

(2012) 08 DEL CK 0392
In the Delhi High Court
Case No : MAC. APP. 559 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Deepa Devi and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 DEL CK 0392

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

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Manoj R. Sinha, for R-1 to R-5, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CM APPL.9199/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

MAC APP. 559/2012

1. Issue Notice to Respondents No. 1 to 5 (the Claimants). Mr. Manoj R. Sinha, Advocate accepts notice on behalf of Respondents No. 1 to 5. He submits that he is prepared with the arguments and the Appeal can be finally disposed of.

2. The Appellant New India Assurance Company Limited impugns a judgment dated 19.03.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 8,80,960/- was awarded for the death of Surinder Pal Singh, who died in a motor vehicle accident which occurred in the night intervening 4/5.05.2007.

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

(i) There was contributory negligence on the part of the driver of the Qualis in which the deceased was travelling. Thus, the driver and owner of the Qualis were equally liable.

(ii) The deceased was working as a cook in Chemsford Club, New Delhi. There was no documentary proof with regard to his salary. There was no evidence with regard to deceased's future prospects. Thus, there could have been addition of only 30% towards the inflation on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.

4. On the other hand, it is urged by the Learned Counsel for Respondents No.1 to 5 that there was no negligence on the part of the driver of Qualis No.DL-7CE-1884. PW-2's testimony was not challenged, thus negligence on the part of driver of truck No. UP-14AJ-9111 was sufficiently established. It is contended that the compensation awarded is just and reasonable.

NEGLIGENCE:-

5. In order to establish negligence, the Claimant examined Pratima Devi as PW-2. In her affidavit Ex. PW-2/A (by way of her examination-in-chief) she testified that on 05.05.2007 at about 3:50 AM they were proceeding to Almora for the last rites of her deceased husband. When they reached near Vam Factory, Gajraula, (U.P.) a truck No. UP-14-AJ-9111 driven by its driver Ram Lal Sahni (Respondent No. 2) in a rash and negligent manner, came from the opposite direction. The truck came from the wrong side of the road and hit the Qualis. The Qualis was badly damaged and both of her sons suffered fatal injuries. PW-2's testimony on the factum of negligence was not challenged in cross-examination. Not even a suggestion was given that the truck was not being driven in a rash and negligent manner.

6. The Learned Counsel for the Appellant Insurance Company drew my attention to the copy of the site plan placed on record by the Claimant to emphasize that it was a head on collision and, therefore contributory negligence must be inferred on the part of the Qualis driver. It cannot be laid down as an absolute proposition that in every case of head on collision there will be contributory negligence on the part of both the drivers. As stated earlier, PW-2's testimony was not challenged in cross-examination. In a Petition u/s 166 of the Motor Vehicles Act, 1988 (the Act) negligence is required to be proved only on the touchstone of preponderance of probability which was adequately done in this case. The finding on negligence thus cannot be faulted.

QUANTUM OF COMPENSATION

7. Coming to the quantum of compensation, it was proved that deceased Surinder Pal Singh was working as a cook with Chemsford Club, New Delhi. As per PW-1 Deepa Devi's testimony, the deceased was getting a salary of Rs. 5,000/- per month. As per the salary slip, the deceased was getting a salary of Rs. 3470/- per month at the time of his death. The minimum wages of a skilled

worker at the time of the accident were Rs. 3895/-. The actual increase in minimum wages is given by the Establishment in due course. The Claims Tribunal, therefore, rightly took the minimum wages of a skilled worker to compute the loss of dependency.

8. The deceased Surender Pal Singh was in stable employment with Chemsford Club, New Delhi since the year 1999. Thus, the Claimants were entitled to an addition of 50% in the income towards future prospects.

9. The salary slip of the deceased was placed on record to prove that he was in regular employment and contributed towards Provident Fund and ESI. In the circumstances 50% addition towards future prospects was justified.

10. The overall compensation of Rs. 8,80,960/- awarded by the Claims Tribunal, in the circumstances, cannot be said to be excessive or exorbitant.

11. The Appeal is devoid of any merit; it is accordingly dismissed.

12. The awarded amount shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.

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