
(2012) 04 DEL CK 0316
In the Delhi High Court
Case No : MAC.APP. 218 of 2011

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Jitender Sharma and Others	RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0316

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant;

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The Appellant ICICI Lombard General Insurance Company Limited impugns the judgment dated 28.09.2010 whereby while holding that the Respondents No.1 to 5 would have been entitled to the compensation of Rs. 21,40,000/-, the Claims Tribunal made the deceased liable for contributory negligence to the extent of 40% and thus awarded a compensation of Rs. 12,84,000/- to the Respondents. The following contentions are raised on behalf of the Appellant:-

(i) It was established on record that the deceased while driving his motor cycle No. DL-9SJ-6746 came from the wrong side. He was under the influence of alcohol and other intoxicating substances. He struck against the pavement and then collided against the Santro Car bearing registration No.DI-3CP-4865, owned and driven by Respondent No.6. He himself was negligent in causing the accident. In any case, argues the learned counsel for the Appellant that the negligence of the driver of the Santro Car could not have been held to be 60% in the circumstances of the case.

(ii) The compensation awarded is excessive and in the absence of any evidence as to the future prospects, the Claims Tribunal erred in adding 50% of the deceased's income towards future prospects.

(iii) The compensation of Rs. 1,25,000/- awarded towards Loss of Love and Affection is on the higher side.

2. The Claims Tribunal while dealing with the issue of negligence observed as under:-

26. There is no dispute raised by the respondents with respect to the fact that respondent no.1 is facing trial for negligent driving or that FIR was not registered against him. Further respondent no.1 has not even denied the factum of accident. Only aspect which therefore, requires to be examined is the "negligence". That is due to whose negligence accident had taken place.

27. The witness to the incident examined by petitioners i.e. PW-3 Shakeel Ahmed had only stated that accident had taken place between motorcycle and a Santro Car. He stated that he had not seen the vehicles prior to the accident and had noticed them only after the accident. His deposition therefore, does not throw much light on the manner in which both the vehicles involved in the accident were being driven.

28. The factum of "negligence" is therefore, required to be ascertained on the basis of documentary evidence on record. It is appear on perusal of the site plan that accident had taken place on the road which was leading towards Sector 19 & 20 from the side of Sector 9, Dwarka. It is also apparent on perusal of the photographs taken by the Investigating Officer during the course of investigations and also the mechanical inspection report vide which both the vehicles involved in the accident were mechanically inspected that front portion of the motorcycle i.e. its handle and shoulder were damaged. Similarly, front left portion of Santro Car was damaged. This fact ascertains that it was the head on collision between these two vehicles.

29. Perusal of the site plan prepared by the Investigating Officer during the course of investigations reveals that at the place of accident there is a double road. The motorcycle which was being driven by the deceased should have been driven on the correct side of the road which was not to be and was being driven on the road meant for traffic coming from the opposite direction.

30. Rules and regulations are framed for each and every one to follow, so as to live peacefully in the society. Certain basic rules and regulations of traffic are promulgated for the drivers of the motor vehicle using public road which they are expected to follow not only for their own safety but also for the safety of others using the public road. It is incumbent duty of every person driving a motor vehicle to drive his vehicle at such a speed, so that it always remains in his control and can be put at rest so as to avert any unforeseen incident. It is also expected of a driver to take care of other vehicles moving on the road and to respect their rights as well, while using the public road. It is expected from the people using the public road to drive the vehicle on correct side of the road and not to intrude upon the space meant for traffic coming from the opposite direction.

31. On the basis of documentary evidence i.e. site plan, photographs of the vehicles, mechanical inspection report as well as oral deposition on record i.e. statement of PW-3 Shakeel Ahmed and respondent No.1, who appeared in the witness box as R1W1 it is apparent that driver of both the vehicles have contributed to the occurrence of this accident.

32. Had the deceased being vigilant and would have been driven his motorcycle on correct side of the road, then the accident would not have taken place. Driver of the offending car, if would have driven his vehicle at a controlled speed and would have taken note of the motorcycle coming from the opposite direction, then also the accident could have been avoided which in that case, would not have resulted in death of deceased Ram Lalit.

33. It is further apparent on perusal of MLC of deceased Ram Lalit vide which he was medically examined at Ayushman Hospital, immediately after the accident that smell of alcohol was coming from his mouth. Deceased should not have driven his vehicle after consuming liquor which factor has also contributed to the occurrence of this accident, as consumption of alcohol would have slower down his reflexes and mental faculties which were required for driving a motor vehicle on the public road.

34. Having regard to these factual matrix, I am of the considered opinion that deceased as well as respondent no.1 both were negligent and negligence on the part of both had contributed to the occurrence of this accident. Had both followed the rules and regulations, the present accident would not have taken place.

35. On the basis of factual matrix on record, I am of the opinion that contributory negligence of respondent no.1 i.e. driver of Santro Car was 60%. Whereas deceased has also contributed to the happening of this accident, I assess his negligence to be 40% i.e. 25% for driving his motorcycle on wrong side of the road and 15% for driving the motor vehicle after consuming liquor.

3. I have perused the MLC of the deceased prepared in the Ayushman Hospital. It is established that the deceased was having the smell of alcohol and was in possession of two packets of Ganja and Bhaang. It is also established from record and there is no ground to differ with the conclusion reached by the Claims Tribunal on the basis of the Site Plan, prepared by the IO, as also by the unchallenged testimony of Respondent No.6 that the deceased came from the wrong side. At the same time, the Claims Tribunal concluded that had the Respondent No.6 driven the Santro Car at a reasonable speed, he could have avoided the accident. I agree with the conclusion reached by the Claims Tribunal. However, in the circumstances, the negligence on the part of deceased should not have been assessed to be just 40%. Both the deceased and the Respondent No.6 were equally liable. Therefore, I would conclude that there was negligence of 50% each on the part of Respondent No.6 as also the deceased.

4. As far as quantum of compensation is concerned, the deceased was employed as a Constable in Delhi Police. He was in permanent employment and was aged

about 36 years. The contention raised on behalf of the Appellant that Respondents No.1 to 5 were not entitled to the benefit of future prospects is devoid of any merit in view of the settled law in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

5. The Claims Tribunal awarded a sum of Rs.1,25,000/- towards 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 irrespective of the financial status of the deceased and the Claimants. 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 only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

6. The total compensation works out as Rs. 10,20,000/- (Rs. 21,40,000/- - 1,00,000/- x 50%).

7. The excess amount of Rs. 2,64,000/- along with the proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

8. The Appeal is allowed in above terms.

9. Statutory amount of Rs.25,000/- deposited by the Appellant Insurance Company shall be refunded to it. Pending applications also stand disposed of.