits that the deceased died at the age of 42 years leaving behind 7 dependents i.e. wife, two sons, three daughters and the mother. He was earning bread for the whole family. Due to his death his young wife has lost association of her husband and pleasure of his love. His children lost love and affection and guidance of their father and the mother lost love and affection and support of his son at the old age.

22. Keeping in view the aforementioned facts, I enhance the amount to Rs. 1,00,000/- towards love and affection. Accordingly, the present appeal is partially allowed.

23. Consequently the compensation amount assessed is as under:-

Sl. No.	Heads of Compensation	Compensation granted by Id. Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.13,53,800/-	Rs.12,26,568/-
2.	Loss of love and affection	Rs. 25,000/-	Rs. 1,00,000/-
3.	Loss of consortium	Rs. 1,00,000/-	Rs. 1,00,000/-
4.	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
5.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
	TOTAL	Rs.15,13,800/-	Rs.14,61,568/-

24. Thus, the compensation amount is reduced to Rs. 14,61,568/-.

25. Accordingly, the appellant is directed to deposit compensation amount within 4 weeks from today with interest @ 9% per annum from the date of filing of the claim petition till realisation of this amount, failing which the respondent/claimant shall be

entitled for interest @ 12% on delayed payment.

26. The statutory amount along with balance compensation i.e. Rs. 52,232/- be released in favour of the appellant.

27. I hereby make it clear that the amount shall be disbursed in terms of the award dated 06.02.2013 in favour of the respondents/claimants.

28. It is further made clear that as per the award learned Tribunal has awarded Rs. 1,00,000/- each in favour of the respondent Nos. 2 to 7. The rest of the amount with proportionate interest shall be released in favour of the respondent No. 1.

C.M. APPL. 9733/2014 (for stay)

In view of the aforesaid order in appeal, the application for stay has become infructuous and the same is hereby dismissed.