

(2012) 07 DEL CK 0568

In the Delhi High Court

Case No : MAC. APP. No. 648 of 2010

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Havanti Devi and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 07 DEL CK 0568

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

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; S.N. Parashar, Advocate for the Respondents No. 1 to 7, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The Appellant Reliance General Insurance Co. Ltd. impugns a judgment dated 21.07.2010 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of Rs. 11,13,000/- was awarded for the death of Ram Chander Manjhi who died in a motor accident which occurred on 09.10.2008. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Tata Tempo No. DL-1LG-4021. It was claimed that the deceased was employed in a private company and was earning a salary of Rs. 6,500/-. In the absence of any cogent evidence to prove the deceased's employment and his salary, the Claims Tribunal took the minimum wages of a matriculate, added 50% towards inflation, deducted 1/5th towards personal and living expenses and applied a multiplier of 15 relevant to the age of the deceased to compute the loss of dependency as Rs. 9,08,000/-. On addition of compensation towards pecuniary and non-pecuniary heads, an overall compensation of Rs. 10,63,000/- was awarded.

2. During hearing of the Appeal, the following contentions were raised on behalf of the Appellant:

(i) There was no material on record to come to the conclusion that the accident was caused because of the rash and negligent driving of the driver of Tata Tempo No. DL-1LG-4021. Thus, there was no liability of the owner to pay the compensation and the Claim Petition is liable to be dismissed.

(ii) There was no evidence of future prospects. The Claims Tribunal added 50% in the deceased's income on account of inflation, which is not permissible.

NEGLIGENCE:

3. While dealing with the issue on negligence, the Claims Tribunal held as under:

19. The onus to prove this issue was on petitioner. Petitioner No. 1 appeared in the witness box as PW-1. She filed her examination in chief by way of affidavit Ex.PW-1/A. She deposed that on the date of incident, her husband was going on his scooter and when he reached near petrol pump, Sector 3, Dwarka, the offending vehicle came from back side and struck against the scooter of her husband which resulted in his death. Admittedly, she was not the witness to the incident. However, certified copies of criminal proceedings which were initiated on the basis of FIR No. 639/08, registered at PS Dwarka were placed on record and were exhibited as Ex.P1.

20. Perusal of certified copy of criminal records reveals that the same were initiated on statement of Constable Hashan Imam, who was the witness to the incident and he reported to the Investigating Officer that incident had taken place due to negligence driving of respondent No. 1, who was driving the offending vehicle in a negligent manner.

21. Perusal of this charge sheet further reveals that respondent No. 1 was arrested from the spot itself.

22. It has been held by Hon'ble High Court in National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, that whenever criminal proceedings are filed along with the compensation petition then that in itself is sufficient proof of negligent driving of the person against whom a charge sheet is filed.

23. In the present case, it is apparent from the charge sheet that the offending vehicle had struck against the scooter of Ram Chander Manjhi from back side which fact in itself speaks about the negligent manner in which respondent No. 1 was driving his truck.

4. It is true that the Petitioner (wife of the deceased) was not an eye witness of the accident. The Respondents No. 8 and 9 (the driver and the owner) denied the averments of rash and negligent driving on the part of Eighth Respondent by way of filing of the written statement. They preferred not to contest the proceedings after filing of the written statement and were proceeded ex parte. The Eighth Respondent preferred not to appear in the witness box to controvert the averments of rash and negligent driving.

5. It is well settled that in a Claim Petition u/s 166 of the M.V. Act negligence has

to be proved only on touchstone of preponderance of probability and a Claims Tribunal is required to take a holistic view while dealing with a Claim Petition under the Act. A reference may be made to a judgment of the Supreme Court *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530 where it was held as under:

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

6. In view of the above, the Claims Tribunal was justified in drawing an inference of negligence on the part of Respondent No. 8.

7. As far as addition on account of future prospects/inflation is concerned, this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012 relying on *Santosh Devi Vs. National Insurance Company Ltd. and Others*, held that the persons who are getting fixed salary or who are self employed as menial, skilled and unskilled workers, like barber, blacksmith, cobbler, mason, carpenter, etc. etc. would be entitled to an increase in the income to the extent of 30% on account of inflation when the deceased or the victim is aged upto 50 years.

8. The loss of dependency would, therefore, come to Rs. 7,86,240/- (Rs. 4200/- +30% x 4?5 x12 x 15) instead of Rs. 9,08,000/-.

9. No other contention has been raised.

10. In view of the above discussion, the overall compensation is reduced by Rs. 1,21,760/-. The excess amount of Rs. 1,21,760/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

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

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