

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

% *Judgment reserved on : 10.08.2011*
Judgment delivered on : 12.08.2011

+ **MAC APPEAL No.8/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr.K.L. Nandwani, Advocate

Versus

SOM NATH & OTHERS Respondents
Through: Mr.Sanjeev Mehta, Advocate
for the claimants.
Mr. Harish Gupta, Advocate
for respondent No. 4.

MAC APPEAL No.83/2011

SOM NATH SHARMA & ANOTHER Appellants
Through: Mr.Sanjeev Mehta, Advocate

Versus

NARESH KUMAR & OTHERS Respondents
Through: Mr.K.L. Nandwani, Advocate
for the Insurance company

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, I.

1 These are two appeals which have arisen out of the Award dated 14.09.2010 wherein compensation in the sum of ₹3,57,000/- along with interest @ 7.5% per annum had been awarded in favour of the claimants from the date of filing of the petition till realization.

2 The first appeal i.e. MAC APPEAL No. 8/2011 has been filed by the Insurance Company. Admittedly permission under Section 170 of the Motor Vehicle Act (MVA) has not been taken by the Insurance Company before filing this appeal. The contention of the appellant/Insurance Company is that no such permission is required. The grounds of appeal as is evident from the body of the appeal is that vehicle in question i.e. Qualis was not involved in the accident; contention is that this has not been correctly appreciated by the Tribunal; the amount awarded is exorbitant; it is on the higher side; only a just and fair compensation was to be awarded; claimants could not have been enriched; Award has accordingly been challenged on the aforementioned grounds. In the body of the appeal itself, it has been stated that permission under Section 170 of the MVA is not required.

3 Learned counsel for the non-applicants/claimants submits

that appeal of the appellant is not maintainable in view of mandatory permission which is required under Section 170 of the MVA.

4 Under Section 170 of the MVA, the insurer has no right to file an appeal on grounds other than those available to it under Section 149 (2) of the MVA. Section 149(2) of the MVA is a provision engrafted to ensure that the victims of motor vehicle accidents are compensated and protected; Insurance Company cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those conditions which are specified under Section 149 (2) of the MVA; only those defences which are covered under Section 149 (2) are available to the insurer. In the instant case as is evident from the body of the appeal the claim of compensation has been challenged; this could not have been permissible unless permission under Section 170 of the MVA had been obtained. In the absence of this procedure having been followed, the appeal filed by the Insurance Company is not maintainable. This Court is fortified in this view in view of judgment delivered by another Bench of this Court in MAC APPEAL No. 560/20006 dated 28.03.2008 in the case of M/s National Insurance Co. Ltd. Vs. Mrs.

Ashoka Devi and Others. The appeal of the Insurance Company is
MAC APPEAL Nos.8/2011 & 83/2011

liable to be dismissed on this ground. It is accordingly dismissed.

5 The second appeal i.e. MAC APPEAL No. 83/2011 is an appeal filed by the claimants seeking enhancement of compensation. The compensation awarded as noted supra is in the sum of ₹3,57,000/- along with interest @ 7.5% per annum. The claimants are the parents of the victim Kunal @ Sonu. The deceased was coming on a motor cycle along with two persons when he was hit by Qualis No.DL-6CG-6601 which had been driven in rash and negligent manner; Qualis had fled away from the scene; one eye witness Bhagat Singh had been examined. It was not refuted that the Qualis was insured with the Insurance Company; contention of the Insurance Company was that this vehicle was not involved in the accident; however, since the appeal filed by the Insurance Company has been dismissed, this Court need not examine or deal with this argument.

6 The claimants have assailed the compensation on the ground that the multiplier of 13 has been applied when as per the structured formula contained in the second Schedule of the MVA which is applicable to a claim petition under Section 163-A of the MVA, the multiplier of 17 should have been applied. This submission of learned counsel for the appellant is borne out. The

victim was aged 23 years on the date of incident; age of victim was relevant to apply the multiplier in the case of a claim under Section 163-A of the MVA. The multiplier from 13 is accordingly modified to 17.

7 The next contention of learned counsel for the appellant is that although the minimum wages of the victim had been taken into account at ₹3,300/- per month yet the benefit of price index rise and cost of inflation had not been taken into account. Reliance has been placed upon the judgments reported in 2008 ACJ 2182 (Delhi) Kanwar Devi Vs. Bansal Roadways, 2007 ACJ 2165 (Delhi) Lekhraj Vs. Suram Singh and 2009 ACJ 1921 (Delhi) National Insurance Co. Ltd. Vs. Renu Devi to substantiate the submission that 50% increase has to be considered as price rise and judicial notice of the fact should be taken into account that minimum wages are likely to be doubled in the next 10 years. This submission has been countered by learned counsel for the Insurance Company who states that price rise and cost of index inflation cannot be considered in a claim petition under Section 163-A of the MVA.

8 To counter this submission learned counsel for the claimants has placed reliance upon a judgment of the coordinate Bench of this Court reported in 2009 (3) T.A.C. 120 (Del.) New India
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Assurance Co. Ltd. Vs. Mohd. Jabir & others where also future prospects were taken into account and the income of the deceased was doubled; this was also in a claim petition under Section 163-A of the MVA. The rider which has to be kept in mind is that the income calculated by the Tribunal should not exceed ₹40,000/- per annum which is a pre-requisite for the applicability of the provisions under Section 163-A of the MVA.

9 Both these contentions of learned counsel for the claimants have force. The benefit of price rise index and cost of inflation has to be given to the victim. The compensation thus assessed would read as under:-

Salary of the deceased	₹3,300/-
Adding future prospects (50%)	<u>₹1,650/-</u>
	₹4,950/-
Deducting 1/3rd personal expenses	<u>₹1,650/-</u>
	₹3,300/-X12X17 = ₹6,73,200/-

10 The amount awarded under the head of funeral expenses, loss of estate and hospitalization & treatment expenses calls for no interference.

11 Both the appeals are disposed of in the above terms.

INDERMEET KAUR, J.

AUGUST 12, 2011

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