

(2012) 05 DEL CK 0686

In the Delhi High Court

Case No : MAC. App. No. 424 of 2011

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Krishan Pal and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0686

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

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; R.L. Sharma, Advocate for the Respondents No. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Insurance Company impugns a judgment dated 31.01.2011 whereby a compensation of Rs. 9,03,000/- was awarded for the death of Smt. Savitri who died in an accident which occurred on 17.10.2009. The Appellant's grievance is that it was not given opportunity to prove that the driver did not possess a valid driving licence and that the compensation awarded is exorbitant and excessive.

2. The application for additional evidence filed by the Appellant Insurance Company was dismissed by an order dated 07.02.2012 wherein it was held that sufficient opportunity was granted to the Appellant Insurance Company to prove its defence. Since no evidence was produced by the Insurance Company to prove that the Respondent No. 5 (Joginder) the driver of the offending vehicle did not possess any valid driving licence on the date of the accident, the Appellant Insurance Company having failed to discharge the onus, cannot avoid its liability to indemnify the insured.

3. As far as quantum of compensation is concerned, the Claims Tribunal opined that no evidence was produced to prove that the deceased was engaged in the work of knitting and tailoring. It was, however, held that the value of the

gratuitous services rendered by the deceased cannot be ignored. It, therefore, took the minimum wages of a skilled worker, added 50% on account of inflation, deducted 1/4th towards the personal and living expenses and applied a multiplier of 13 and calculated the loss of dependency as Rs. 7,73,000/- . The Claims Tribunal added a sum of Rs. 1,00,000/- towards loss of love and affection in addition to Rs. 10,000/- each on account of funeral expenses, loss to estate and loss of consortium.

4. The assessment of the value of the gratuitous services rendered by a housewife is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC. APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

- (i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,
- (ii) National Insurance Co. Ltd. Vs. Deepika rep. by her guardian and next friend, Ranganathan, Ranganathan, Rajeswari and S. John Antony,
- (iii) Amar Singh Thukral v. Sandeep Chhatwal, ILR (2004) Del 1,
- (iv) Lata Wadhwa and Others Vs. State of Bihar and Others,
- (v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,
- (vi) A. Rajam Vs. M. Manikya Reddy and Another
- (vii) Morris v. Rigby (1966) 110 Sol Jo 834 and
- (viii) Regan v. Williamson 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh* (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.
- (ii) Minimum salary of a Matriculate where she is a Matriculate.
- (iii) Minimum salary of a non-Matriculate in other cases.
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60

years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

5. No evidence was produced by the Claimants to prove the educational qualification of the deceased. Thus, the minimum wages of a non-matriculate which on the date of the accident was Rs. 4,146/- are to be taken into consideration to compute the loss of dependency and an addition of 15% is to be made as the deceased was aged 47 years. Thus, the loss of dependency comes to Rs. 7,43,792/- (Rs. 4146 + 15% X 12 X 13).

6. The 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 Rs. 25,000/- (in total to all the claimants) only under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

7. The overall compensation is reassessed as under:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

Awarded by this Court

1.

Loss of Dependency

Rs. 7,73,000/-

Rs. 7,43,792/-

2.

Loss to Estate

Rs. 10,000/-

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3.

Loss of Consortium

Rs. 10,000/-

Rs. 10,000/-

4.

Funeral Expenses

Rs. 10,000/-

Rs. 10,000/-

5.

Loss of Love & Affection

Rs. 1,00,000/-

Rs. 25,000/-

Total

Rs. 9,03,000/-

Rs. 7,88,792/-

8. The compensation thus stands reduced from Rs. 9,03,000/- to Rs. 7,88,792/- .

9. It was urged that the interest on the award amount granted @ 9% was excessive and exorbitant. The contention raised is totally misconceived. Normally, the Claims Tribunal and the Courts in Motor Accident Claims cases grant interest as per the bank rate of interest on long-term fixed deposits prevalent at the time of the accident. This accident took place in the year 2009 and the Claim Petition came to be decided in the year 2011. During this period, the rate of interest on long-term deposits were in the vicinity of 8 to 9% per annum. Thus, the Claims Tribunal was justified in granting the interest @ 9% per annum. Thus, it cannot be said to be exorbitant and excessive.

10. The excess amount of Rs. 1,14,208/- along with proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

11. The amount of compensation along with interest as held payable by this Court shall be released/held in Fixed Deposit in favour of the Respondents (Claimants) in terms of the order passed by the Claims Tribunal.

12. The statutory amount of Rs. 25,000/- shall be returned to the Appellant Insurance Company. The Appeal is allowed in above terms.