

Date of Decision: 12th March, 2010

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+ MAC.APP. 271/2007

TATA A.I.G.GENERAL INSURANCE CO. LTD..... Appellant
Through : Ms. Anjali Bansal, Adv.

versus

RAMWATI & ORS. Respondents
Through : Mr. Navneet Goyal and
Mr. Varun Kumar, Adv.

+ MAC.APP.No.379/2007

RAMWATI & ORS Appellants
Through : Mr. Navneet Goyal and
Mr. Varun Kumar, Adv.

versus

SUKHVIR SINGH & ORS Respondents
Through : Ms. Anjali Bansal, Adv.
for R-3.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.31,42,800/- has been awarded to the claimants. The appellant in MAC.APP.No.271/2007 is seeking reduction of the award

amount whereas the appellants in MAC.APP.No.379/2007 are seeking enhancement of the award amount.

2. The accident dated 23rd February, 2005 resulted in the death of Jasbir Singh. The deceased was survived by his widow, two sons, one daughter and parents who filed the claim petition before the learned Tribunal.

3. The deceased was travelling in Toyota Qualis bearing No.DL-4C-P-0059 on Delhi-Rohtak highway. At Kharawad bye-pass near Sudhir Factory, Gandhra More, Sampla, a Maruti Zen car bearing No.DL-4C-5540 came from the approach road and hit the Toyota Qualis due to which Toyota Qualis overturned and fell into the ditch resulting in death of Jasbir Singh. The deceased was aged 44½ years at the time of the accident and was working with State Bank of India drawing Rs.21,128/- per month. The learned Tribunal added 50% towards the future prospects, deducted 20% towards Income Tax, deducted 1/3rd towards the personal expenses and applied the multiplier of 15 to compute the loss of dependency at Rs.30,52,800/-. Rs.40,000/- has been awarded towards loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.31,42,800/-.

4. The learned counsel for the appellants in MAC.APP.No.271/2007 has urged the following grounds at the time of hearing of this appeal:-

- (i) The driver of the Toyota Qualis was contributory negligent for the accident and, therefore, liability of the appellant is liable to be reduced.
- (ii) The income of the deceased should be taken as Rs.20,053/- per month.
- (iii) The multiplier be reduced from 15 to 14.
- (iv) The compensation be reduced on the ground that the widow of the deceased is getting pension.
- (v) The future prospects be reduced from 50% to 30%.
- (vi) The compensation towards loss of consortium and loss of love and affection be reduced.

5. On the aspect of negligence, the eye-witness, Lal Singh Saini appeared in the witness box as PW-5 and deposed that he was travelling in the Toyota Qualis along with the deceased at the time of the accident. He further deposed that the Toyota Qualis was on the highway and the Maruti Zen car bearing No.DL-4C-5540 came from the link road and hit the Toyota Qualis on the left side with a very great force. PW-5 further deposed that the accident occurred due to rash and negligent driving of the Maruti Zen Car. The widow of the deceased appeared in the witness box as PW-2 and also deposed on the same lines. The Investigating Officer of the police appeared in the witness box as R3W2 and deposed that the Toyota Qualis was on the highway towards Sampla

and the Maruti Zen came from the approach road and hit the Toyota Qualis and the case was registered against the driver of Maruti Zen in FIR No.29/05. The driver of Maruti Zen appeared in the witness box as RW1 and deposed that the accident occurred due to rash and negligent driving of the Toyota Qualis. However, in cross-examination, he admitted that he came from the side road and approached the main road but did not see the Toyota Qualis. RW-1 further admitted that the accident occurred when he was mounting on the main highway from the side road. RW-1 further admitted that the Maruti Zen stopped on the same side of the road hardly two-three feet from the point of impact. RW-1 further admitted that he ran away from the spot of occurrence after the accident. From the statements of the eye-witnesses, PW-2 and PW-5, Investigating Officer-R3W2 and driver of the Maruti Zen Car, RW1, rash and negligent driving of the driver of Maruti Zen Car is sufficiently proved. The finding of the learned Tribunal in this regard is upheld.

6. The deceased was aged 44½ years at the time of the accident and the appropriate multiplier according to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 14 whereas the learned Tribunal has applied the multiplier of 15. The multiplier is, therefore, reduced from 15 to 14.

7. The deceased was working as Special Assistant with State Bank of India at the time of the accident. In the claim petition, it was mentioned that the salary of the deceased was Rs.20,053/- per month. However, the witness from State Bank of India appeared as PW-1 and proved the certificate dated 16th December, 2005 in respect of the salary paid to the deceased in the month of January, 2005 as Ex.PW1/A according to which Rs.20,053/- was paid to the deceased. The Manager of State Bank of India appeared in the witness box as PW-3 and deposed that the gross salary of the deceased at the time of the accident was Rs.21,128/- per month. The salary certificate for the month of February, 2005 was proved as Ex.PW3/A according to which the gross salary of the deceased in February, 2005 was Rs.21,128/-. The service sheets of the deceased were also proved as Ex.PW3/B.

8. In view of the difference in amount in Ex.PW1/A and Ex.PW3/A, the Manager of State Bank of India was recalled by the learned Tribunal and he clarified that both the certificates Ex.PW2/1 and Ex.PW3/A were issued by him. He further clarified that there was a mistake as special compensatory allowance of Rs.975/- was not shown in Ex.PW3/A, and Ex.PW2/1 was issued for the salary actually drawn by the deceased last time before his death whereas Ex.PW3/A was prepared after the revision of the salary in pursuance to Bank settlement in November, 2002. The

witness produced another certificate-Ex.PW3/C. The learned Tribunal has taken the salary of the deceased at the time of the accident to be Rs.21,128/- per month in terms of Ex.PW3/A. The finding of the learned Tribunal in this regard with respect to the salary of the deceased is upheld.

9. The learned Tribunal has deducted 20% towards the Income Tax. As per the calculation by the Accounts Department of this Court, the deceased would have paid Income Tax of Rs.6,638/- per annum subject to the Saving of Rs.1,00,000/- by the deceased. However, if the saving of Rs.1,00,000/- is not taken into consideration, the approximate Income Tax would be to the tune of Rs.27,000/- per annum. In either case, the 20% deduction towards the Income Tax by the Claims Tribunal is not justified. Rs.2,128/- is deducted towards the Income Tax on Rs.21,128/- and the income of the deceased for computation of compensation is taken as Rs.19,000/- per month.

10. The learned Tribunal added 50% towards the future prospects. The deceased was aged 44½ years at the time of the accident and the future prospects in terms of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (Supra) has to be 30% of the salary. The future prospects of the deceased are reduced from 50% to 30%.

11. The learned counsel for Insurance Company submits that pension being received by claimant/appellant No.1 should be deducted from the loss of dependency of the

deceased. The judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (Supra) does not permit any deduction to be made on account of pension being received by the family of the deceased after his death. No judgment has been cited by the learned counsel for the Insurance Company in support of her submission. In **United India Insurance Co. Ltd. vs. Patricia Jean Mahajan, II(2002) ACC 460**, the Hon'ble Supreme Court has held as under:-

“33.....Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The court has further referred to receipts of Provident Fund which is a deferred payment out of contribution made by an employee during tenure of his service. Such an employment is payable irrespective of accidental death of the employee. The same is the position relating to family pension. There is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in paragraph 18 of the judgment.”

12. Following the aforesaid judgment, it is held that the pension being received by the widow of the deceased is not deductible from the loss of dependency.

13. The learned Tribunal has deducted 1/3rd towards the personal expenses of the deceased. The deceased has left behind six legal representatives and, therefore, the appropriate deduction according the judgment of the Hon'ble

Supreme Court in the case of **Sarla Verma** (Supra) is $\frac{1}{4}^{\text{th}}$. The personal expenses of the deceased are reduced from $\frac{1}{3}^{\text{rd}}$ to $\frac{1}{4}^{\text{th}}$.

14. The learned Tribunal has awarded Rs.40,000/- towards loss of consortium and Rs.40,000/- towards loss of love and affection which are on a higher side. The compensation towards loss of consortium is reduced from Rs.40,000/- to Rs.10,000/- and the compensation towards loss of love and affection is also reduced from Rs.40,000/- to Rs.10,000/-. Rs.10,000/- is awarded for loss of estate.

15. Taking the income of the deceased to be Rs.19,000/- per month, adding 30% towards the future prospects, deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses and applying the multiplier of 14, the loss of dependency is computed to be Rs.31,12,200/- $[(Rs.19,000 + 30\% \text{ of } Rs.19,000) \times 12 \times \frac{3}{4} \times 14]$. Adding Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses, the total compensation is computed to be Rs.31,52,200/- $(Rs.31,12,200 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000)$.

16. Both the appeals are partially allowed and the compensation is enhanced from Rs.31,42,800/- to Rs.31,52,200/-.

17. The award amount along with interest be deposited by the Insurance Company with UCO Bank A/c Ramwati, Delhi

High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

18. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the same to claimants/appellants in MAC.APP.No.379/2007 in equal shares. The remaining amount be kept in fixed deposit in the following manner:-

- (i) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.1 for a period of one year.
- (ii) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.5 for a period of two years.
- (iii) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.2 for a period of three years.
- (iv) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.3 for a period of four years.
- (v) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.3 for a period of five years.
- (vi) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.4 for a period of six years.

(vii) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.1 for a period of seven years.

(viii) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.1 for a period of eight years.

(ix) Fixed deposit in respect of 10% of the award amount in the name of claimant/appellant No.1 for a period of nine years.

19. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of claimant/appellant No.1.

20. Withdrawal from the aforesaid account shall be permitted to claimant/appellant No.1 after due verification and the Bank shall issue photo Identity Card to claimant/appellant No.1 to facilitate identity.

21. No cheque book be issued to claimant/appellant No.1 without the permission of this Court.

22. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the claimants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

23. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

24. Half yearly statement of account be filed by the Bank in this Court.

25. On the request of the claimants, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the claimants.

26. The claimants shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

27. After deposit of the enhanced award amount along with interest in terms of this judgment, the Registry is directed to refund the statutory amount deposited by the appellant in MAC.APP.No.271/2007.

28. Copy of the order be given dasti to counsel for both the parties under signatures of the Court Master.

29. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

MARCH 12, 2010
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