

UNREPORTED

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

+ MAC.APP. NO.360/2009 and CM NO. 10356/2009

ICICI LOMBARD INSURANCE CO. LTD. Appellant
Through: Ms. Suman Bagga, Advocate.
versus
JAI CHAND SHARMA & ORS. Respondents
Through: Mr. Uday Bhan Singh,
Mr. Mukesh Chauhan and
Mr. G.S. Chaturvedi, Advocates.

AND

+ MAC.APP. NO.446/2009 and CM NO. 13150/2009

JAI CHAND SHARMA & ANR Appellants
Through: Mr. Uday Bhan Singh,
Mr. Mukesh Chauhan and
Mr. G.S. Chaturvedi, Advocates.
versus
ICICI LOMBARD INSURANCE CO. LTD. & ANR. Appellants
Through: Ms. Suman Bagga, Advocate, for
the respondent no.1.

% Date of Decision : February 7, 2011

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?

J U D G M E N T

: REVA KHETRAPAL, J.

By way of this order it is proposed to decide two appeals, one filed by the appellant-the ICICI Lombard General Insurance Company Ltd., being MAC App. No. 360/2009 for scaling down the compensation awarded to the respondents No.1 and 2 herein by its award dated 29th May, 2009 and the other filed by Jai Chand Sharma being MAC App. No. 446/2009 for enhancement of the compensation awarded by the Motor Accident Claims Tribunal by its aforesaid Award.

2. Briefly delineated the facts are that on 28th November, 2005, one Surya Kant Sharma, son of the respondents No.1 and 2, who was aged 22 years and 10 months, while driving his scooter was hit by a Santro car driven by the respondent no.3, Hari Krishen Pandita. Allegedly, the car was being driven at a shooting speed and first hit from the side a scooter driven by Mr. Durgesh Saini (PW2) and thereafter hit the back side of the scooter of Surya Kant Sharma, who succumbed to his injuries on the same day. Surya Kant Sharma (hereinafter referred to as 'the deceased'), being the only son of the

appellants, the appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 for the grant of compensation for his untimely demise.

3. The learned Motor Accident Claims Tribunal after ruling that the death of the deceased had been caused by the rash and negligent driving of the respondent no.3 held the appellant, Insurance Company, liable to pay compensation to the respondents No.1 and 2. The respondent no.1 (in MAC APP No. 360/2009) is the father of the deceased while the respondent no.2 is the mother, who was 45 years of age at the time of his death. The Tribunal assessed the income of the deceased to be in the sum of ₹ 11,500/- per month at the time of his demise and held that the multiplier applicable to the said multiplicand for the purpose of capitalizing and arriving at the loss of dependency would be the multiplier of 14, keeping in view the fact that the age of the mother of the deceased was 44 years on the date of the accident and 45 years at the time of the filing of the petition. The Tribunal then reasoned that the deceased being a bachelor must have spent 50% of his income on himself and deducting half (1/2) from the income of the deceased, computed the total loss of dependency to be

in the sum of ₹ 9,66,000/-, to which the Tribunal added non-pecuniary damages for the loss of love and affection, funeral expenses and loss of estate and thus held the total compensation to be in the sum of ₹ 10,31,000/- (including the amount of interim award paid to the claimants) with interest @ 7.5 % per annum from the date of the filing of the petition till its realization.

4. Aggrieved from the aforesaid award, the parents of the deceased, who were the claimants before the Tribunal, and the insurance company, which was the insurer of the offending vehicle, being the Santro car, have both appealed against the same, the former for the enhancement of the compensation and the latter for scaling it down.

5. The appellants assailed the award on the ground that the Tribunal has erred in not taking into account the future prospects of the deceased who was a graduate and who at the age of 22 years or say 23 years was earning a sum of ₹ 11,500/- per month. Mr. Uday Bhan Singh, the learned counsel for the appellants contended that the deceased apart from giving tuitions from which he was earning a sum of ₹ 84000/- per annum, was earning a further sum of 4500/- per

month as evidenced by his salary certificate dated 10th February, 2005 (Ex.PW1/6), which shows that his last drawn salary was ₹ 4500/- per month. Reference was made by him to the documents Ex.PW1/4 – copy of the graduation marksheet of the deceased, Ex.PW1/5 – the income tax returns of the deceased for the assessment years 2004-05 and 2005-06 and Ex.PW1/7 – the tuition fees details issued by the Welfare Association.

6. The document Ex.PW1/4 indisputably shows that the deceased was a graduate. The two income tax returns of the deceased for the assessment years 2004-05 and 2005-06, collectively marked as Ex.PW1/5, show that the income of the deceased was ₹ 48,000/- per annum for the assessment year 2004-05 and was ₹ 84,000/- per annum for the assessment year 2005-06. Document Ex.PW1/6, as stated above, is the salary certificate of the deceased which is issued by a Limited Company and Ex.PW1/7 are the tuition fee details issued by the Welfare Association concerned.

7. The above documentary evidence is corroborated by the testimony of PW1, the respondent no.1 (Jai Chand Sharma) and PW3 (wrongly recorded as PW2 by the Tribunal), the respondent no.2

(Smt. Raj Bala). PW4 (wrongly recorded as PW3 by the Tribunal), Mr. Ashok Kumar, son of Thakri Singh, testified that two of his sons, Nitender Chauhan and Joginder Chauhan, were under the tutelage of the deceased since the year 2002 till the time he died and were attending his coaching classes. He deposed that he had signed Ex.PW1/7 at point 'X1'. Though extensively cross-examined, his testimony remained unshaken. PW5 (wrongly recorded as PW4 by the Tribunal), Mr. Satpal Singh, son of Hari Singh, deposed that his son Sumit had been attending the coaching classes of the deceased and that the name of his son was mentioned on document Ex.PW1/7 at Serial no.7 and that his signatures were at point 'X2' on the said document. The testimony of this witness also survived the test of cross-examination. No evidence in rebuttal was led by the respondent-Insurance company.

8. Adverting to the income tax returns filed by the respondents, exhibited as Ex.PW1/5 collectively, the said returns clearly reveal that the income of the deceased accrued from private tuitions and that at the time of his death, his income was ₹ 84,000/- per annum which was not taxable after grant of rebate under Section 88D of the Income

Tax Act. Thus, clearly, the deceased was a private tutor and his income from private tuitions was not less than ₹ 84,000/- per annum, i.e. ₹ 7000/- per month. Ex.PW1/7 (Colly.), which has been proved on record by two independent witnesses viz., PW4 and 5 even sets out the names of the students who were under the tutelage of the deceased and is signed by a parent of each of the said students. These records have not been controverted by the appellant Insurance Company by adducing any evidence in rebuttal nor sworn testimonies of PW4 and PW5 have been shaken in the least bit. Further, document Ex.PW1/7 when read with the income tax returns of the deceased leads to the inescapable conclusion that the deceased was rendering private tuitions. The claim of the Insurance Company that the income tax returns have been filed with the purpose of obtaining loan by the deceased, which incidentally is the only ground set up by the Insurance Company for disbelieving the income tax returns is not substantiated and there is not even an iota of evidence on record to show that the deceased had taken any loan from anywhere. Even the purpose of the loan has not been stated by the insurance company and only a bald allegation is sought to be made that the Income tax returns

had been filed by the deceased with the purpose of obtaining loan. Clearly, the income tax returns were filed much prior to the death of the deceased and, therefore, must be held to clearly depict the income of the deceased.

9. There is also no reason to disbelieve the salary certificate Ex.PW1/6 which is signed by the authorised signatory of a Limited Company, viz., M/s. Ping Pong Marketing Ltd. This certificate clearly shows that the deceased had entered into the service of the said Limited Company from 1st October, 2005 and that his last drawn salary was ₹ 4500/- per month. The salary certificate has been proved on record by PW1 and PW3. Not even a suggestion has been put to either of the said witnesses that the salary certificate is a fake document and there does not, therefore, appear to be any cogent reason for this Court to disbelieve the same. More so, as it is clear from the record that it was after the filing of the income tax return for the assessment year 2005-06 that the deceased took up employment with the aforesaid company, possibly to augment his income.

10. It also emerges from the record that the income of the deceased was steadily increasing as is evident from the fact that his income tax

returns show that while he was earning ₹ 4000/- per month in the accounting year 2003-04, his income increased to ₹ 7000/- per month in the accounting year 2004-05 and would have risen to ₹ 11,000/- per month for the accounting year 2005-06, had he lived to file his income tax return for the year 2006-07. There is, therefore, no conceivable reason as to why the Tribunal in such circumstances, while believing his income to be in the sum of ₹ 11,500/- per month came to the conclusion that there was nothing on record to suggest that he had bright future prospects, “or that income could have ameliorated (sic.)...” It is, thus, deemed expedient to recalculate the loss of dependency of the appellants, upon which exercise I now embark.

11. In the case of *Sarla Verma and Ors. vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121*, the Hon’ble Supreme Court has laid down that in view of the imponderables and uncertainties, as a rule of thumb, an addition of 50% of the actual salary should be made to the actual salary income of the deceased towards the future prospects where the deceased has a permanent job and is below 40 years of age. Thus calculated, the income of the deceased works out

to ₹ 11,500/- + ₹ 5750/- = ₹ 17,250/- per month. Deducting one-half therefrom towards the personal expenses and maintenance of the deceased, in consonance with the dicta laid down in *Sarla Verma's case* (supra), the loss of dependency per month of the respondents works out to be ₹ 8625/- per month, i.e. ₹ 1,03,500/- per annum. The age of the mother of the deceased at the time of the accident as per the ration card Ex.PW1/1 was less than 45 years. For the age group of persons between 41-45 years, the multiplier specified in the Second Schedule to the Motor Vehicles Act, 1988 is 15 as per the Second Schedule. However, the multiplier of 14 has been applied by the learned Tribunal on the ground that in the case of *Sarla Verma* (supra), the Hon'ble Supreme Court approved of the multiplier of 14 for the age group of persons between 41 to 45 years. Applying the aforesaid multiplier, the total loss of dependency on account of the death of the deceased works out to ₹ 1,03,500/- x 14 = ₹ 14,49,000/-. The contention of the appellant Insurance Company that the multiplier should have been 13 is, therefore, being noted for the purpose of being rejected.

12. As regards the non-pecuniary damages, the learned Tribunal has awarded a sum of ₹ 50,000/- towards loss of love and affection and the emotional trauma caused to the parents of the deceased, ₹ 10,000/- towards the funeral expenses and ₹ 5000/- on account of loss of estate of the deceased. I see no cogent reason to interfere with the said award which appears to be justified. Accordingly, the award amount is enhanced by a sum of ₹ 4,18,000/- (14,49,000 – 10,31,000) with a direction to the Insurance Company to make the payment of the same to the appellants within one month from today with interest thereon @ 7.5% per annum as awarded by the Tribunal. The rest of the award is sustained as no interference with the same is called for.

13. Before parting with the case, it may be noted that the Insurance Company in the instant case has preferred an appeal for reduction of the award amount by the appellants without first obtaining the permission of the Motor Accident Claims Tribunal under the provisions of Section 170 of the Act. The learned counsel for the Insurance Company made an attempt to argue that this was the precise grievance of the Insurance Company, in as much as though an

application under Section 170 of the Act was filed before the learned Tribunal, the Tribunal did not choose to pass any orders thereon, though the Insurance Company was afforded full opportunity to cross examine the witnesses of the appellants in view of the fact that the respondent-driver/owner was not contesting the case.

14. The counsel for the appellants on the other hand submitted that the respondent-driver/owner had cross-examined the eye-witness to the accident and was thereafter proceeded *ex parte* on 28th April, 2009. So there was no occasion for the Insurance Company to move an application under Section 170 of the Act. The said application, it is urged, was surreptitiously slipped into the trial court records without even affixing court fees stamps thereon. The application is also without an affidavit and keeping in view the fact that neither the court fees stamps are affixed on it nor it is supported by an affidavit, nor it is signed by the authorized signatory of the appellant-Insurance Company, the possibility of it being slipped in unnoticed, at a subsequent stage, cannot be ruled out.

15. Be that as it may, there does not appear to be any need for this Court to embark upon this issue in view of the findings rendered hereinabove.

16. Both the appeals are disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

February 7, 2011
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