
(2012) 09 DEL CK 0054

In the Delhi High Court

Case No : MAC. App. 1018 of 2011

National Insurance Company Ltd.

APPELLANT

Vs

Asha Thakral and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0054

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

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Manjeet Chawla, for R-1 to R-4, for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 27,15,100/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Pradeep Thakral, aged 34 years who died in a motor vehicle accident which occurred on 10.04.2008. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Maruti Car No. DL-3C-AG-4095 by Respondent No. 1 which collided against the two wheeler driven by the deceased. The Claims Tribunal found that the deceased's income of Rs. 11,968/- was established; it made an addition of 50% towards future prospects; deducted one-fourth towards the personal and living expenses and applied the multiplier of 16 to compute the loss of dependency. The Claims Tribunal further awarded a sum of Rs. 1,00,000/- towards loss of love and affection and Rs. 10,000/- each towards loss of consortium, funeral expenses and loss to estate.

2. The following contentions are raised on behalf of the Appellant:-

(1) The deceased was riding on a motor cycle No. DL-7SAZ-2725 with two persons on the pillion. The deceased, therefore, himself contributed to the accident.

(2) The salary of the deceased was wrongly taken by the Claims Tribunal. The

amount of Rs. 4065/- reflected in the salary certificate was towards the arrears for the previous month. The said sum was, therefore, required to be excluded. A sum of Rs. 1598/- was being paid towards the conveyance allowance. This being incidental to employment was not to be taken into consideration to compute the loss of dependency.

(3) The compensation of Rs. 1,00,000/- awarded towards the loss of love and affection is on the higher side.

3. On the other hand, Learned Counsel for the Claimants contends that in view of the unchallenged testimony of PW Nishant Singh, it was established that the accident was caused on account of rash and negligent driving of Maruti Car driver. It is stated that the compensation awarded is just and reasonable.

NEGLIGENCE:-

4. While dealing with the issue of negligence, the Claims Tribunal held as under:-

15. In the instant case, from the testimony of Ramesh Kumar and Nishant Singh, the petitioners in petition No. 548/10 and 591/10, it is proved that the respondent No. 1 was driving the Wagon R. DL3CAG4095 at a fast speed in a rash and negligent manner and near Block No. 18 Crossing, Lodhi Road, the car hit the motorcycle DL3SAZ2725 which was being driven by the deceased Pradeep Thakral on which Nishant Singh and Ramesh Kumar were the pillion riders. The police had arrived at the spot, registered the case vide FIR No. 87/08 at PS Lodhi Colony and arrested the driver i.e. Respondent No. 1. The site plan shows that the accident had occurred at the centre of crossing. The testimony of Ramesh Kumar and Nishant Singh on the aspect of rash and negligent driving by respondent No. 1 remained unassailed. It has also come in evidence that immediately after the accident, Pradeep Thakral and other petitioners were removed to the hospital where Pradeep Thakral succumbed to the injuries and other petitioners sustained grievous injuries on their persons. The petitioners also placed on record the criminal proceedings i.e. Copy of FIR, post mortem report etc. which clearly prove that respondent No. 1 was negligent. Further no evidence contrary to this stand has been brought on record by the respondents....

5. The testimony of two eye witnesses with regard to the manner of the accident was not challenged in their cross-examination. Their testimonies along with registration of a criminal case was sufficient to draw an inference of culpable negligence on the part of Respondent No. 5, (Kunal Dhingra) driver of the offending Maruti Car.

6. Respondent No. 5, the driver of the offending car did not appear to rebut the testimony of eye witnesses. Thus, it is established that the accident was caused on account of rash and negligent driving of Maruti Car driver. Merely because three persons were riding on a two wheeler, no inference can be drawn that the deceased/motorcyclist himself contributed to the negligence.

7. Thus, it is established that the accident was caused solely on account of

negligent driving of Maruti Car by Respondent No. 5.

QUANTUM:-

8. I have before me, the salary certificate issued by CMA, CGM Global (India) Pvt. Ltd., the deceased's employer. This certificate shows that the deceased was getting a sum of Rs. 1598/- towards conveyance allowance. This amount being incidental to employment was not for the benefit of family and was, therefore, not to be taken into consideration for computation of loss of dependency. The amount of Rs. 4065/- was paid to the deceased as Misc. Earnings-2.

9. The Claimant Asha Thukral in her affidavit Ex. PW-1/X was completely silent with regard to this sum of Rs. 4065/-. In her cross-examination, she admitted that the amount of Rs. 4065/- was towards increase in salary as arrears. She was unable to say as to for what duration/months the arrears were paid.

10. Thus, from PW-1's cross-examination it was clear that the sum of Rs. 4065/- was in respect of arrears on salary for previous months. This amount and the amount of Rs. 1598/- which PW-1 admitted was towards conveyance for attending office, is liable to be deducted from the deceased's salary as reflected in Ex. PW-1/4.

11. It is urged that there was no evidence with regard to deceased's future prospects and thus addition of 50% was unjustified; it should have been only 30% towards inflation. The deceased was in stable employment with a reputed company. Respondent No. 1 in her affidavit Ex. PW-1/X testified that the deceased's income would have increased to Rs. 15,000/- to Rs. 20,000/- per month in the near future. This testimony was not rebutted by giving any suggestion. In the circumstances, addition of 50% towards future prospects cannot be faulted.

12. The loss of dependency thus comes to Rs. 17,07,048/- ($7903/- + 50\% \times 3/4 \times 16$).

13. The Claims Tribunal awarded a sum of Rs. 1,00,000/- 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.

14. The Claimants are further entitled to a sum of Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses.

15. The overall compensation thus stands reduced from Rs. 27,15,100/- to Rs. 17,62,048/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

16. The excess amount of Rs. 9,53,052/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
17. The awarded amount shall be disbursed/held in fixed deposit in the name of the Claimants in terms of the order passed by the Claims Tribunal.
18. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.
19. The Appeal stands disposed of in above terms. Pending Applications also stand disposed of.