
(2012) 09 DEL CK 0185

In the Delhi High Court

Case No : MAC. APP. No. 256 of 2008

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Sonika Dutta and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 336, 337

Citation : (2012) 09 DEL CK 0185

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Narender K. Choudhary and Mr. Joginder Singh for R-1 and 2, for the Respondent

Judgement

J.R. Midha

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 4,81,000/-has been awarded to claimants/respondents no. 1 and 2. The accident dated 22nd November, 2005 resulted in the death of Vinay Dutta. The deceased was survived by his widow and a minor son who filed the claim petition before the Claims Tribunal. The deceased aged 34 years at the time of the accident, was running an ice-cream factory. According to the claimants, the deceased was earning Rs. 20,000/-per month. The Claims Tribunal took the income of the deceased as Rs. 6,000/-per month, added 50% towards the future prospects, deducted 1/3rd towards his personal expenses and applied the multiplier of 14 to compute the loss of dependency at Rs. 10,08,000/-. Rs. 30,000/-has been awarded towards loss of consortium, Rs. 20,000/-towards loss of love and affection and Rs. 10,000/-towards funeral expenses. The Claims Tribunal computed the total compensation as Rs. 10,68,000/-. The Claims Tribunal held the driver of the car in which the deceased was travelling, to be negligent to the extent of 45% and deducted 55% of the compensation. The Claims Tribunal awarded Rs. 4,81,000/-to the claimants.

2. The learned counsel for the appellant has urged following grounds at the time

of hearing of this appeal:

(i) The driver of the car in which the deceased was travelling, was not negligent and, therefore, the appellant is not liable to pay any compensation.

(ii) There was collusion between the claimants and the driver of the car in which the deceased was travelling.

(iii) The future prospects be reduced from 50% to 30%

3. The learned counsel for claimants/respondents No. 1 and 2 had urged following grounds at the time of hearing of this appeal:

(i) The accident occurred due to the rash and negligent driving of the driver of the car. However, even if the composite negligence of the driver of the car is taken to be 45% as held by the Claims Tribunal, the claimants are entitled to the entire compensation from the appellant and deduction of 55% of the compensation by the Claims Tribunal is erroneous.

(ii) The income of the deceased be taken as Rs. 20,000/-per month.

(iii) The multiplier be enhanced from 14 to 16

(iv) The compensation be awarded for loss of estate.

(v) The rate of interest be enhanced from 7% per annum to 9% per annum.

4. There is no merit in the first contention of the appellant that the driver of the car in which the deceased was travelling, was not negligent. The driver of the car appeared in the witness box as PW-2 and deposed that an unknown trailer took a u-turn due to which his car hit the trailer from behind resulting in the accident. He admitted in cross-examination that the accident occurred due to his mistake. The police registered FIR under Sections 279/ 336/ 337/ 304A IPC against him which was proved by PW-1 as Ex.PW1/3. The Claims Tribunal applied the doctrine of *res ipsa loquitur* and held that hitting of the trailer from behind points out to the negligence of the car driver. The Claims Tribunal further held negligence of the car driver to be 45% and the remaining 55% fault was attributable to the driver of the trailer. On careful consideration of the testimony of the witnesses and the documents on record, this Court does not find any infirmity in the finding of the Claims Tribunal.

5. There is no merit in the second contention of the appellant that there was collusion between the claimant and the driver of the car. There is no evidence on record in support of this contention. The car in which the deceased was travelling was comprehensively insured. The policy specifically covers all occupants travelling in the car. However, despite the specific coverage of the occupants, the appellant raised a frivolous plea before the Claims Tribunal that the policy does not cover the occupants. It has been rightly rejected by the Claims Tribunal. The purpose of taking a comprehensive insurance of the car is that the Insurance Company would gracefully pay the compensation in the event of any injury or

death of the occupants. The compensation cannot be denied merely because the occupants travelling in the car are related to the insured as in the present case. The plea of collusion raised by the appellant is untenable and is hereby rejected.

6. The claimants/respondents No. 1 and 2 seek enhancement of the award amount. The learned counsel for the appellant submits that claimants/respondents No. 1 and 2 have not filed the cross-objections and, therefore, the enhancement is not warranted. The appellant's submission in this regard is contrary to law. It is well settled that the Appellate Court has the jurisdiction to enhance the award even in the absence of cross-objections under Order XLI Rule 33 of the Code of Civil Procedure. Reference in this regard may be made to the recent judgment of this Court in National Insurance Co. Ltd. Vs. Komal and Others in which this Court has referred to and followed catena of judgments of the Supreme Court and other High Courts.

7. The deceased was aged 34 years at the time of the accident and was running ice-cream factory. The partnership deed relating to the ice-cream factory run by the deceased was proved as Ex.PW1/7. The Claims Tribunal presumed the income of the deceased to be Rs. 6,000/-per month and added 50% towards future prospects. The claimants submit that the income of the deceased be taken as Rs. 20,000/-per month whereas the appellant seeks reduction of the future prospects from 50% to 30%. The income of the deceased taken by the Claims Tribunal is fair and reasonable in terms of the principles laid down by the Supreme Court in Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, followed by this Court in United India Insurance Co. Vs. Kanwar Lal and Others National Insurance Co. Ltd Vs. Gaje Singh and Others, and New India Assurance Co. Ltd. v. Bal Kishan Pawar, MAC. APP. No. 246/2009 decided on 31st May, 2012. The Claims Tribunal has added 50% towards future prospects which are reduced to 30% in terms of the judgment of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, The Claims Tribunal has applied the multiplier of 14 whereas the appropriate multiplier at the age of 34 is 16. Multiplier is, therefore, enhanced from 14 to 16. The Claims Tribunal has not awarded any compensation for loss of estate. Rs. 10,000/-is awarded for loss of estate. The Claims Tribunal has awarded interest @7% per annum whereas the appropriate rate of interest according to the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (supra) is 9% per annum. The rate of interest is, therefore, enhanced from 7% per annum to 9% per annum.

8. The claimants are entitled to total compensation of Rs. 10,68,400/-as per break-up given hereunder:-

Income of the deceased :

Rs. 6,000/-

Add : Future prospects :

Rs. 1,800

Total income :

Rs. 7,800/-

Less : 1/3rd towards personal expenses of the deceased :

Rs. 2,600/-

Loss of dependency (Rs. 6,000 + Rs. 1,800 ? 1/3rd x 12 x16) :

Rs. 9,98,400/-

Compensation towards loss of consortium :

Rs. 30,000/-

Compensation towards loss of love and affection :

Rs. 20,000/-

Compensation towards loss of estate :

Rs. 10,000/-

Compensation towards funeral expenses :

Rs. 10,000/-

Total :

Rs. 10,68,400/-

9. The Claims Tribunal has deducted 55% of the compensation on the ground that the driver of the car was negligent to be extent of 45% and, therefore, the claimants are entitled to 45% of the total compensation. The finding of the Claims Tribunal in this regard is erroneous. It is well settled that in the case of composite negligence, the claimants are entitled to claim the compensation from any of the composite joint tort-feasors. Reference in this regard may be made to Om Wati and Others Vs. Mohd. Din and Others, in which the Division Bench of this Court held as under:-

12. We, therefore, hold that it was a case of composite negligence in case of Shiv Singh and Sat Pal and their claimants had an option to file the claim petition either against all or any one of the joint tort-feasors and their failure to implead the tort-feasors of the car was not fatal for their claim and that First Appellate Court had wrongly forfeited their 30% share of awarded compensation amount for this which they were entitled to recover from the Appellant company, being insurer of tort-feasorts of truck. It would then be open to the company to recover such amount from the owner/insurer of the car jointly or severally.

10. Following the aforesaid judgment, the finding of the Claims Tribunal is set aside and the appellant is held to be liable to pay the entire compensation. Even

otherwise in the present case, the insurance policy issued by the appellant is a comprehensive policy which covers risk of injury/death of the occupant of the car and, therefore, the appellant is liable to pay the entire compensation.

11. For the reasons as aforesaid, the appeal is dismissed. However, the amount awarded by the Claims Tribunal is enhanced from Rs. 4,81,000/-to Rs. 10,68,400/-along with interest @9% per annum from the date of filing of the claim petition till realization.

12. The appellant has deposited a sum of Rs. 5,20,556/-with the Registrar General of this Court in terms of the order dated 25th April, 2008 out of which Rs. 1,00,000/-has been released to respondent No. 1 and the remaining amount is lying in fixed deposit. The Registrar General is directed to endorse/transfer the FDR to UCO Bank.

13. The enhanced award amount along with up to date interest be deposited by the appellant with the UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Sonika Dutta.

14. UCO Bank is directed to release 10% of the total amount (amount received from the Registrar General as well as the enhanced award amount deposited by the appellant) to Sonika Dutta by transferring the same to her Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:

(i) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of one year.

(ii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of two years.

(iii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of three years.

(iv) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of four years.

(v) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of five years.

(vi) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of six years.

(vii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of seven years.

(viii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of eight years.

(ix) Fixed deposit in respect of 50% of the amount in the name of respondent No. 2 till he attains the age of majority.

15. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No. 1.
16. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.
17. No cheque book be issued to the beneficiary without the permission of this Court.
18. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.
19. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
20. Half yearly statement of account be filed by the Bank in this Court.
21. On the request of the beneficiary, Bank shall transfer the Savings Account to any other branch according to their convenience.
22. The beneficiary shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).
23. List for compliance on 5th October, 2012.
24. The statutory amount deposited by the appellant be refunded back to the appellant through counsel after deposit of the award amount. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).