

(2012) 08 DEL CK 0259
In the Delhi High Court
Case No : MAC. APP. 558 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Pratima Devi and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 DEL CK 0259

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM APPL.9160/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

MAC APP. 558/2012

1. Issue Notice to Respondent No. 1 (the Claimant). Mr. Manoj R. Sinha, Advocate accepts notice on behalf of Respondent No. 1. He submitted

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. 5,87,176/- was awarded for the death of Rakesh Singh, a bachelor 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 an Assistant steward at Pot Pourri Restaurant (Nirulas), Preet Vihar Delhi. He was admittedly getting a salary of

Rs. 3540/- per month. The Claims Tribunal erred in taking the minimum wages to award loss of dependency. 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.

(iii) Since there was only one dependent, that is, the deceased's mother Pratima Devi (the First Respondent), there should have been deduction of

50% towards the personal and living expenses.

4. On the other hand, it is urged by the Learned Counsel for Respondent No. 1 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, the deceased Rakesh Singh was working as an Assistant Steward. As per the Claim Petition, the

deceased was getting a salary of Rs. 3540/-. However, during evidence, PW-2 deposed that the deceased was getting a salary of Rs. 4500/- per

month. The deceased was working as an Assistant Steward with a well known chain of Restaurants "Nirulas" 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 Matriculate i.e. Rs. 3918/- to compute the loss of dependency.

8. The salary slip of 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.

9. The First Respondent was the only dependent, thus, deduction would be 50% instead of one-third taken by the Claims Tribunal. The loss of

dependency therefore, comes to Rs. 3,87,882/- ($3918/- + 50\% \times 1/2 \times 12 \times 11$) as against Rs. 5,17,176/- awarded by the Claims Tribunal.

10. The Respondent No. 1 is further entitled to a sum of Rs. 70,000/- under non-pecuniary heads, as awarded by the Claims Tribunal.

11. The compensation is thus reduced by Rs. 1,29,294/-.

12. The excess amount of Rs. 1,29,294/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall

be refunded to the Appellant Insurance Company.

13. The awarded amount along with proportionate interest @ 7.5% per annum shall be released in favour of the First Respondent in terms of the

order passed by the Claims Tribunal.

14. The Appeal is allowed in above terms.

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