

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC APP. NO.88/2008

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Mr. L.K. Tyagi, Advocate.

versus

SIYA RAM AND ANR. Respondents
Through: Mr. S.N. Parashar, Advocate.

% Date of Reserve : November 08, 2010
Date of Decision : November 29, 2010

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

By way of this appeal the appellant seeks to assail the Award dated 7th September, 2007 passed by the learned Motor Accident

Claims Tribunal whereby the respondent no.1 was held entitled to compensation in the sum of ₹ 7,43,000/- together with interest @ 7% per annum from the date of the filing of the petition till the date of the realization of the compensation.

2. The facts leading to the filing of the claim petition briefly delineated are that on 22nd December, 2004, Sh. Satyapal Singh (hereinafter referred to as 'the deceased') was hit by a Tata Sumo while crossing the road at Noida T-point, near the Petrol Pump ,Patparganj. The said Tata Sumo was being driven rashly and negligently by its driver (the respondent no.2 herein), who was coming from the Nizamuddin side at a very high speed. The respondent no.2 stopped for a while and then fled from the spot. A first information report bearing FIR No. 687/2004 dated 23rd December, 2004 was recorded at Police Station Pandav Nagar in respect of the accident, but the offending vehicle could not be traced out. Subsequently, however, a charge-sheet was filed against the respondent no.2 on a complaint received from the eye-witness to the accident, Sh. Jag Pravesh, who subsequently appeared in the witness-

box as PW2. In the said charge sheet the number of the offending Tata Sumo was disclosed as No. HR-01-Q-5150. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was accordingly filed by the respondent no.1, the father of the deceased and the sole legal representative of the deceased, against the driver, owner and the insurer of the said vehicle.

3. Since the appellant and the respondent no.2 did not appear before the Tribunal despite service of summons upon them, they were proceeded ex parte. Subsequently, however, the appellant joined the proceedings and at the time of the cross-examination of PW1, Sh. Siya Ram (the respondent no.1 herein), the counsel for the respondent no.2 moved an application under Section 170 of the Motor Vehicles Act to cross-examine PW1 which was allowed on the same date, i.e., 3rd August, 2006.

4. The award has been assailed by Mr. L.K. Tyagi, the counsel for the appellant principally on the ground that the learned Motor Accident Claims Tribunal failed to appreciate that the claimant had planted an eye-witness after seven months of the accident, without

any explanation as to why the said eye-witness did not immediately inform the police about the accident and the vehicle involved. Rather, he kept silent for about seven months. It has been argued on behalf of the appellant that in the circumstances, no reliance should have been placed by the Tribunal on the testimony of the said eye-witness (PW2, Sh. Jag Pravesh) who had been introduced subsequently and in fact was not an eye-witness at all.

5. The only other submission of Sh. L.K. Tyagi, the learned counsel for the appellant, is that the Tribunal had erred in not deducting the personal expenses of the deceased out of the income of the deceased for the purpose of computing the compensation. According to the learned counsel, in the present case, only the father of the deceased was the claimant and, therefore, the Tribunal ought to have taken his dependency at half of the income of the deceased.

6. Rebutting the aforesaid contentions, Sh. S.N. Parashar, the learned counsel for the respondent no.1 (claimant), invited my attention to the chargesheet of Police Station Pandav Nagar, filed before the learned Additional Sessions Judge, and pointed out that the

name of the eye-witness Sh. Jag Pravesh was shown at serial no.8 of the list of witnesses enclosed with the charge-sheet whereas the complaint filed by the eye-witness was also enclosed with the chargesheet, which was dated 14th July, 2005, and was received in Police Station Pandav Nagar on the following day i.e. 15th July, 2005, as evidenced by the receipt which was duly signed and stamped with the seal of the aforesaid Police Station. The learned counsel submitted that the Tribunal after perusing the entire testimony of PW2 and going through the complaint written by PW2 to the police had rightly come to the conclusion that the testimony of PW2 could safely be relied upon.

7. The basic facts pertaining to the case are not in dispute. The deceased suffered fatal injuries in a hit-and-run accident. The eye-witness to the accident, as it appears from the letter written by him to the police on 14th July, 2005, would have liked to avoid appearing in the witness-box as a witness to the offence, but could not withstand the burden upon his conscience, which ultimately compelled him to depose against the driver of the offending vehicle. The appellant-

Insurance Company was clearly unable to shake his testimony. Not only this, the appellant has not even hinted to any relationship or even friendship of PW2 with the deceased and/or his family. In such circumstances, in my view, the testimony of PW2 which is unscathed can be safely relied upon. There is, therefore, to my mind, no substance in the first submission of the appellant that the eye-witness was a planted one.

8. The only other submission of the appellant's counsel was that the learned Tribunal had erred in not deducting the personal expenses of the deceased while computing the loss of dependency of the claimant (the respondent no.1 herein), resulting in the compensation granted being on the higher side. I find from the Award that this is in fact so. Paragraph 14 of the Award is apposite, which reads as under: -

“14. Ex.PW1/8 is a compensation sheet. This shows that basic pay of deceased was ₹ 5500/-. Therefore, compensation can be assessed only on the basis of his basic pay. Since multiplier on the basis of age of parents is being applied, therefore, one third has not to be reduced in lieu of the expenses which the deceased would have incurred towards maintaining himself had he

been alive. On calculation the loss of dependency comes to ₹ 5500/- x 12 x 11 = ₹ 7,26,000.00. If multiplier on the age of petitioner is applied then loss of dependency comes to ₹ 5500/- - 1/3 x 12 x 17 = ₹ 7,48,000.00.”

9. It is not understandable as to how the Tribunal came to the conclusion that since the multiplier being adopted by it was on the basis of the age of the parents, no deduction was required to be made towards the personal expenses of the deceased. However, the learned Tribunal on the basis of the compensation sheet (Ex.PW1/8) rightly came to the conclusion that the basic pay of the deceased was ₹ 5500/- per month. The learned Tribunal also rightly held that in view of the admission made by the PW1 in his cross-examination that the employment of the deceased was not permanent but only for a period of 6 months as trainee, i.e. from 29th September, 2004 to 28th March, 2005, the claimant was not entitled to compensation in lieu of future prospects. The Tribunal also correctly applied the multiplier of 11 keeping in view the fact that the claimant, who was the father of

the deceased was 54 years as on 3rd August, 2006, meaning thereby that he was 52 years of age on the date of the accident.

10. In view of the above, in my opinion, the ends of justice would be met if one half of the salary of the deceased is deducted towards his personal expenses for the purpose of computing the loss of dependency of the respondent no.1. Thus calculated, the income of the deceased for the purpose of computing loss of dependency comes to ₹ 2750/- per month (i.e. one half of ₹ 5500/-). The total loss of dependency thus works out to $\text{₹ } 2750 \times 12 \times 11 = \text{₹ } 3,63,000/-$. As regards the non-pecuniary damages, the Tribunal has awarded a sum of ₹ 15,000/- towards the loss of love and affection and loss of estate of the deceased and a sum of ₹ 2000/- towards the funeral expenses of the deceased. I do not find any cogent reason to interfere with the said award. Thus, in all, the compensation payable to the respondent no.1 by the appellant comes to ₹ 3,80,000/-. The respondent no.1 shall also be entitled to interest @ 7% per annum from the date of filing of the appeal till the date of realization of the compensation.

11. The appellant is directed to deposit the award amount with the Registrar General of this Court by way of crossed cheques within a period of 30 days from the date of this judgment. It is further directed that the amount so deposited shall be released to the respondent no.1 (claimant) in terms of the award. The award stands modified to the above extent.

12. The appeal stands disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

November 29, 2010
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