

(2012) 10 DEL CK 0344
In the Delhi High Court
Case No : MAC. APP. 943 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Uma Sharma and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 12 Rule 6, 35
Suits Valuation Act, 1887 — Section 9

Citation : (2012) 10 DEL CK 0344

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

Bench : Single Bench

Advocate : Abhishek Kumar, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM APPL. 14821/2012 (Delay)

Delay of 33 days in filing the Appeal is condoned.

The Application is allowed.

MAC. APP. 943/2012

1. The Appeal is for reduction of compensation of Rs. 19,34,305/- awarded for the death of Pradeep Kumar Sharma, who died in a motor vehicle accident which occurred on 22.01.2008. The finding on negligence has not been challenged by the Appellant Insurance Company, the same has thus attained finality.

2. The deceased was working as a Upper Division Clerk (UDC) with Govt. of NCT of Delhi. At the time of his death, he was getting a salary of Rs. 9283/- per month. Since the deceased was aged 45 years, the Claims Tribunal made an addition of 30% towards future prospects; deducted one-fifth towards personal and living expenses and applied the multiplier of 14 to compute the loss of

dependency as Rs. 16,21,959/-.

3. The Claims Tribunal further awarded a sum of Rs. 1,02,346/- towards purchase of medicines and the treatment received by the deceased in the hospital before he succumbed to the injuries.

4. The Claims Tribunal awarded the compensation which is tabulated hereunder:-

5. The following contentions are raised on behalf of the Appellant Insurance Company :-

(i) Since the number of dependents were five, there should have been deduction of one-fourth towards the personal and living expenses instead of one-fifth made by the Claims Tribunal.

(ii) The award of compensation of Rs. 1,00,000/- towards loss of love and affection and Rs. 50,000/- each towards loss of consortium and loss to estate was exorbitant and excessive.

(iii) The interest awarded @ 9% per annum from the date of filing of the Petition was excessive.

(iv) The award of counsel's fee of Rs. 70,000/- is excessive and in contravention of the High Court Rules & Orders.

DEDUCTION TOWARDS PERSONAL AND LIVING EXPENSES

6. I have before me the Affidavit Ex. PW-1/A of Claimant Uma Sharma as also the Claim Petition. There were seven dependents on the deceased. In the instance case Buddhi Prakash Sharma, the deceased's father was aged 72 years and thus he was one of the dependents on the deceased. In this view of matter, the Claims Tribunal was justified in making deduction of one-fifth towards the personal and living expenses. The conclusion reached by the Claims Tribunal cannot be faulted.

AWARD OF NON-PECUNIARY DAMAGES

7. The Claims Tribunal awarded a compensation of Rs. 1,00,000/- towards loss of love and affection and Rs. 50,000/- each towards loss of consortium and loss to estate.

8. 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.

9. The deceased Pradeep Kumar Sharma was working as UDC with the Govt. of NCT of Delhi and was getting a salary of Rs. 9283/- per month. The deceased

was not in such a position as to save a very large sum after taking care of a large family. In such circumstances, only a nominal sum has to be awarded towards loss to estate.

10. In *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, the Supreme Court laid down that a sum of Rs. 5,000/- to Rs. 10,000/- may be awarded as loss to estate and conventional sum of Rs. 5,000/- to Rs. 10,000/- should be awarded under the head of loss of consortium. In the facts and circumstances, and following *Sarla Verma* I would make a provision of Rs. 10,000/- each towards loss to estate and loss of consortium.

11. This accident took place in the year 2008. The rate of interest in the year 2008 was in the vicinity of about 8%. They started rising in the year 2009. In the year 2010, the interest rates were in the vicinity of 9% per annum. The interest is awarded on the compensation payable to the legal representatives on retention of money by the tortfeasor. The grant of interest @ 9% per annum in the facts and circumstances was justified.

12. The Claims Tribunal awarded a sum of Rs. 70,000/- towards Counsel's fee. It is urged that the same is exorbitant and excessive and in violation of the High Court Rules and Orders.

13. This Court while deciding bunch matters titled *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi & Ors.*, MAC APP. 645/2012, decided on 30.07.2012 dealt with the question of award of Counsel's fee in great detail. Paras 17 to 22 of the report are extracted hereunder:-

17. Section 35 & Order XXA of the Code which deal with the payment of costs and Rule 1; Rule 1A; Rule 2; Rule 8; Rule 9; Rule 12 and Rule 16 of Chapter 16 Volume 1 Part B of the Delhi High Court Rules (for short the Rules), which deals with the Counsel's fee are extracted hereunder:-

35. Costs.

Subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

ORDER XXA. COSTS

Rule 1. Provisions relating to certain items:-

Without prejudice to the generality of the provisions of this Code relating to

costs, the Court may award costs in respect of-

expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

expenditure incurred on the typing, writing or printing of pleadings filed by any party;

charges paid by a party for inspection of the records of the Court for the purposes of the suit;

expenditure incurred by a party for producing witnesses, even though not summoned through Court, and in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

2. Costs to be awarded in accordance with the rules made by High Court-The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.

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Rule 1. Suit for recovery of property, breach of contract or damages--In suits for the recovery of money or of specific property or a share of specific property, whether immovable or moveable, or for the breach of any contract or for damages:--

If the amount or value of property, debt or damages decreed shall not exceed Rs. 25,000/- at 10 per cent on the amount or value decreed.

If the amount of value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/-, on Rs. 25,000/- at 10 per cent and on the remainder at 8 per cent.

If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs. 50,000/- as above and on the remainder at 4 per cent.

If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 per cent.

If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one per cent subject, however, that in no case the amount of fee shall exceed Rs. 20,000/-.

Rule 1A. In the case of:

Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with

the conditions on which leave to defend was granted and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or installment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(viii) Any formal party to a suit or appeal, e.g., a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs.

(ix) A suit or appeal which has abated.

(x) A Plaintiff returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (1) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/-

Rule 2. Others Suits--In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court u/s 9 of the Suits Valuation Act, 1887 for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall not exceed Rs. 5,000/-.

Rule 8. Miscellaneous proceedings--In any miscellaneous proceedings or for any

matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall not exceed:

rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs. 1,000.

Rule 9. Undefended suits--If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.

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Rule 12. Appeals--In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly as may be.

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Rule 16. Certificate as to fees to be filled by counsel in the Court of District Judges--Notwithstanding anything contained in the rules and notwithstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.

18. A perusal of Section 35 read with Order XXA of the Code would show that normally the costs shall follow the event and in case the Court directs otherwise, it is required to state reasons in writing. It is further revealed that expenditure in serving any notice required by law or even otherwise; expenditure incurred on typing, writing and printing of pleadings; charges paid by party for inspection of the Court's record; expenditure incurred by a party for producing witnesses; and in case of Appeal the charges incurred by a party for obtaining copy of the judgment and decree; are broadly payable without limiting the scope of the costs.

19. It is urged on behalf of the Appellant Insurance Companies that the proceedings in a Petition u/s 166 of the Act or for that matter u/s 163-A of the Act are miscellaneous proceedings covered under Rule 8 of the Rules and the Counsel's fee shall be payable on the scale as mentioned in Rule 8. Rule 8 extracted earlier apply to misc. proceedings or for any matter other than that of appearing, pleading etc. in a suit prior to the decree.

20. On the other hand, Rule 1 of Chapter 16 Volume 1 Part B of the Rules is very

widely worded and also includes Suit for damages. A Claim Petition u/s 166 /163-A is in respect of damages for the injuries caused to the Claimant payable by the driver, the owner and the Insurer. Thus, in my view Rule 1 is the appropriate Rule which would apply to the Claim Petition under the Act. In the circumstances, apart from the award of costs under other heads, as mentioned under Order XXA, the Counsel's fee shall be payable on the scale as given in Rule 1.

21. It may be mentioned that the inquiry conducted by a Claims Tribunal is not more complex than a recovery suit or a suit for breach of contract or for damages. Thus, the scale of fees in Rule 1 of the Rules would be more than adequate to meet the expenses towards the Counsel's fee.

22. Moreover, as per Rule 1A in case of a decision made in a Claim Petition decided without contest, the payment of fees is not to exceed one-half of what is provided in Rule 1, as extracted earlier.

14. This Court concluded as under:-

(i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.

(ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.

(iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.

(iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.

The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.

15. Thus, at the most, if the Counsel had submitted the certificate of fee with the Claims Tribunal before conclusion of the hearing that could have been awarded as cost of the Claim Petition. The Counsel's fee would be payable as per the scale of fee indicated earlier. Moreover, there is no provision for awarding out of pocket expenses to the Counsel. The costs take care of the actual expenses as admissible under the High Court Rules. The order awarding Counsel's fee of Rs. 70,000/- was illegal.

16. In view of the above discussion, the compensation stands reduced by Rs. 1,55,000/-.

17. The Respondents Claimants would be entitled to the costs of the Claim Petition including the Counsel's fee in terms of the High Court Rules and Orders as stated by this Court in Kanti Devi (supra).

18. By an order dated 28.08.2012 the execution of the award against the Appellant was stayed subject to deposit of the award amount along with interest less counsel's fee and out of pocket expenses. Thus, the excess amount of Rs. 1,55,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

19. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company, subject to making up of deficiency in the Court fees within two weeks.

20. Appeal is allowed in above terms. Pending Applications also stand disposed of.