

(2012) 04 DEL CK 0308

In the Delhi High Court

Case No : MAC. APP. No. 238 of 2012

Meenu Tognatta and Another

APPELLANT

Vs

National Insurance Co. Ltd. and Ors

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0308

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

Bench : Single Bench

Advocate : R.K. Kohli, with Mr. K.R. Pamei, for the Appellant; S.L. Gupta, with Mr. Ram Ashray, for R-1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—By virtue of this judgment, the Cross-Objections which are registered as MAC APPL.238/2012 and MAC APP.249/2012 are being decided as common question of law and facts is involved in both the Appeals. Two young girls Disha Tognatta and Chhavi Aggarwal, who were the Second year students of BE in Information Technology Engineering and BE in Electronics & Communication Engineering respectively from Modi College of Engineering & Technology, Sikar, lost their life in a motor accident which occurred on 19.11.2004. Both the girls were quite brilliant in their studies. In 10th standard Disha scored 79% marks in aggregate and 90% in Science subjects with an "A" Grade in all the subjects. She passed her 12th standard from a highly reputed Institution i.e. MGD Girls School, Jaipur. She was involved in extra curricular activities in the fields of music and communication skills and in sports. Her father was a qualified Engineer and mother was a Post Graduate in Hotel Management.

2. Chhavi Aggarwal scored 86% marks with an "A+" Grade in all subjects in her 10th class examination. She completed her schooling from various reputed schools i.e. National Public School, Bangalore; Army School, Ambala; Air Force Bal Bharti, New Delhi and Central School, Bareilly as her father was an Aeronautical Engineer and served in Indian Air Force.

3. Obviously, the deceased did not have any income on the date of the accident. The Claims Tribunal after holding that the accident was caused on account of rash and negligent driving of the Tata Tanker, bearing registration No.RJ-23G-0843 driven by Om Prakash (the Respondent No.4 in the main MAC APP.1094/2006 & MAC APP.1095/2006) relied on the judgments in Fateh Narain Hajela Vs. Rawal Singh and Others, Haji Zainullah Khan (Dead) by LR's v. Nagar Mahapalika, Allahabad, 1994 SSC 487; Delhi Transport Corporation v. Sudershan Yadav, 1995 ACJ 393; K. Muruges v. M. Palappa, 1999 ACJ 1961; Dr. Harminder Singh Vs. Sukhpinder Singh, M.S. Grewal and Another Vs. Deep Chand Sood and Others, ; Lata Wadhwa and Others Vs. State of Bihar and Others, ; Vanitha B. Mehta and Another Vs. Thiruvalluvar Transport Corporation, ; Smt. Kanta Bhandari v. Karam Ellahi, 113 (2004) Delhi Law Times 809; The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, Assn. of Victims of Uphaar Tragedy v. Union of India Common Cause v. Govt. of NCT of Delhi II (2003) ACC 114 (DB), to hold that the potential income of a person pursuing a professional course can be taken into consideration to award the loss of dependency.

4. The Claims Tribunal accordingly took the deceased's potential income to be Rs. 1,50,000/- per annum and awarded a compensation of Rs. 8,85,000/- in each of the two cases.

5. The contention raised on behalf of the Appellants are twofold:-

(i) The potential income of Rs. 1,50,000/- taken by the Claims Tribunal was very low.

(ii) The multiplier applied was low, it should have been taken according to the age of the deceased's mother.

6. It was established during inquiry before the Claims Tribunal that the deceased were pursuing Engineering in Communication / Information Technology from the prestigious Institution and they had an excellent educational record apart from participation in extra curricular activities. The Claims Tribunal referred to and relied on a number of decisions and took the income of Rs. 1,50,000/- per annum or say Rs. 12,500/- per month.

7. No evidence was adduced by the Appellants to show the placement offers in the relevant year or even in the year of the death of the deceased.

8. In the case of Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, , death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of Rs. 1,46,900/- was increased and rounded off to Rs. 1,50,000/-.

9. In Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded

the MBBS degree in a short time, the Tribunal awarded a compensation of Rs. 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of Rs. 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between Rs. 16,000/- per month to Rs. 25,000/- per month. Thus, the average monthly income of the deceased was taken as Rs. 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to Rs. 21,36,000/-.

10. In Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006 decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) Rs. 38,333/- per month.

11. The gross salary of a Group "A" officer in the Central and the State Govt. on the date of the accident i.e. 19.11.2004 on the basic pay of Rs. 8,000/- was Rs. 17,980/- per month. If a qualified degree holder Engineer joined a Govt. service in the year 2004, he would get a salary of Rs. 8,000/- plus all allowances. The placements in Private Sectors were on a much higher salary.

12. A Division Bench of Andhra Pradesh High Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, held that it was very difficult to determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take a salary at the entry level fixed by the Govt. for such jobs.

13. Since the deceased were exceptionally bright and pursuing BE from very a prestigious institution in a hot selling branch, the Appellants were also entitled to be granted 50% increase towards future prospects.

14. The Claims Tribunal erred in applying the multiplier of "11" in each case. The age of the mother of deceased Disha in MAC APP. 238/2012 was "42" years on the date of the accident, therefore, appropriate multiplier for this age was "14".

15. Similarly, the age of the mother of deceased Chhavi Aggarwal in MAC APP.249/2012 on the date of the accident was 47 years and the appropriate multiplier for this age was "13".

COMPENSTION IN MAC APP.238/2012

16. The loss of dependency which works out in the case of deceased Disha thus comes to Rs. 22,68,000/- (18,000/- + 50% x 1/2 x 12 x 14).

17. On adding notional sums of Rs. 25,000/- towards Loss of Love and Affection, Rs. 10,000/- towards Loss to Estate and Rs. 10,000/- towards Funeral Expenses, the overall compensation comes to Rs. 23,13,000/-.

18. The compensation is thus enhanced from Rs. 8,85,000/- to Rs. 23,13,000/- which shall carry interest @7.5% per annum from the date of filing of the Petition till the date of deposit.

COMPENSTION IN MAC APP.249/2012

19. The loss of dependency which works out in the case of deceased Chhavi Aggarwal thus comes to Rs. 21,06,000/- (18,000/- + 50% x 1/2 x 12 x 13).

20. On adding notional sums of Rs. 25,000/- towards Loss of Love and Affection, Rs. 10,000/- towards Loss to Estate and Rs. 10,000/- towards Funeral Expenses, the overall compensation comes to Rs. 21,51,000/-.

21. The compensation is thus enhanced from Rs. 8,85,000/- to Rs. 21,51,000/- which shall carry interest @7.5% per annum from the date of filing of the Petition till the date of deposit.

22. Respondent No.1 National Insurance Company Limited is directed to make the deposit of the enhanced compensation alongwith interest within six weeks with UCO Bank, Delhi High Court Branch, New Delhi in the proportion as awarded by the Claims Tribunal in the name of the Appellants.

23. The enhanced compensation shall be released in favour of the Appellants in terms of the Tribunal order. The Appeals are allowed in above terms.