

(2012) 09 DEL CK 0156
In the Delhi High Court
Case No : MAC. APP. 237 of 2012

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Raj Kumari and Others	RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 09 DEL CK 0156

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

Bench : Single Bench

Advocate : Rajat Brar, for the Appellant; Robin Kumar, Advocate for R-1 to R-3, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The present Appeal is directed against the judgment dated 21st December, 2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 22,13,892/- was awarded for the death of Hira Lal aged about 55 years, who had been working as a Sub Inspector in Delhi Police, who suffered fatal injuries in an accident which occurred on 24th August, 2008, after which he was hospitalised in Dr. Baba Saheb Ambedkar Hospital (BSA Hospital) for 13 days. It is urged that the Claimants failed to prove any negligence on the part of Respondent No. 4, driver of the offending car, and that deduction towards income tax was not made to compute the loss of dependency. Reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

2. Admittedly, in this case, no eye witness was examined to prove the negligence. At the same time, it is important to note that in this case an FIR was registered on the basis of the statement made by the deceased Hira Lal. He informed the IO that while he was proceeding to his house after finishing his duty on 11th August, 2008 at about 9.30 AM a car bearing No. DL-8CJ-1136 being driven in a rash and negligent manner came from the side of Village Pooth and

collided against his two wheeler. Hira Lal succumbed to the injury suffered in the accident and thus statement made by him to the police became a dying-declaration.

3. The driver of the offending car did not come forward to rebut the case set up by the Claimants on the question of negligence. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, the Supreme Court held that in a Petition u/s 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and a holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

4. Thus, the Claims Tribunal's finding that the negligence on the part of the driver of the offending car bearing No. DL-8CJ-1136 was established, cannot be faulted.

5. It is well settled that income tax has to be deducted from the income of the deceased to compute loss of dependency. It was established that at the time of his death, the deceased was getting a salary of Rs. 24,647/- per month, Ex. PW2/1.

6. There would be an income tax liability to the extent of Rs. 14,576/-. Thus, loss of dependency comes to Rs. 20,62,045/- (Rs. 24,647/- x 12 - Rs. 14,576/- (income tax) x 2/3 x 11).

7. The Claims Tribunal awarded a sum of Rs. 10,000/- towards the loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma and Others Vs. Bachitar Singh and Others*, and in *Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others*, granted Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would enhance the compensation under this head to Rs. 25,000/-.

8. Thus, on adding a sum of Rs. 25,000/- towards love and affection and a sum of Rs. 10,000/- each towards funeral expenses, towards loss to estate and loss of consortium, the overall compensation thus comes to Rs. 21,17,045/-.

9. It is proved on record that immediately after accident the deceased was removed to Dr. Baba Saheb Ambedkar Hospital (BSA). He battled for survival for 13 days before his succumbed to the injuries. Even if the treatment received in a government hospital is free. The Claims Tribunal did not award any compensation

towards special diet, conveyance and attendant charges. In the case of "Delhi Transport Corporation and Anr. v. Kumari Lalita" 22 (1982) DLT 170 (DB), a Division Bench of this Court held that victims/claimants have to be compensated for the gratuitous services rendered by the family members. Relevant para of the report is extracted hereunder:-

(33) Counsel for the Corporation argued that since Lalita is being looked after by her mother compensation ought to be reduced. We do not agree. In the case of Lalita the main question is of future care. Today she is being helped by her mother. But that does not mean that she is not to be compensated for services rendered to her. A legal agreement between mother and daughter is not necessary to claim compensation. We cannot deduct what is described as the "domestic element" from the cost of care. A wrong doer cannot take advantage of this "domestic element." If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother's services were necessitated by the wrong doing and the injured should be compensated for it. (Cuningham v. Harrison (1973) 3 All E.R. 463). The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E. R. 241).

10. The Claims Tribunal awarded a total compensation of Rs. 22,13,892/-. I would grant a sum of Rs. 1,00,000/- as a lump sum compensation towards attendant charges, conveyance, special diet and expenditure towards treatment. Hence, on adding the same the total sum comes to 22,17,045/-which is less than the compensation awarded. In the circumstances, the impugned award does not call for any interference.

11. The Appeal is devoid of merit; it is accordingly dismissed.

12. The statutory amount of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.