

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

Date of decision: 12th October, 2012

+ **MAC. APP. 271/2012**

NATIONAL INSURANCE COMPANY LTD. Appellants
Through: Mr. Pankaj Seth, Adv.

versus

SMT. SAVITRI & ORS. Respondents
Through: Mr. Sunil Kumar Verma, Adv. for R-1 to R-7.

+ **MAC. APP. 372/2012**

SMT. SAVITRI & ORS Appellants
Through: Mr. Sunil Kumar Verma, Adv.

Versus

DHEERAJ KUMAR & ORS. Respondents
Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 01.10.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in MACT No.66/10 whereby a compensation of ₹25,82,056/- was awarded in favour of the legal heirs of deceased Ved Prakash who died in a motor vehicle accident which occurred on 20.11.2009.

2. For the sake of convenience, the Appellant in MAC APP.271/2012 shall be referred to as the Insurance Company whereas the Appellant in MAC APP.372/2012 shall be referred to as the Claimants.
3. The finding on negligence is not challenged by the Appellant Insurance Company thus, the same has attained finality.
4. To compute the loss of dependency, the Claims Tribunal accepted the salary of the deceased Ved Prakash to be ₹22,509/-, considering the number of dependents as seven, it deducted one-fifth towards the personal and living expenses and applied the multiplier of 12 as per the age of the deceased. Claims Tribunal further awarded a sum of ₹1,75,000/- towards loss of love and affection and ₹10,000/- each towards funeral expenses, loss to estate and loss of consortium.
5. The following contentions are raised on behalf of the Appellant:-
 - (i) The income tax payable on the deceased's actual income was required to be deducted to compute the loss of dependency. In support of the contention, reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.
 - (ii) Claimants No.2,3 and 4 (Respondents No.2, 3 and 4 in MAC APP.271/2012) are the married daughters of the deceased. They were not financially dependent on the deceased Ved Prakash. Virtually, the number of dependents were four and deduction of one-fourth was required to be made instead of one-fifth done by the Claims Tribunal.

- (iii) One of the legal heirs applied for appointment in place of deceased Ved Prakash with the employer of the deceased on compassionate ground. The same ought to have been taken into account to award the loss of dependency.
 - (iv) Award of ₹1,75,000/- towards loss of love and affection is on the higher side.
6. On the other hand, the learned counsel for the Claimants states that the actual salary of the deceased at the time of the accident was ₹32,524/-. The Claims Tribunal erred in not taking the allowance into consideration to compute the loss of dependency.
7. From the salary sheet Ex.PW-2/A and the salary slip Ex.PW-2/B it is clear that the deceased's gross salary inclusive of all allowance was ₹32,524/- there was a deduction of ₹8,000/- towards GPF, ₹2,000/- towards advance taken from the GPF and ₹15/- towards misc. charges. These deductions were for the benefit of the deceased and his family members and were to be taken into consideration to compute the loss of dependency. Thus, the entire income of ₹32,524/- was to be considered to compute the loss of dependency.
8. It is no longer *res integra* that the actual income of the deceased minus income tax has to be taken into consideration to compute the loss of dependency. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*).
9. Out of the gross salary of ₹32,524/-, a sum of ₹5697/- per month was being paid to the deceased towards HRA and was therefore, not taxable.

The liability of income tax on an income of ₹ 3,90,288/- (₹32,524/- x 12) was thus about ₹10,000/- per annum.

10. It was admitted in cross-examination of PW-1 that Respondents No.2,3 and 4 are the married daughters. Thus, they were not financially dependent. The Claims Tribunal erred in making deduction of one-fifth towards personal and living expenses it should have been one-fourth instead of one-fifth.
11. As far as application moved by one of the legal heirs of the deceased for an appointment on compassionate ground is concerned, admittedly, no appointment was offered till the decision of the Claim Petition. It is stated by the learned counsel for the Claimants that the application was rejected. In the case of *National Insurance Co Ltd v. Charanjeet Kaur @ Simmi & Ors.* MAC APP.734/2010 decided on 16.07.2012 this Court held that the appointment on compassionate ground would not be a factor to be considered for reduction of compensation unless compassionate appointment is offered only on account of the accidental death. Since the Respondent Maheshverdutt Sharma's application for appointment on compassionate ground has since been rejected, no deduction is required to be made under this head.
12. The loss of dependency thus comes to ₹ 31,37,376/- (32,524/- x 12 – 10,000/- (income tax) x 3/4 x 11).
13. The Claims Tribunal awarded a sum of ₹1,75,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v.*

Bachitar Singh (2011) 11 SCC 425 and in Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.

14. The compensation of ₹10,000/- each awarded towards funeral expenses, loss to estate and loss of consortium is not disputed by either of the parties, the same is maintained.
15. The overall compensation thus comes to ₹31,92,376/-.
16. The compensation, therefore, stands enhanced by ₹3,10,230/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
17. Appellant National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
18. The entire enhanced compensation shall enure for the benefit of the First Claimant.
19. Eighty percent of the enhanced compensation shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest shall be released on deposit.
20. Both the Appeals are disposed of in above terms.
21. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.

22. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 12, 2012
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