

(2012) 08 DEL CK 0168
In the Delhi High Court
Case No : Mac. App. 137 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Bharat Singh @ Bharat Kumar @ Bharat Kumar Bilwal and
Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0168

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

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Amit Kumar Pandey, for R-1 and R-2,
for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 19,10,492/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Abhilasha, a B.Com student in Aurobindo College, Delhi University. In the absence of any Appeal by the driver, owner and the Insurer, the finding on negligence has attained finality.

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

(i) The deceased was only a first year student in B.Com, the Claims Tribunal erred in accepting her income to be Rs. 10,000/- per month and making addition of another Rs. 10,000/- to take potential income as Rs. 20,000/- per month.

(ii) The compensation of Rs. 75,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses is excessive and exorbitant.

3. In Paras 5 and 6 of the Claim Petition filed by Respondents No. 1 and 2 before the Claims Tribunal it was stated that the deceased was a self employed person as a tutor and was earning Rs. 8,000/- per month. During the evidence, the Respondents examined PW-2 Deepak Malhotra, who testified that the deceased Abhilasha was working as an Assistant Accountant with him and he was paying a

salary of Rs. 10,000/- per month to her. In cross-examination, the witness admitted that no appointment letter was issued to the deceased. The salary was being paid by cash. He could not give the date when the deceased joined his office. He denied the suggestion that the documents have been manipulated.

4. The deceased was a full time student in Aurobindo College, Delhi University and was a resident of Faridabad. It is not conceivable that the deceased would travel from Faridabad to Delhi, attend classes for the whole day and would then look after the accounts of PW-2 and would then travel to Faridabad. Further, the evidence produced is contrary to the stand taken in the Claim Petition. In the circumstances, I am not inclined to believe PW-2's testimony that the deceased was working as an Account Assistant and getting a salary of Rs. 10,000/- per month.

5. I have before me the Trial Court Record including the mark sheet (Ex.PW-1/3) of 12th standard. Deceased Abhilasha scored about 87% marks in 12th examination conducted by the Central Board of Secondary Education (CBSE) in the year 2008. On the basis of her good performance, the deceased was able to get admission in Aurobindo College in Delhi University.

6. It is well settled that potential income of a victim can be taken into consideration to award loss of dependency.

7. 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/-.

8. 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/

9. 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.

10. 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 salary at the entry level fixed by the Govt. for such jobs.

11. Considering that the deceased Abhilasha was a meritorious student. After completing her Graduation, she would have got some job as an Assistant Accountant or Accounts Clerk in any Govt. or any public sector company. She would have easily got a salary of Rs. 15,000/- per month. Since she was not doing any professional course from any prestigious Institution, it would not be possible to make any addition towards the future prospects.

12. Thus, the loss of dependency on potential income of Rs. 15,000/- on applying the multiplier of "15" as per the age of the deceased's mother (37 years) would come to Rs. 13,15,000/- ($15,000/- \times 12 \times 1/2 \times 15$).

13. The Claims Tribunal awarded a sum of Rs. 75,000/- towards loss of love and affection. Normally, when full compensation towards loss of dependency is granted only a nominal sum is awarded towards loss of love and affection. The trend of the High Courts and the Supreme Court is to grant a sum of Rs. 25,000/- under this head. Such a sum was granted by 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*, towards love and affection. However, in a later judgment in *Amrit Bhanu Shali & Ors. v. National Insurance Company Ltd. & Ors.* (2012) 6 SCALE 1, in case of a death of bachelor, a compensation of Rs. 1,00,000/- was awarded by the Supreme Court.

14. In the circumstances, I would not interfere with the award of compensation of Rs. 75,000/- towards loss of love and affection.

15. The compensation towards funeral expenses is awarded on actual basis. No evidence was led by Respondents No. 1 and 2 as to the actual expenditure on funeral expenses. In the circumstances of the case, I would not interfere with the award of compensation under this head.

16. In view of the above discussion, the compensation awarded stands reduced from Rs. 19,10,492/- to Rs. 14,25,492/-.

17. The excess amount of Rs. 4,85,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. Rest of the compensation shall be disbursed in terms of the order passed by the Claims Tribunal.

18. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

19. The Appeal is allowed in above terms. Pending Applications stand disposed of.