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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd July, 2012

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MAC. APP. No.200/2012

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Ms. Suman Bagga, Advocate

Versus

SMT. RINKI @ RINKU & ORS. Respondents

Through: Mr. H.N. Pandey, Advocate for
the Respondents No.1 to
7(Claimants)

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 Ltd. takes exception to a judgment dated 09.01.2012 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹9,93,848/- was awarded for the death of Hari Madhav in a motor vehicle accident which occurred on 17.12.2009.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of truck No.HR-46-8209 by the Respondent No.8. The deceased Hari Madhav's income was claimed to be ₹8,000/- per month. In the absence of any cogent evidence with regard to his income, the Claims Tribunal took the minimum wages of a

skilled worker, added 50% towards inflation and applied a multiplier of '15' to compute the loss of dependency as ₹8,53,848/-. The Claims Tribunal awarded a sum of ₹25,000/- towards funeral expenses, ₹1,00,000/- towards loss of love and affection, ₹10,000/- for loss of consortium and ₹5,000/- towards loss to estate.

3. The following contentions are raised on behalf of the Appellant:

- (i) Even if the case of the Claimants (Respondents No.1 to 7) is admitted as it is, it was a case of contributory negligence. The Respondent No.8 (owner of the offending vehicle) and consequently the Appellant should not have been made liable to pay the entire compensation.
- (ii) The Claims Tribunal in the absence of any evidence took the deceased's income to be of a skilled worker as per the Minimum Wages Act but erred in making an addition of 50% towards inflation.
- (iii) The Respondent No.6 Bhagwan Das (the deceased's father) cannot be considered as dependent on the deceased; the deduction towards personal and living expenses should have been 1/4th instead of 1/5th.
- (iv) The compensation of ₹1,00,000/- awarded towards loss of love and affection and ₹25,000/- towards funeral expenses was excessive.

4. On the other hand, the learned counsel for the Claimants (Respondents No.1 to 7) argues that the accident took place

because of sudden application of breaks of the offending vehicle by the Eighth Respondent. Thus, the Respondents No.1 to 7 sufficiently proved negligence on the part of the Eighth Respondent. It is contended that the finding on negligence reached by the Claims Tribunal is well-reasoned and does not call for any interference. It is stated that the deceased's father was physically handicapped person and was, therefore, dependent on the deceased. The compensation awarded, according to the learned counsel, is just and reasonable.

NEGLIGENCE:

5. While dealing with the issue on negligence, the Claims Tribunal observed as under:

“8. Since the present petition is under Section 166 of M.V. Act, it was the bounden duty of the petitioner to prove that the respondent No.1 was rash and negligent in driving the vehicle at the time of accident.

9. Accident Information Report (AIR) u/s 158 Motor Vehicle Act was filed by the police pertaining to case FIR etc. bearing No.480/09, P.S. Nangloi u/s 279/337/304-A IPC.

10. To determine the negligence, I am being guided by the judgment of Hon'ble High Court of Delhi in 2009 ACJ 287, National Insurance Company Limited v. Pushpa Rana wherein in the Hon'ble High Court held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under section 279/304A IPC or the certified

copy of the FIR or in addition the recovery memo on the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Further, in Kaushnumma Begum and Others v. New India Assurance Company Limited, 2001 ACJ 421 SC the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would made the petition maintainable under Section 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one.

11. Therefore, reading all the documents filed by the petitioners as a whole it is clear that respondent No.1 was driving the vehicle in a rash and negligent manner.”

6. The Claims Tribunal was conscious of the fact that negligence is a *sine qua non* to a Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act). It is also true that the proceedings for grant of compensation under the Act are neither governed by the criminal procedures nor are a civil suit. A reference may be made to a judgment of the Supreme Court

Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors., (2009) 13 SC 530 where it was held as under:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

7. The Claimants examined Smt. Rinki (the deceased's wife) as PW1 to prove the negligence. She deposed that on 17.12.2009 while the deceased was returning from Nangloi, a truck/trolla No. HR-46-8209 was being driven by the Respondent No.8 at a very fast speed and in a negligent manner. She deposed that the Respondent no.8 suddenly applied brakes as a result of which the maruti van driven by her deceased's husband collided against the truck. Smt. Rinki (PW-1) was not an eye witness of the accident.
8. The learned counsel for the Appellant has taken me through the FIR No.480/2009, site plan and the mechanical inspection reports of both the vehicles involved in the accident. In this case, the FIR was registered merely on the ground that the accident had taken place. The driver of the truck was not accused of the negligence in the FIR. A perusal of the mechanical inspection reports reveals that there was extensive damage in the front portion of the maruti van No.DL-1CE-6568

and some fresh damages on the rear of truck/trolla No.HR-46-8209. It is, therefore, apparent that the maruti van was also being driven at an excessive speed and the driver was not maintaining proper distance to stop the vehicle. Thus, there was contributory negligence on the part of the deceased as well. The Respondent No.8 cannot be held solely responsible for the accident. In the circumstances of the case, I hold that there was equal negligence i.e. in the ratio of 50:50 on the part of the deceased and the Eighth Respondent. The Claimants would, therefore, be entitled to only 50% of the compensation from the owner driver and the Appellant Insurance Company.

9. With regard to the deceased's income, Smt. Rinki (PW1) testified that her husband was employed as a driver and was earning a sum of ₹8,000/- per month. Her testimony on the aspect of employment was not challenged in the cross-examination. It was, however, disputed if the deceased Hari Madhav was earning ₹8,000/- per month. The Claimants did not produce any documentary evidence with regard to the deceased's income. In the circumstances, salary of ₹8,000/- by a maruti van driver cannot be accepted. I would assume his salary to be ₹150/- per day to be ₹4,500/-. Admittedly, the Claimants did not produce any evidence with regard to the deceased's bright future prospects.
10. As far as addition on account of future prospects/inflation is concerned, this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012 relying on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE

559 held that the persons who are getting fixed salary or who are self employed as menial, skilled and unskilled workers, like barber, blacksmith, cobbler, mason, carpenter, etc. etc. would be entitled to an increase in the income to the extent of 30% on account of inflation

11. In *Sarla Verma v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the Supreme Court held that in the absence of any evidence to the contrary, the father would not be considered to be financially dependent on his son. In this case, there was no evidence that the Respondent No.7 was financially dependent on the deceased. Rather, there was evidence that the deceased had two younger brothers. In the circumstances, the Claims Tribunal erred in making a deduction of 1/5th towards personal and living expenses. Since the number of dependents, excluding the father, were six, the deduction towards personal and living expenses would be 1/4th. In view of above discussion, the loss of dependency comes to ₹7,89,750/- (₹4500/- + 30% x 3 ÷ 4 x 12 x 15).
12. The Claims Tribunal awarded a compensation of ₹1,00,000/- towards love and affection. Loss of love and affection cannot be measured in terms of money. Thus, when the Claimants are awarded compensation for loss on dependency, actually a nominal sum is awarded under the head of loss of love and affection. Thus, uniformity is 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/- under the head of loss and affection. The compensation under this head is reduced from ₹1,00,000/- to ₹25,000/-.

13. The Claims Tribunal awarded a sum of ₹25,000/- towards funeral expenses. In the absence of any evidence with regard to the actual expenditure, a sum of ₹10,000/- is awarded under this head. The compensation under this head is reduced from ₹25,000/- to ₹10,000/-. Thus, the overall compensation comes to ₹8,44,750/-.
14. I have already held above that the deceased Hari Madhav had himself contributed to the accident and have held negligence in the ratio of 50:50. Thus, the Appellant Insurance Company is under obligation to pay a sum of ₹4,22,375/-. The compensation held payable shall be disbursed in favour of the Claimants (the Respondents No.1 to 7) in the manner as suggested by the Claims Tribunal.
15. The excess amount of ₹1,49,098/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
16. The Appeal is allowed in above terms.
17. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 23, 2012/pst