

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

% *Date of Judgment: 16.09.2011*

+ **MAC Appeal No 552/2010**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

.....Appellant
Through: Ms. Suman Bagga, Advocate.

Versus

SMT. ARCHANA SINHA & OTHERS

.....Respondents
Through: None

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 This appeal has impugned the Award dated 29.05.2010 vide which a total compensation of Rs.40,66,550/- along with interest @ 7.5% per annum had been awarded in favour of the claimants.

2 Record shows that the deceased Taposh Kumar on 04.03.2007 while driving his scooter was hit by a motor-cycle as a

result of which he had suffered grievous injuries, he succumbed to the same on 07.03.2007 i.e. three days later.

3 After oral and documentary evidence was led, the aforementioned amount was awarded in favour of the claimants of the victim which included his parents, widow and two minor children.

4 This appeal has been filed by the Insurance Company; it has been assailed firstly on the quantum; contention is that the amount of Rs.40,66,550/- is very much on the higher side; in fact it has enured as a bonanza; attention has been drawn to the testimony of PW-5 & PW-6; it is pointed out that PW-6 was allegedly the witness where the deceased was working yet inspite of specific opportunities having been granted to him to produce the relevant record of the company, he had failed to do so; the Tribunal by placing reliance upon the appointment letter Ex.PW-1/21 and ignoring the income tax returns of the deceased which were of the year 2007-2008 i.e. Ex. PW-1/23 and Ex. PW-1/24 has committed an illegality; submission being that had these documents Ex. PW-1/23 & Ex. PW-1/24 been taken into account, the income of the deceased would have been assessed at Rs.9,000/- per month but relying upon Ex. PW-1/21 (which was not properly proved), his income of Rs.29,176/- has been taken into account. The future prospects have illegally been considered; the

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petitioner was working in the company only since the last two months.

5 The second argument propounded by the learned counsel for the appellant is that this is a case of head on collusion; PW-4 was the alleged eye witness yet in his cross-examination he has admitted that the site plan was not prepared at his instance; if the site plan was not prepared at his instance, it is clear that the Investigating Officer has made a guess work; the driver of the offending vehicle has been examined as PW-4 whose deposition in fact shows that this was a case of head on collusion; the aspect of contributory negligence has not been taken into account by the Tribunal. On both counts, the Award is liable to be set aside.

6 None has appeared for the respondents although they have been served.

7 The second question shall be answered first. The Tribunal has noted that PW-4 is the eye witness; he was strolling outside his jhuggi on the fateful day when he witnessed this accident; the victim was driving vehicle No. 2385 when he was hit by the offending vehicle; PW-4 has on oath deposed that the motorcyclist of the offending vehicle was driving the offending vehicle at a very high speed and was coming from the wrong side and because of this, the accident had occurred. In his cross-examination he has

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stated that he had notified the PCR and his name also appeared in the PCR form which information was given at the same time i.e. at 10:30 PM which was the time of the accident. This evidence thus shows that PW-4 in fact had witnessed the accident and that is how his name had appeared in the PCR which was the first information report of the accident. PW-4 in his cross-examination has further explained that the Police had in detail asked him about the accident which explanation he had given and told then the manner in which the accident had taken place; in this scenario his submission that the site plan was not prepared at his instance has little relevance; it also cannot be lost sight of the fact that this witness was a jhuggi dweller; he was an illiterate person; probably he did not know what a site plan is; yet his version is clear and categorical to the effect that he had seen the accident in the manner in which it had taken place pursuant to which the site plan was prepared. PW-4 had further stated that the speed of the said vehicle i.e. 2385 (which was being driven by the deceased) was comparatively slow; this testimony was thus rightly relied upon by the Tribunal; site plan has also been perused; point 'A' reflects the site of the accident showing that the motorcyclist i.e. offending vehicle was coming from the wrong side. The testimony

vehicle; he has also stated that there were ditches on the road and in order to save himself, the motorcyclist (driven by the deceased) hit a stone and to prevent himself from falling into the ditch, the vehicle of the deceased hit against a stationary tempo. Testimony of this witness along with the testimony of the eye witness clearly shows that there was no negligence on the part of the deceased and this is rightly appreciated by the Tribunal; there were ditches and gaddas there and in order to save himself from the said ditches as also the fact that the offending vehicle was coming from the wrong side, the accident had occurred. Finding of this score calls for no interference.

8 Quantum of Rs.40,66,550/- awarded to the claimants of the victim also does not suffer from any infirmity. PW-6 Narender Pratap Singh was authorized to depose on behalf of the Company i.e. M/s Cull Next Solution Ltd. where the deceased was working since the last two months i.e. two months prior to the date of the accident; Ex. PW-1/21 was the appointment letter which had been issued to him by the company; his total salary was Rs.29,176/-; carry home salary being Rs.27,900/- which was the figure taken into account by the Tribunal. The Tribunal has in fact also made a deduction of 15% from this carry home salary of Rs.27,900/- for the purpose of tax; there is no reason as to why the future

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prospects of the victim should not have been considered; they were rightly considered. The educational qualification and the fact that the victim was a micro-software expert was taken into account; victim had obtained an advance diploma in Computer Application from the IGNOU and had been awarded a certificate of excellence as a micro-software certified professional; the said documents had been proved as Ex. PW-1/3 & Ex. PW-1/4. PW-5 was the earlier employer of the victim; PW-5 had deposed that the monthly salary of the victim in May, 2005 was about Rs.15,000/- per month; obviously he left the services of PW-5 to join the company where PW-6 was working only for a better and enhanced future prospects; his carry home salary of Rs.27,900/- was noted in Ex. PW-1/21. Ex. PW-6/B and Ex. PW-6/G were the personal data record of the victim and evidenced the fact that he was drawing the aforementioned amount as a carry home salary.

9 Strict rules of evidence are not applicable to proceeding before the Tribunal; as such the submission of learned counsel for the appellant that Ex. PW-1/21 has not been proved as per rules of evidence has little meaning; the whole purpose of this legislation is that a just and fair compensation should be awarded to the victim of a grieved person who has left his near and dear ones in the lurch by an unfortunate and unprecedented accident and as
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such compensation paid to the legal representatives of such a victim as early as possible would be given a go-bye if the claimants of the said victim are asked to engage a lawyer on high cost and to follow the strict procedural laws. Even otherwise, the proof of Ex. PW-1/21 and Ex. PW-6/E to Ex. PW-6/G (Colly.) suffers from no infirmity. These documents were noted in the testimony of PW-6 and Ex. PW-1/21 was the salary certificate of the victim which was further substantiated by documents PW-6/E to Ex. PW-6/G (Colly.).

10 The sum of Rs.40,31,550/- had thus been awarded under the 'loss of dependency'; victim being only 29 years on the date of the accident; the amount awarded under the non-pecuniary damages is not the subject matter of challenge before this Court. Impugned Award in no manner suffers from any infirmity. Appeal is without any merit.

11 Dismissed.

INDERMEET KAUR, J.

SEPTEMBER 16, 2011

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