

(2012) 12 DEL CK 0010
In the Delhi High Court
Case No : Mac. App. 504 of 2012

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Mamta and Others	RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0010

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Amit Kumar Pandey, Advocate for R-1 to R-5, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 14,93,144/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 5 for the death of Sanjay who died in a motor vehicle accident which occurred on 26.06.2010. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company; thus the same has attained finality.

2. During the inquiry before the Claims Tribunal, it was claimed that deceased Sanjay was employed with MCD on contract basis and was earning Rs. 6,000/- per month. In the absence of any evidence with regard to his income, the Claims Tribunal took the Minimum Wages of an unskilled worker; added 50% towards inflation; deducted 1/5th towards personal and living expenses and applied the multiplier of 15 (as per the age of the deceased i.e. 20 years) to compute the loss of dependency as Rs. 13,68,144/-.

3. The Claims Tribunal further awarded a sum of Rs. 1,00,000/- towards loss of love and affection, Rs. 50,000/- towards loss of consortium & Rs. 25,000/- towards funeral expenses to award an overall compensation of Rs. 14,93,144/-.

4. The following contentions are raised on behalf of the Appellant Insurance

Company:

i. There was no evidence with regard to the future prospects; thus the addition of 50% towards inflation should not have been given.

ii. The number of dependents were five, therefore, deduction towards personal and living expenses should have been 1/4th instead of 1/5th as taken by the Claims Tribunal.

iii. The compensation awarded towards funeral expenses, loss of love and affection and loss of consortium is on the higher side.

5. The Respondents (Claimants) claimed that the deceased was working with MCD on contract basis. No cogent evidence was produced with regard to the deceased's employment. Thus, the Claims Tribunal took the Minimum Wages of an unskilled worker to compute the loss of dependency, which is not challenged by the Appellant Insurance Company.

6. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , *Smt. Sarla Dixit and another Vs. Balwant Yadav and others*, , *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, , *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, and *Santosh Devi Vs. National Insurance Company Ltd. and Others*, and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:-

14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government

employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

7. Thus, an addition of only 30% should have been made towards inflation.

8. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Supreme Court laid down that where the number of dependents are 4 to 6, deduction towards personal and living expenses would be 1/4th. Although, the Claims Tribunal relied on Sarla Verma (supra), but erred in making deduction of 1/5th towards personal and living expenses.

9. The loss of dependency thus comes to Rs. 11,11,546/- (5278/- + 30% x 3/4 x 12 x 18).

10. 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 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.

11. In Sarla Verma (supra), the Supreme Court laid down that in addition to the loss of dependency, a nominal sum of Rs. 5,000/- to Rs. 10,000/- should be awarded towards loss of consortium. The Claims Tribunal was, therefore, not justified in awarding a sum of Rs. 50,000/- towards loss of consortium; the same is reduced to Rs. 10,000/-. No evidence was led as to the actual expenses for the funeral. In the absence thereof, it would be reasonable to award a sum of Rs. 10,000/- towards funeral expenses, which is, therefore, reduced from Rs. 25,000/- to Rs. 10,000/-.

12. The compensation is recomputed hereunder:-

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13. The overall compensation stands reduced from Rs. 14,93,144/- to Rs. 11,56,546/-.

14. The excess amount of Rs. 3,36,590/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal, shall be refunded to the Appellant Insurance Company.

15. The amount awarded shall be released/held in fixed deposit proportionately in favour of Respondents No. 1 to 5 (Claimants) in terms of the order passed by the Claims Tribunal.

16. The Appeal is allowed in above terms.

17. Statutory deposit of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.