

(2011) 01 DEL CK 0086
In the Delhi High Court
Case No : MAC. APP. No. 64 of 2011

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Ram Jatan Ram and Others	RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0086

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.

CM No. 1344/2011

1. Exemption granted subject to all just exceptions.

The application stands disposed of.

CM No. 1345/2011 and CM No. 1346/2011

2. By way of this application the applicant seeks condonation of 13 days delay in filing the appeal and 30 days delay in re-filing the appeal. In view of the ground given in the applications, the delay is condoned. Both the applications stand disposed of.

MAC APP. No. 64/2011 and CM No. 1343/2011 (for stay)

3. This appeal has been preferred by the ICICI Lombard General Insurance Company u/s 173 of the Motor Vehicles Act, 1988 for setting aside of the award dated 28th August, 2010 passed by the Motor Accident Claims Tribunal, Delhi, whereby compensation was awarded to the claimants in the sum of Rs. 4,73,600/- along with interest @ 7.5% per annum from the date of the

institution till realization.

4. The brief facts giving rise to the claim petition are that on 28th March, 2008 at about 11.00 p.m. the deceased, Sh. Mogal, was returning to his house along with his elder brother Sh. Manoj Kumar on foot. While he was crossing the road at Mukarba Chowk, Outer Ring Road, Jahangirpuri, a vehicle bearing registration No. HR-38L-0074, which was being driven rashly and negligently by the Respondent No. 1-driver in a zig-zag manner, struck against him, as a result of which he fell on the road and came under the wheels of the offending vehicle and died on the spot.

5. Written statements were filed on behalf of all the Respondents. The Appellant herein, which was the Respondent No. 3 in the claim petition, in their written statement admitted that the offending vehicle was insured with it vide policy No. 3003/53475550/00/000 for the relevant period i.e. from 09-02-2008 to 08-02-2009.

6. On the basis of the pleadings of the parties, the issues were framed by the learned Tribunal. The Petitioner No. 1 Sh. Ram Jatan Ram, being the father of the deceased examined himself as PW1 and stated that his son Mogal died in the road accident on 28th March, 2008 at Mukarba Chowk, while returning home along with his brother Manoj Kumar, who was the eye witness to the accident. He also filed certified copies of the criminal record to prove that the driver of the offending vehicle had been charge sheeted by the police after investigation. PW2, Manoj Kumar, the brother of the deceased testified that his brother was fatally hit by the vehicle bearing registration No. HR-38L-0074 in his presence. On the basis of the testimony of PW2 and the fact that the Respondent No. 3 herein was charge sheeted by the police, the learned Tribunal proceeded to hold that the Respondent No. 3 herein was driving rashly and negligently and thereby caused the death of the deceased-Mogal.

7. The sole ground on which the appeal is pressed by Ms. Suman Bagga, the learned Counsel appearing for the Appellant is that the Tribunal erred in computing the income of the deceased by taking the average of the minimum wages of Rs. 3,600/- p.m. at the time of the accident and its double which comes to Rs. 5,400/- p.m. (i.e. Rs. 3600/- plus Rs. 7200/- divided by 2). According to Ms. Bagga, the assessment of the average income by taking the mean of the actual income (minimum wage) and doubling the said income is contrary to the law laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

8. I have heard the learned Counsel for the Appellant and find that the contention of Ms. Suman Bagga, the learned Counsel for the Appellant is not sustainable. It is rightly noted by the learned Tribunal that it is well settled by a catena of judgments of this Court that judicial notice of the increase of minimum wages to meet the increase in price index and inflation rate must be taken while computing the income of the deceased for the purpose of sustaining the quantum

of loss of dependency of his legal representatives. In all these decisions, the Court has taken the view that the minimum wages get doubled over the period of 10 years, and held that taking into account the increase in minimum wages is not akin to taking into account the future prospects of the deceased. The learned Tribunal has relied upon the case of Santosh Devi v. Abdul Kareem and Ors. decided on 8th October, 2009 in MAC APP. No. 440/2009 and Reshma and Ors. v. Harish Kaushik and Ors. decided on 11th December, 2009 in MAC APP. No. 560/2007 in which it is held that "the income of the deceased should be computed by taking the average of minimum wages at the time of the accident and it is double."

9. It may be mentioned at this juncture that the decision of the Hon'ble Supreme Court rendered in the case of Sarla Verma (supra) does not deal with the aspect of minimum wage at all and thus the reliance placed upon the said decision by the learned Counsel for the Appellant is entirely misplaced.

10. It may also be noted that this Court in the following decisions has taken a view that it is legitimate for the Court while computing the income of the deceased to take into account the fact that the minimum wages get doubled over a period of 10 years and this aspect has no nexus to the future progression of the deceased/victim in his chosen job or vocation:

1. Kanwar Devi and Others Vs. Bansal Roadways and Others, ;
2. National Insurance Company Ltd. Vs. Renu Devi and Others, ;
3. UPSRTC v. Munni Devi IV (2009) ACC 879;
4. Shanti Devi and Others Vs. Ghasia Kachhap and Others, ;
5. ICICI Lombard General Insurance Co. Ltd. v. Bimla and Ors., MAC APP. No. 625/2009 decided on 28th April, 2010 and
6. New India Assurance Co. Ltd. v. Sujata and Ors., MAC APP. No. 19/2011 decided on 21st January, 2011.

11. Faced with this situation, the learned Counsel for the Appellant was not able to give any cogent reason as to why in this case this Court should differ with the consistent view taken by the other Benches of this Court nor was able to cite any judgment to the contrary rendered by any other Court. Significantly also, I find that while in this case 50% increase has been made to the minimum wage which presumably the deceased was drawing at the time of his demise, the multiplier of 14 has been given. This multiplier has not been faulted by the Appellant-Insurance company, being in consonance with the decision of the Supreme Court in the case of Sarla Verma and Ors. (supra,) and hence it can safely be presumed that within a span of 14 years from the date of the accident, the income of the deceased would have been two and a half times his income on the date of the accident. The learned Tribunal, in consonance with the judgments of this Court, has taken only a 50% increase to beat the inflation rate and the rise

in the price index.

12. For the aforesaid reasons, I find no merit in this appeal, which is accordingly dismissed.

13. Before parting with the case, in my view, certain observations are called for. It is the governmental policy to increase the rate of minimum wages after a passage of every few years to meet the escalation in the cost of living. The Courts while calculating the income of the deceased for the purpose of computing the loss of dependency of his legal representatives must bear this in mind, for, there is no reason for the courts to take a different view than that adopted by the government, which is in a better position and is better equipped to calculate the rise in the price index and in the cost of living. It also cannot be lost sight of that the Motor Vehicles Act is designed to be a beneficial piece of legislation and is intrinsically meant to afford relief to those who meet with untimely death or are severely handicapped on account of a motor vehicular accident for which only the tort-feaser is to blame.

14. With these observations, the appeal stands disposed of.