
(2009) 12 DEL CK 0341

In the Delhi High Court

Case No : MAC. APP. No. 579 of 2009 and CM No. 17153 of 2009

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Darshna and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0341

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Joy Basu and Madhurendra Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This appeal has been filed against judgment dated 25th August, 2009, passed by Motor Accidents Claims Tribunal, Delhi (for short as "Tribunal").

2. Brief facts of this case are that on 8th December, 2007, deceased Sanjay Kumar was travelling as a pillion rider on a motor cycle which was being driven by Rakesh Kumar. When they reached at Civil Lines Delhi, offending truck bearing No. HR-37A-8885, driven at a fast speed and in a rash and negligent manner by respondent No. 5, hit against the motor cycle. As a result of the forceful impact, deceased fell down and was crushed under the truck, sustaining fatal injuries.

3. Vide impugned judgment compensation amounting to Rs. 34,49,000/- (Thirty four lakhs forty nine thousand only.) was awarded to the claimants.

4. It is contended by learned Counsel for appellant that at the time of accident, total gross salary of the deceased was Rs. 11,466/- (Eleven thousand four hundred sixty six only) per month. As per new scale as applicable after Sixth Pay Commission, deceased would have received Rs. 16,924/- (Sixteen thousand nine hundred twenty four only) per month if and when the Pay Commission recommendation are applied with retrospective effect. Tribunal ought to have taken amount paid towards income tax, which was liable to be deducted from the

income and this aspect of the matter finds no mention in the impugned judgment.

5. It is also contended that deceased was receiving total salary of Rs. 11,466/- and net payable salary was Rs. 3766/- after deduction of Rs. 7700/-, as deceased had taken a loan, for which a sum of Rs. 2460/- was being deducted. This loan repayment needs also to be deducted from the income as this amount which never accrued to the family members of the deceased even when the deceased was alive. In addition, there are certain other allowances which may be required to be deducted while arriving at the monthly income.

6. None of the deductions, even the mandatory deduction of income tax, have been deducted from the income of the deceased while calculating the loss of income. In view of salary slip of the deceased his income on the date of accident, could not have been taken more than Rs. 11,466/- only.

7. In support, learned Counsel for appellant cited judgment of Sayed Basheer Ahamed and Ors. v. Mohd. Jameel and Anr. 2009 (1) Scale, where in observations made by M.N. Venkatachaliah, J. (as His Lordship then was) in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, have been quoted;

10. The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he had done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales". At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

It was further observed;

Thus, for arriving at just compensation, it is necessary to ascertain the net income for the deceased available for the support of himself and his dependents at the time of his death and the amount, which he was accustomed to spend upon himself. This exercise has to be on the basis of the data, brought on record by the claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture.

8. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Supreme Court Cases 121, cited by learned Counsel for appellant, Supreme Court observed;

The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if

he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

9. It is well settled that amount of compensation payable to the heirs and legal representatives of a deceased victim of an accident must be a fair and reasonable one. The estimate of the amount of loss of dependency may be arrived at by adopting various methods, application of structured formula being one of them. Such a formula has also been provided for in Schedule II appended to the Motor Vehicles Act, 1988. While determining the amount of compensation, certain well known principles must be kept in mind.

10. In *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, Supreme Court 2985, the Court observed;

8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years" purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

11. In the present case, deceased was a Government Employee and is covered under Sixth Pay Commission. He died on 8th December, 2007, whereas Sixth Pay Commission became effective from 1st January, 2006. Under these circumstances, salary of deceased at the time of accident has to be taken as per Sixth Pay Commission. Trial court rightly took the salary of deceased as per Sixth Pay Commission. Its findings regarding salary are as under:

As per the pay slip of the deceased for the month of November, 2007, his Gross Salary was Rs. 11,466/-. As per the detailed salary record Ex. PW 5/1 pertaining

to the deceased, his revised pay scale, pursuant to the recommendations of the VI Pay Commission, on the date of accident, would have been Rs. 16,924/- Therefore, the salary of the deceased on the date of accident is taken to be Rs. 16,924/-. The deceased was in a Govt. job and as clear from the testimony of PW-5, had promotional avenues and even if he did not get a promotion as a Sewer Mate, his pay would have increased in the next 10 years on the basis of the promotion due.

Trial court further observed;

The Average Future Salary of the deceased would be equal to $[16,924 + (2 \times 16,924)] \times 1/2$ i.e Rs. 25,386/- which is rounded off to Rs. 25,400/-. The deceased had four dependents and therefore, the deduction towards his personal and living expenses would be $1/4$. Therefore, the deduction is equal to $25,400 \times 1/4 = 6350/-$. Therefore, the loss of monthly dependency is equal to Rs. $25,400 - 6350 = 19,050/-$ Accordingly, the annual loss of dependency would be $19,050 \times 12 = 2,28,600/-$ Therefore, the total loss of dependency would be Rs. $2,28,600 \times 15$ (multiplier) = 34,29,000/-.

12. In Smt. Sarla Dixit and another Vs. Balwant Yadav and others, Supreme Court observed that;

In case of fatal accidents, the future prospects of the deceased in his job/vocation/profession also needs to be assessed in order to arrive at the amount which could be termed "just" compensation.

13. Main grievance of the appellant is with regard to the deduction of Rs. 7700/- which include loan amount of Rs. 2460, as the same was to be repaid. As per appellant this amount ought to have been deducted from the income of the deceased as this amount never accrued to the family members of the deceased even when the deceased was alive.

14. As deceased had taken loan in his life time and was paying installments towards loan, now after his death, the same has to be paid by the claimants. The claimants can pay loan only from the income of the deceased. Thus, rightly no deduction on this account was made by the trial court.

15. Thus, there is not infirmity or ambiguity in the impugned judgment. Trial court rightly considered the formula and income of the deceased, as enunciated in Sarla Dixit (Supra).

16. There is no merit in this appeal and same is hereby dismissed.

CM No. 17153/2009

Dismissed, being infructuous.