

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

% *Date of Judgment: 15.07.2011*

+ **MAC APPEAL No. 653/2010**

ANITA DEVI & OTHERS

.....Appellants
Through: Mr. Hameed S. Shaikh,
Advocate.

Versus

UNITED INDIA ASSURANCE COMPANY LTD. & OTHERS

.....Respondents
Through: Mr. K.L. Nandwani, Advocate
for respondent No. 1.

AND

MAC APPEAL No. 654/2010

REKHA YADAV & OTHERS

.....Appellants
Through: Mr. Hameed S. Shaikh,
Advocate.

Versus

UNITED INDIA ASSURANCE COMPANY LTD. & OTHERS

.....Respondents
Through: Mr. K.L. Nandwani, Advocate
for respondent No. 1.

AND

MAC APPEAL No. 655/2010

NIRMALA DEVI & OTHERS

.....Appellants
Through: Mr. Hameed S. Shaikh,
Advocate.

Versus

MAC APPEAL No.653-55/2010

Page 1 of 9

UNITED INDIA ASSURANCE COMPANY LTD. & OTHERS

.....Respondents
Through: Mr. K.L. Nandwani, Advocate
for respondent No. 1.

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, J. (Oral)

1 These are three appeals preferred by the legal heirs of deceased Pawan Kumar, Jitender Singh & Dev Karan. Their claim petition had been decided by a common judgment and vide Award dated 18.05.2010 compensation had been awarded in favour of the claimants. There is no dispute on the quantum granted under the head of non-pecuniary damages. The only dispute is with regard to the amounts awarded under the head of loss of dependency.

2 All the three deceased after their retirement from the Indian Navy had been employed with M/s DEC Property Management Pvt. Ltd. on different posts. On 08.11.2008 they were travelling

MAC APPEAL No.653-55/2010 Page 2 of 9

together in a Maruti Wagon (R) when their car collided with a Tata truck which was being driven in a fast and negligent manner; as a result of this collision the motor cycle in front of the offending vehicle being driven by one Sunny Singh was hit; Sunny Singh sustained injuries; Pawan Kumar, Jitender Singh & Dev Karan all died on the spot.

3 Four claim petitions had been preferred under Section 166 of the Motor Vehicle Act (hereinafter referred to as the 'MV Act'); three by legal heirs/claimants of the deceased and the fourth claim petition had been preferred by the injured Sunny Singh himself.

4 Fact as further emanating from the record are that Pawan Kumar was working as a Engineer; he was 33 years of age on the date of the accident; Jitender Singh was working as a Sr. Engineer; he was 35 years of age on the date of the accident; Dev Karan was working as a Supervisor; he was 49 years of age on the date of the accident;. Because of the untimely death of the aforementioned three persons, future prospects which had not been considered by the Tribunal have been claimed in these appeals. The claimants of all the three deceased persons have sought an enhancement of their compensation.

5 Record shows that oral and documentary evidence had been

led. To decide this controversy i.e. as to whether the legal heirs of the claimants were entitled to future prospects, testimony of PW-5 is relevant. PW-5 was P.S. Bhandari, Manager of M/s DEC Property Management Pvt. Ltd.; appointment letter qua Dev Karan had been proved as Ex. PW-5/D showing that Dev Karan was appointed with the company at a monthly salary of Rs.16,041/-; the breakup of his salary had also been given showing that a gross earning of Rs.6,500/- towards basic pay besides dearness allowance; he was entitled to HRA, medical allowance and City Compensatory Allowance. Appointment letter qua Jitender Singh had been proved as Ex. PW-5/B showing that Jitender Singh was appointed with the company at a monthly salary of Rs.36,875/-; the breakup of his salary had also been given showing that a gross earning of Rs.10,500/- towards basic pay besides dearness allowance; he was entitled to HRA, medical allowance and City Compensatory Allowance. Appointment letter qua Pawan Kumar had been proved as Ex. PW-5/C showing that Pawan Kumar was appointed with the company at a monthly salary of Rs.26,666/-; the breakup of his salary had also been given showing that a gross earning of Rs.8,000/- towards basic pay besides dearness allowance; he was entitled to HRA, medical allowance and City Compensatory Allowance. The Tribunal had

MAC APPEAL No.653-55/2010

Page 4 of 9

not taken the allowances into consideration but the annual salary after deducting 10% as income tax had been computed as the income. Admittedly future prospects had not been considered. The pension being received by the deceased was also taken into consideration; 50% of the same was deducted; keeping in view the fact that the remaining 50% would have probably been spent by the deceased upon himself; this calculation up to this point suffers from no infirmity.

6 However future prospects should have been taken into account and the Tribunal has erred in not taking this into account. In the judgment reported in AIR 2009 SC 3104 Sarla Verma & Others Vs. Delhi Transport Corporation, the Apex Court has held that the future prospects should not be considered of deceased who are above 50 years of age. This legislation is a socially benevolent legislation engrafted with an intent to allow compensation to be paid to the claimants of a deceased as early as possible; it must be a 'just compensation'. Admittedly in all the three cases i.e. Pawan Kumar, Jitender Singh and Dev Karan they were all aged below 50 years. Pawan Kumar was 33 years of age; Jitender Singh was 35 years of age; Dev Karan was 49 years of age on the date of the accident.

7 The Apex Court in Sarla Verma (Supra) had also noted that
MAC APPEAL No.653-55/2010

the future prospects may not be considered if the deceased does not have a permanent job. Learned counsel for the respondent has also placed reliance upon the judgment of the Apex Court reported in AIR 2006 SC 1255 Bijoy Kumar Dugar VS. Bidyadhar Dutta & Others to support his submission that to establish the claim of future prospects, there must be cogent evidence.

8 In this context, the testimony of PW-5 as noted supra is relevant. The appointment letters of each of three persons are on record; admittedly all the three deceased persons were mechanical engineers; they were highly qualified; being specialized in a special professional field; admittedly all of them had served in the Indian Navy prior to their having been appointed in the service of M/s DEC Property Management Pvt. Ltd. Clause 4 of the appointment letter is also relevant. It states that their period of probation will be for a period of one year which may be extended at the discretion of the employer or this may be dispensed with even earlier or thereafter till confirmation. Their appointment letters are dated 25.08.2008. The accident had occurred on 08.11.2008 i.e. within six months of the date of their appointment. It is nobody's case that the deceased had any adverse report against them. Bifurcation of salary of each of the deceased had also been produced in the evidence of PW-5; there

MAC APPEAL No.653-55/2010 Page 6 of 9

also a promotion policy of the company. The promotion policy in fact states that a permanent employee is one who is employed against a permanent post and may also include a probationer; salary will be increased annually in April every year; the salary chart of the deceased placed on record also shows that M/s DEC Property Management Pvt. Ltd. was a large company having several employees on its work list.

9 From this record, it is apparent that the deceased were all special qualified professional persons who were working in the field of their specialized capacity; it is also a known fact that these persons after having served in the Indian Navy had joined the service of M/s DEC Property Management Pvt. Ltd. The evidence led before the Tribunal establishes that their jobs were of a permanent nature and they should have also been considered for future prospects; the promotion policy of the company also substantiates enhancement. The rise in the price index and inflation for which notice has been taken by our courts time and again cannot be lost sight of; this has illegally been ignored by the Tribunal. There was ample evidence to support this submission of the appellants. The judgment of Bijoy Kumar Dugar (Supra) is inapplicable in this factual scenario.

10 The appellants are entitled to future prospects which would

be double the amount of salary (in the case of Anita Devi and Rekha Yadav and 30% in the case of Nirmala Devi) after deduction of tax. This is in conformity with the ratio of the catena of 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.

11 The modified Award under the head of loss of dependency will be read as following:-

(I) In the case of Anita wife of deceased Pawan

Salary of the deceased	₹23,500/-
Adding future prospects	₹11,750/-
	₹35,250/-
Adding family pension	₹2,057/-
	₹37,307/-
Deducting 10% tax liability	₹3730/-
	₹33,577/-
Deducting 1/4th personal expenses	₹8,394/-
	₹25,183/-X12X16 =
Total loss of dependency	₹ 48,35,136/-

(II) In the case of Rekha Yadav wife of Jitender

Salary of the deceased	₹ 32,500/-
Adding future prospects	₹16,250/-
	₹ 48,750/-
Adding family pension	₹1,363/-
	₹50,113/-
Deducting 10% tax liability	₹5,011/-
	₹ 45,102/-
Deducting 1/4th personal expenses	₹ 11,275/-
	₹33,827/-X12X16 =
Total loss of dependency	₹64,94,784/-

(iii) In the case of Nirmala Devi wife of deceased Dev Karan	
Salary of the deceased	₹14,000/-
Adding future prospects	<u>₹4,200/-</u>
	₹ 18,200/-
Adding family pension	<u>₹1,715/-</u>
	₹19,915/-
Deducting 10% tax liability	<u>₹1,991/-</u>
	₹17,924/-
Deducting 1/4th personal expenses	<u>₹13,443/-</u>
	₹ 13,443/-X12X13 =
Total loss of dependency	₹20,97,108/-

12 The non-pecuniary damages remained unmodified. The interest amount also calls for no interference.

13 Appeals are disposed of in the above terms.

INDERMEET KAUR, J.

JULY 15, 2011

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