

(2016) 02 DEL CK 0162

In the Delhi High Court

Case No : MAC. App. 510/2012 & CM Appl. 8554/2012, MAC. App. 734/2012 & CM Appl. 11907/2012, MAC. App. 741/2012 & CM Appl. 11976/2012 and MAC. App. 827/2012

United India Insurance Co. Ltd. and Others

APPELLANT

Vs

Dharam Prakash and Others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) 02 DEL CK 0162

Hon'ble Judges : R.K. Gauba, J.

Bench : Single Bench

Advocate : D.D. Singh and Navdeep Singh, Advocates, for the Appellant; Peeush Sharma, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

R.K. Gauba, J.—1. The judgments of the motor accident claims tribunal (the tribunal) impugned in these four appeals were rendered on four separate accident claim cases brought before the tribunal relating to the same motor vehicular accident. Since the evidence was led commonly during the inquiry into the said claim petitions and since some of the issues being raised in these appeals are identical, they have been heard together and are being decided through this common judgment.

2. On 07.08.2007, at about 05:30 PM, a motor vehicular accident occurred involving collision between a WagonR car bearing registration no. DL-3CAW-3217 (the car) and a bus bearing registration no. HR-31- 0503 (the offending vehicle) in the area of village Dewal, Nahar Pul within the jurisdiction of police station Ram Raj, District Muzaffarnagar, Uttar Pradesh. The offending vehicle was statedly driven by Amrish Kumar, it being owned by Smt. Kariman and being concededly insured against the third party risk with United India Insurance Company Ltd., all of whom were impleaded as party respondents in the claim petitions. Six persons were travelling in the car at the time of accident, they

including Pramod Pal, Satish Kumar, Jitender Kumar and Girish Joshi, all of whom died due to the injuries suffered in addition to Rakesh & Gaurav who also sustained injuries (Gaurav later dying in the hospital).

3. The claim petitions on which the judgments passed are impugned in these appeals relate to the deaths of Pramod Pal, Jitender Kumar & Satish Kumar and the injuries suffered by Rakesh Kumar. The legal heirs of Pramod Pal brought the claim case on 05.09.2007, which was registered as MACT case no. 30/11 (old no. 571/2007) in which compensation in the sum of Rs. 13,14,075/- with interest at the rate of eight percent (8%) per annum from the date of filing of the petition till realization, was awarded. The legal heirs of Jitender Kumar brought their claim petition on 05.09.2007, which was registered as MACT case. No. 29/11 (old no. 574/2007) in which compensation in the sum of Rs. 8,17,000/- with interest at the rate of seven and half percent (7.5%) was awarded from the date of filing of the petition till realization. The legal heirs of Satish Kumar brought their claim petition on 05.09.2007, registered as MACT case no. 32/11 (old no. 570/2007), in which compensation in the sum of Rs. 21,85,000/- with interest at the rate of seven and half percent (7.5%) was granted from the date of filing of the petition till realization. Rakesh Kumar brought his claim petition for the injuries suffered on 05.09.2007, which was registered as MACT case No. 33/11 (old no. 569/2007) in which compensation in the sum of Rs. 2,05,000/- was awarded with interest at the rate of seven and half percent (7.5%) per annum from the date of filing of the petition till realization. In all these cases, the insurance company having conceded that there was an insurance cover against third party risk, it was directed to indemnify the insured and the driver (principal tort-feasor) who had been jointly and severally liable to compensate.

4. The insurance company is in appeal against the awards passed in the claim petitions arising out of the deaths of Pramod Pal, Jitender Kumar and Satish Kumar questioning the method and calculation of the compensation, mainly, the loss of dependency, inter-alia, based on the element of future prospects. The claimants, on the other hand, while resisting the appeals of the insurance company defend the method of calculation of the loss of dependency and also raised grievances that compensation under the non-pecuniary heads of damages was highly inadequate. It is also pointed out that there is a variation in the rate of interest levied in the cases of deaths of Jitender Kumar and Satish Kumar.

5. Rakesh Kumar, by way of his appeal, on the other hand, questions the award on the ground that it is inadequate, primarily raising the issue that he had mustered the evidence to show that he had not been able to take care of his avocation for a period of one year and, thus, compensation on account of loss of earning was not properly taken care of. It is also pointed out on his behalf that compensation under the non-pecuniary head was grossly under assessed. He is further aggrieved on account of levy of interest restricted to seven & half percent (7.5%) per annum only.

6. Since the element of future prospects is a subject matter which is common to

grievances in all these cases, it needs to be considered first.

7. Pramod Pal (whose death is subject matter of MAC appeal no. 510/2012) was stated by his legal heirs to be engaged in the business of readymade garments at GTB Enclave, Shahdara, Delhi. His legal heirs proved his income on the basis of income tax return (Ex.PW3/2) for the period 01.04.2006 to 31.03.2007 indicating the income declared to be Rs. 1,31,700/- per annum. The tribunal accepts it as good evidence taking note of the fact that the return had been submitted on 04.05.2007 i.e. prior to the date of accident. This court finds no error in the said approach taken by the tribunal.

8. In case of death of Jitender (which is subject matter of MAC appeal no. 734/2012), it was stated by his legal heirs that he was engaged in the business of repairing mobile phones and other electrical accessories and was earning Rs. 8,000/- per month. The tribunal accepted this evidence, even though the insurance company had contested pointing out that there was no document filed in support.

9. In case of death of Satish Kumar (which is subject matter of MAC appeal no. 741/2012), his legal heirs had claimed that he was engaged in the work of running a shop of repairing and selling of mobile phones and computers and earning Rs. 10,000/- per month. Again, no formal evidence was submitted to substantiate the oral word in this regard.

10. The insurance company had argued in the cases of deaths of Satish Kumar & Jitender Kumar that in the absence of formal proof substantiating the claim, the income attributed to the said persons should not be assumed to be correct only on the basis of oral word. One shall revert to this part of controversy a little later.

11. In the case reported as Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., , (2009) 6 SCC 121, Supreme Court, inter-alia, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in Reshma Kumari & Ors. Vs. Madan Mohan & Anr., , (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors. vs. Rajbir & Ors., , (2013) 9 SCC 54, the issue was later referred to a larger bench, inter-alia, by order dated 02.07.2014 in National Insurance Company Ltd. vs. Pushpa & Ors., , (2015) 9 SCC 166.

12. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (Sunil Kumar v. Pyar Mohd.), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

13. The claimants in the two aforementioned cases arising out of the deaths of Jitender Kumar & Satish Kumar did not lead any formal evidence with regard to the engagement of the said persons in avocations stated in the petitions. It is noted that though it was claimed that the said persons were working for gain by running their respective shops/establishments, even the addresses of the said shops were not declared. Mere production of bill books cannot be believed. In these circumstances, this court agrees with the submission of the insurance company that the income could not have been assessed merely on the verbal claim of the respective claimants. The rule in *Reshma Kumari (supra)* applies to the matters arising out of deaths of Satish Kumar and Jitender Kumar because the claimants here pleaded that the said deceased persons were self employed and have not led any evidence showing their income to be reflecting periodic increase.

14. It is admitted in the evidence that Jitender Kumar was only a matriculate. Satish Kumar, on the other hand, had studied up-to 12th standard. The safest benchmark for notional income to be arrived at in both cases, would be minimum wages payable to a matriculate as on 07.08.2007 (the date of accident and deaths), which was Rs. 3964/- per month. While calculating the loss of dependency, the tribunal added the element of future prospects of increase in income to the extent of fifty percent (50%).

15. Since Pramod Pal, Jitender Kumar and Satish Kumar were admittedly self employed persons, in absence of any formal proof of periodic increase in their income, the element of future prospects could not have been added. The awards, in these cases, thus, need suitable correction to this extent.

16. In the cases of deaths of Pramod Pal and Jitender Kumar, they being bachelors, the claimants were primarily the parents, though in the former case even his younger sisters had joined as co-petitioner. In the case of death of Satish Kumar, he being a married person, besides parents, his younger sister, widow and children were joined as co- claimants. In all these cases, the tribunal also considered non-pecuniary damages. In the case of death of Pramod Pal, Rs. 10,000/- each was awarded on account of loss of love & affection, loss of estate and funeral charges. In case of death of Jitender Kumar, Rs. 10,000/- each was awarded on account of love & affection and loss of estate besides Rs. 5,000/- towards funeral expenses.

17. This court agrees with the submission that the approach of the tribunal in awarding non-pecuniary damages under above heads has not been consistent or adequate. There is no explanation as to why there was variation in the awards particularly in the cases of deaths of Jitender Kumar and Satish Kumar. There is also no explanation as to why no award was made on account of loss of consortium in the case of death of Satish Kumar.

18. Upon above contentions being raised, the learned counsel for the insurance company objected on the ground that no appeals have been filed by the

claimants to raise these grievances. In the considered view of this court, this submission is improper. Once the insurance company questions the computation, the issue of adequate compensation is at large. Even otherwise, it being a benevolent jurisdiction, this court is duty bound to bring in correction wherever there is an error or deficiency in the award of compensation.

19. The accident in the cases at hand had occurred on 07.08.2007. The precedent nearest home respecting non-pecuniary damages is that of the judgment in the case of *Rajesh & Ors. v. Rajbir Singh & Ors.*, , (2013) 9 SCC 54. In the said case, the accident had occurred on 05.10.2007. The Supreme Court had awarded Rs. 1,00,000/- on account of loss of love & affection, Rs. 1,00,000/- on account of loss of consortium and Rs. 25,000/- on account of funeral expenses. In *Shashikala V. Gangalakshamma* , (2015) 9 SCC 150, the accident had occurred on 14.12.2006. The Hon"ble Supreme Court adopted identical approach and awarded similar non-pecuniary damages adding Rs. 25,000/- towards loss of estate. In the considered opinion of this court, damages under the non-pecuniary heads in the three cases of deaths will have to be awarded on similar lines.

MAC Appeal no. 510/2012

20. The deceased Pramod Pal was 25 years old. As observed above, the claimants proved to the satisfaction of the tribunal that he was earning Rs. 1,31,700/- per annum as was the income declared by him in preceding financial year. To calculate the loss of dependency, the element of income tax will have to be deducted. But then, the income being so low, quite near to the minimum exempt level of income for the corresponding year, such deduction would not be justified in the case at hand. The tribunal adopted the multiplier of 13 and rightly so, having regard to the age of claimants. But, since the deceased was unmarried, fifty percent (50%) of the income is to be deducted towards his personal and living expenses. The monthly loss of dependency, thus, comes to $(131700/2)$ Rs. 65,850/-. The total loss of dependency is calculated at (65850×13) Rs. 8,56,050/-. Adding the non-pecuniary damages in the sum of Rs. 1,00,000/- on account of loss of love & affection, Rs. 25,000/- on account of funeral expenses and Rs. 25,000/- on account of loss of estate, the total compensation in this case works out to Rs. 10,06,050/-, rounded off to Rs. 10,07,000/-. The award is suitably modified and reduced accordingly.

21. Having regard to the consistent view taken by the Hon"ble Supreme Court in series of cases that 9% would be an appropriate rate of interest, it is directed that the award shall carry interest @ nine percent (9%) per annum from the date of filing of petition till realization [*Kaushnuma Begum vs. New India Assurance Co. Ltd.* , (2001) 2 SCC 9; *Supe Dei vs. National Insurance Co. Ltd.* (2009) 4 SCC 513; *Municipal Corporation of Delhi, Delhi vs. Association of Victims of Uphaar Tragedy and Ors.* , (2011) 14 SCC 481; *Basappa vs. T. Ramesh* , (2014) 10 SCC 789; *Syed Sadiq etc. vs. Divisional Manager, United India Ins. Company* , (2014) 2 SCC 735; *Surti Gupta vs. United India Insurance Company and Ors.* ,

2015 (3) SCALE 795; Kumari Kiran vs. Sajjan Singh , (2015) 1 SCC 539].

MAC Appeal no. 734/2012

22. Jitender Kumar was 25 years old at the time of his death. As it has been already observed, loss of dependency in this case needs to be calculated on the basis of minimum wages of Rs. 3964/- per month. The claimants in this case are parents of the deceased. The tribunal apparently committed an error by mentioning the age of father as 55 years and age of mother as 53 years and on that basis adopted multiplier of 11. Copies of voter ID cards on record instead show the age of the father and the mother, at the relevant time, as 51 and 45 years respectively. Taking the average of 48 years, the multiplier of 13 should have been adopted in order to compute the loss of dependency [Sarla Verma (supra)]. The deceased was a bachelor and, thus, fifty percent (50%) of the income is to be deducted towards his personal and living expenses. The monthly loss of dependency, therefore, comes to Rs. 1,982/-. The total loss of dependency comes to $(1,982 \times 12 \times 13)$ Rs. 3,09,192/-. Adding the non-pecuniary damages in the composite sum of Rs. 1,50,000/- on the same lines as mentioned in the case of Pramod Pal above, the total compensation comes to Rs. 4,59,192/- or rounded off to Rs. 4,60,000/-.

23. The compensation is accordingly reduced to Rs. 4,60,000/-. It shall also carry interest at the rate of nine percent (9%) as levied in the case of Pramod Pal above.

MAC Appeal no. 741/2012

24. The deceased Satish Kumar was 24 years old at the time of his death. The tribunal, thus, correctly adopted the multiplier of 18, taking note of the fact that he was a married person and had left behind his widow and minor children besides other dependants. As observed above, his income has to be notionally assessed at the rate of minimum wages of Rs. 3,964/- per month. Since the number of dependants was six, $\frac{1}{4}$ only needs to be deducted towards the personal and living expenses. The loss of dependency in this case, thus, comes to $(3,964 \times \frac{3}{4})$ Rs. 2,973/-. The total loss of dependency, thus, works out to $(2,973 \times 12 \times 18)$ Rs. 6,42,168/- or rounded off to Rs. 6,43,000/-. In this case, the element of Rs. 1,00,000/- on account of loss of consortium deserves to be added to the non-pecuniary damages awarded in other two cases and, thus, adding Rs. 2,50,000/-, the total compensation in this case comes to Rs. 8,93,000/-. The compensation is reduced accordingly. It shall also carry interest at the rate of nine percent (9%) per annum as in the above cases.

MAC Appeal no. 827/2012

25. As mentioned earlier, this is a claim case arising out of injuries suffered by the claimant (appellant).

26. The evidence adduced by the claimant indicated that he was engaged in the job of property dealer earlier and earning Rs. 10,000/- per month. However, no

formal proof in support thereof was submitted. The tribunal presumed the income of the injured to be Rs. 5,000/- per month. There is no basis to the said assumption. The claimant admitted during the evidence that he has studied up-to fifth standard. He did not even show any proof of the establishment which he was running as a property dealer. In these circumstances, the only bench mark that could have been applied is that of minimum wages of Rs. 3,516/- payable to an unskilled worker. The loss of compensation, thus, needs to be worked out accordingly.

27. The appellant claims that he had been rendered disabled and was unable to work for gain for a period of one year. Though the evidence led does not show this specifically, there is material on record to indicate that the injuries suffered by him were grievous in nature. He had suffered multiple fractures, one of the shaft femur bone of the right limb and other in head region. The evidence also showed that nail had to be implanted in the bone of the limb. Thus, he was required to undergo another surgical procedure in August, 2008 besides bone grafting. From this material, this court is inclined to accept the case that the claimant was rendered unable to work for gain for a period of one year, for which he needs to be compensated.

28. Therefore, the award on account of loss of income @ Rs. 15,000/- granted by the tribunal is found to be highly inadequate. In the opinion of this court, the loss of income to the tune of (3,516x12) Rs. 42,192/- deserves to be granted under this head.

29. The learned counsel for the appellant conceded that he was unable to prove medical expenses beyond Rs. 1,33,360/-. The tribunal awarded Rs. 1,50,000/- on this score which cannot be grudged.

30. Indeed, the award under the heads of pain and sufferings on the one hand and conveyance and special diet each at Rs. 20,000/- is on the lower side. In the given facts and circumstances, the awards under above mentioned twin heads are increased to Rs. 30,000/- each.

31. Thus, the total compensation payable comes to Rs. 2,52,192/-, rounded off to Rs. 2,53,000/-. The compensation is increased accordingly. It shall also carry interest at the rate of nine percent (9%) per annum as in the above cases.

Final Directions:-

32. The award of compensation in the three cases of death has been reduced. In each of the said cases, the insurance company had been earlier directed to deposit entire awarded amount with up-to-date interest. In MAC appeal nos. 510/2012 & 741/2012, forty percent (40%) of the awarded amount had been allowed to be released in favour of the claimants, the balance having been kept in fixed deposit receipt. In MAC appeal no. 734/2012, similar orders were passed, though fifty percent (50%) was allowed to be released in favour of the claimants.

33. The Registrar General is directed to calculate the amounts payable to the claimants in terms of the awards as modified above and release the amounts due to the claimants in terms of the directions in the impugned awards, refunding the excess amounts alongwith proportionate interest.

34. The statutory deposits in the appeals of the insurance company, if any, shall also be refunded.

35. The appeals with the pending applications are disposed of in above terms.

36. Trial court records be returned.