

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

Date of decision: 10th April, 2012

+ **MAC.APP. 222/2011**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. D.D. Singh, Advocate with
Mr. Navdeep Singh, Advocate

versus

MEENA GUPTA & ORS. Respondents

Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant United India Insurance Company Limited seeks reduction of compensation of ₹16,62,000/- awarded for the death of Ms. Pearl Gupta who died in a motor accident which occurred on 19.11.2007.
2. The deceased was a first year student of BSW (Bachelor of Social Work) a Professional Course in Delhi University. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was claimed that the deceased was giving home tuitions and was earning ₹9,000/- per month. It was claimed that after completion of the course, the deceased's expected salary would have been ₹30,000/- per month. The Claims Tribunal referred to the judgment of this Court in

Ramesh Chand Joshi v. New India Assurance Company MAC APP.No.212-213/06 decided on 20.01.2010, a judgment of the Rajasthan High Court in *Draupadi Devi v. Inder Kumar 1998 ACJ 418*, a judgment of the Madras High Court in *Divisional Manager v. T. Chelladurai 2010 ACJ 382* and a judgment of the Andhra Pradesh High Court in *B.Ramulamma v. Venkatesh Bus Union I (2010) ACC 563* to hold that the potential income of a student undergoing a Professional Course can be taken into consideration to assess the loss of dependency. The Claims Tribunal held the potential income of the deceased to be ₹ 20,000/- per month. The observations of the Claims Tribunal are extracted hereunder:-

“(e) Future expected income of the deceased:- Deceased was a student of first year professional course of BSW (Bachelor of Social Work) and she got admission in it after passing a tough competition and interview as stated by PW-1. She further stated that after passing of this course she would get expected salary of Rs. 30,000/- per month, though in this regard there is no certificate issued by the college in which deceased was studying nor any evidence of any other person who had passed such course and getting salary is produced.

PW-1 produced education qualification and senior secondary certificates of the deceased along with marks sheets Ex. PW1/1, PW1/3 to 5 which shows that she was an above average intelligent girl and almost good in studies. PW-1 also produced certificate Ex. PW1/5 to show that deceased was active in curricular activities in college. The fact deposed by PW-1 that deceased was very intelligent, brilliant, hardworking and obedient is also not disputed in cross examination even by putting

any suggestion to contrary. At the time of death, deceased was aged about 19 years only and her future appears to be bright.

It is argued on behalf of petitioners that after the completion of BSW course in two years, the deceased would have got a job and salary of approximately Rs. 30,000/- per month. He also relied upon case laws Ramesh Chand Joshi vs. New India Assurance Company MAC.APP no. 212-213/06 decided by Delhi High Court on 20-1-2010. In this case, court in case of 19th year aged student of first year BE (Bio-Technology) course, presumed that after completion of studies, he would get minimum Rs.38,333/- average notional income per month including income tax amount. Court also held that taking of help of minimum wages is permissible only where deceased was illiterate and did not possess any professional and technical qualifications. Where deceased was educated or was pursuing the professional course, income has to be taken on the basis of his expected earnings.

Counsel for petitioner also placed reliance upon the decision of Rajasthan High Court given in case Draupadi Devi vs. Inder Kumar 1998 ACJ 418 in which future earning capacity of the student was considered after completion of studies and accordingly loss of dependency was assessed on its basis.

Madras High Court in Divisional Manager vs. T. Chelladurai 2010 ACJ 382 took the future estimated notional income of final year engineering student died on 13-4-2006 at Rs. 7,000/- per month.

Andhra Pradesh High Court in B. Ramulamma vs. Venkatesh Bus Union I (2010) ACC 563 in case of death of final year student of computer engineering course

taken place on 1-5-1995 took estimated future minimum salary at Rs. 12,000/- per month.

In another old matter decided on 28-2-1997 titled as Kapila Uppal vs. Kishan Datt 1997 ACJ 600 Delhi High Court on account of death of MBBS student doing internship, took his future estimated income at Rs. 1,800/- per month after completion of the course. However in this matter death of student had taken place on 27-5-79. Keeping in view the fact that price index has increased and govt. itself had increased the salary number of times in last 30 years and implemented several pay commissions, so the present case has to be considered in the present situation and prevailing trend of approximate salary.

However after considering the above judgments, the scope of this BSW course in employment etc., coming into force 6th Pay Commission and also keeping in view the fact that normally a class-IV employee gets salary of Rs. 9 to 10 thousand per month on his first employment, I deem it proper to accept the fact that after completion of this course in next two years, deceased would have got a job fetching minimum average salary of Rs. 20,000/- per month. The claim of petitioners regarding getting future estimated notional salary of Rs. 30,000/- is not substantiated by any evidence.

The argument advanced on behalf of respondents that deceased being a female might have been married within next 2-3 years so the loss of dependency should be reduced is not acceptable as a valid ground to refuse to award this future estimated compensation.

(f) Future prospective increase of income :- Counsel for petitioners cited case laws decided by Delhi High Court in The New India Assurance Co. Ltd. vs. Raja Ram, MAC.APP no. 175/2006 decided on 25-8-2009 and

Barnabas Yuhanna vs. Narayan Chaudhary 2010 ACJ 2628 and argued that keeping in view the inflation and increase of price index, the future increase of income has to be taken into consideration because in the next 10 years, it is presumed that income becomes double. However counsel for the respondents argued that these judgments are not applicable in the present circumstances and since future estimated notional income is being taken into consideration so the future prospectus should not be allowed.

In the Raja Ram's case cited above the income of the deceased was taken into consideration on the basis of minimum wages which is not the criteria to be followed in the present case in hand so this case law is of no help to the petitioners. Another decision given in Barnabas Yuhanna's case is also distinguishable from the facts of the present case as in this cited case, deceased was already working in govt. job and earning which is not in the present case. However Delhi High Court in Ramesh Chand Joshi vs. New India Assurance Company MAC.APP.212-213/2006 decided on 20-1-2010 held that no future prospectus of increase of income has to be granted where deceased was a student still undergoing professional course and was having no permanent job. Accordingly the petitioners are not granted any future prospectus upon her notional income of Rs. 20,000/- per month as assessed above."

3. The Claims Tribunal observed that the deceased was earning ₹ 7,500/- per month through tuitions and added ₹7,500/- in the potential income of ₹20,000/- to compute the loss of dependency.
4. In the case of *Haji Zainullah Khan (Dead) by LRs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, death of a young

boy, aged 20 years took place in an accident which occurred in the year 1972. The deceased was a student of B.Sc Ist year (Biology); the compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.

5. It is thus well settled that the potential income of a student pursuing professional course can be considered for computation of loss of dependency to the legal representatives. At the same time, the Claims Tribunal was not justified in adding the sum of ₹7,500/- towards earning from tuitions in the potential income of ₹20,000/- per month. PW-1's testimony on the potential income of ₹ 30,000/- per month was not seriously challenged in the cross-examination. In the circumstances, I would not interfere in the assessment of the potential income as ₹20,000/- per month by the Claims Tribunal.
6. The loss of dependency would thus come to ₹15,19,000/- $(20,000/- \times 12 = 2,40,000/- \text{ less } ₹ 23,000/- \text{ (towards income tax)} \times 1/2 \times 14)$.
7. On adding a sum of ₹10,000/- towards funeral expenses, ₹ 10,000/- towards loss to Estate and ₹ 25,000/- towards Love and Affection as granted by the Claims Tribunal, the overall compensation comes to ₹ 15,64,000/-.
8. The compensation stands reduced from ₹16,62,000/- to ₹ 15,64,000/- which shall carry interest @ 7.5% per annum from

the date of filing of the Petition till the date of deposit of the amount in this Court.

9. The excess amount of ₹98,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. Rest of the amount shall be released to Respondents No.1 and 2 in terms of the Claims Tribunal's order.
10. The Appeal is allowed in above terms
11. The statutory amount of ₹ 25,000/- shall also be refunded to the Appellant.
12. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 10, 2012

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