
(2012) 11 DEL CK 0251
In the Delhi High Court
Case No : MAC. App. 1151 of 2011

ICICI Lombard General Insurance Company Ltd.	APPELLANT
Vs	
Smt. Poonam Devi and Others	RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0251

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

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant; Neeraj Kumar, with Mr. Dinesh Shah and Mr. Bhupender Chaturvedi, 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. 9,87,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Respondents No. 1 to 5 for the death of Kedar Prasad Shah who died in a motor vehicle accident which occurred on 29.10.2009. The finding on negligence is not challenged by the Appellant Insurance Company; thus the same has attained finality.

2. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a rickshaw puller and was earning Rs. 10,000/- per month. In the absence of any cogent evidence with regard to deceased's income, the Claims Tribunal took the Minimum Wages of a skilled worker, that is, Rs. 4400/- per month as fixed by the Govt. of NCT of Delhi under the Minimum Wages Act, added 50% towards inflation, deducted one-fourth towards personal and living expenses and applied the multiplier of 14, as per the age of the deceased (41 years) to compute the loss of dependency as Rs. 8,32,000/-.

3. The Claims Tribunal further awarded a sum of Rs. 1,25,000/- towards loss of love and affection (Rs. 25,000/- each to all the Claimants) and a sum of Rs. 10,000/- each towards funeral expenses, loss of consortium and loss to estate.

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

(i) The deceased was aged 41 years. In the absence of any evidence with regard to future prospects, there could have been addition of only 30% towards inflation. Reliance is placed on Santosh Devi Vs. National Insurance Company Ltd. and Others, .

(ii) The compensation of Rs. 1,25,000/- awarded towards loss of love and affection is excessive and exorbitant.

(iii) The award of interest @ 9% per annum was on the higher side.

5. On the other hand, learned counsel for Respondents No. 1 to 5 (the Claimants) urges that the compensation awarded is just and reasonable, particularly in view of the fact that the deceased left four minor children in addition to his widow as his legal representatives.

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 even in the absence of any evidence with regard to future prospects Santosh Devi provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. 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, even in the absence of any evidence with regard to the future prospects, the Claimants were entitled to an addition of 30% on account of inflation.

8. The loss of dependency thus comes to Rs. 7,20,720/- ($4400/- + 30\% \times 12 \times \frac{3}{4} \times 14$) as against a sum of Rs. 8,32,000/- awarded by the Claims Tribunal.

9. 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. 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.

10. The Respondents No. 1 to 5 are further awarded a sum of Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses as awarded by the Claims Tribunal.

11. This accident took place in October, 2009 and the Claim Petition was decided by order dated 10.08.2011. The award of interest @ 9% per annum in the circumstances was justified.

12. The overall compensation thus comes to Rs. 7,75,720/- as against award of Rs. 9,87,000/- made by the Claims Tribunal which shall carry interest @ 9% per annum from the date of filing of the Petition till its payment.

13. The excess amount of Rs. 2,12,280/- along with proportionate interest and

the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

14. Rest of the compensation shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.

15. The Appeal is allowed in above terms.

16. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.