

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

Decided on: 28th February, 2012

+ **MAC.APP. 218/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. K.L.Nandwani, Advocate

versus

SHANTI & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

C.M. APPL. 3687/2012(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M.No.3688/2012, 3686/2012 & MAC APP.218/2012

1. There is a delay of 98 days in filing the Appeal.
2. The Appellant (The New India Assurance Company Limited) seeks reduction of compensation from Rs.2,75,288/- awarded for the death of Dharmanand Dev who was aged 62 years at the time of the accident.
3. During the enquiry before the Tribunal it was proved that the deceased was getting a pension of Rs.5617/- per month. The

Tribunal deducted 1/2 towards personal and living expenses as only the deceased's widow was financially dependent on the deceased, applied multiplier of '7' relevant to the deceased's age and computed the loss of dependency as Rs.2,25,288/-. The judgment is challenged on the following grounds:-

- (i) There was no negligence on the part of the driver of the insured vehicle. The deceased himself contributed to the accident. There was negligence on the part of the motorcyclist on which the deceased was a pillion rider.
 - (ii) The compensation awarded is excessive as family pension of Rs.4725/- which was available to the family was not deducted from the pension which the deceased was getting.
 - (iii) The driving licence of the driver of the offending vehicle was found to be fake. The Tribunal instead of exonerating the Appellant made it liable to pay the compensation with the right to recover the same from the insured.
4. The Claims Tribunal dealt with the question of negligence in detail. PW-1 an eye-witness to the accident deposed that at the time of accident the motor cycle was hit by the offending vehicle bearing No.UP 14 AH 6405 from behind, the deceased fell down on the road and was crushed by the offending vehicle. This part of the testimony of this witness was not challenged in

cross-examination.

5. The Claims Tribunal further observed that as per the Mechanical Inspection Report the offending vehicle had fresh damage on its front and the motorcycle on which the deceased was a pillion rider had damage on the rear left side. Thus, it was apparent that the accident took place in the manner as alleged by the Respondents/Claimants. No fault can be found with the reasoning given by the Claims Tribunal.
6. As far as the deduction of family pension is concerned, the law is well settled by the report of the Supreme Court in *N. Sivammal and Others v. Managing Director, Pandian Roadways Corporation and Another*, 1985 ACJ 75 and Full Bench judgment of this Court in *Delhi Transport Corporation Vs. Mrs. Meena Chaturvedi and Ors.*, 122(2005) DLT 75 wherein it was held that the reduction of the monetary benefit of pension from the amount of the compensation is without justification. Otherwise also, it is well settled that the benefits which comes to the hands of the dependants by way of accidental death only is to be deducted from the loss claimed by way of compensation. The widow of the deceased was entitled to the family pension even if the deceased met with a natural death or otherwise on account of some illness.
7. So far as holding of a fake licence by the driver and proof of willful breach of policy condition is concerned, the law is well

settled by catena of judgments of Supreme Court including *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338 and three Judges Bench decision in *National Insurance Co. Ltd. v. Swaran Singh & Ors.*, 2004 (3) SCC 297 that in case of a third party injury the Insurance Company is under obligation to fulfill its statutory liability to pay and recover the amount awarded from the insured. In Swaran Singh's case (supra) it was held as under:-

“104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

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110. The summary of our findings to the various issues as raised in these petitions is as follows:

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(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be

recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.”

8. The Appeal is without any merit. It is, therefore dismissed with cost of Rs.20,000/- to be deposited with Delhi High Court legal Services Committee.
9. It is note-worthy that this accident took place on 11.10.2008. The award was passed by the Tribunal on 19.08.2011 i.e. more than six months back. A direction was given to the Appellant by the Claims Tribunal to satisfy the award within 30 days. The Insurance Companies always come forward with the plea that they are ready to settle the claim compensation. However, it is apparent that even in a case of a widow, the Insurance Company was placing all obstacles to stall the payment of a meager compensation of Rs.2,75,288/- in an accident which took place almost three years back. Not only this, the New India Insurance Company was merrily sitting on the award and took almost six months to challenge the same. In the circumstances, the application for condonation of delay also stands dismissed.
10. Let a copy of the judgment be sent to the General Manager of the Appellant/Insurance Company through its counsel and he

should file his response within six weeks as to the circumstances under which the Appeal was filed.

11. List on 04.05.2012.
12. Copy of the order be also given Dasti.

(G.P. MITTAL)
JUDGE

FEBRUARY 28, 2012
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