

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

Date of decision: 19th October, 2012

+ MAC. APP. 227/2011

The New India Assurance Co.Ltd. Appellant
Through: Mr.Abhishek Kumar &
Mr.Punit Vinay, Advocates
versus

Pappu @ Puran Singh & Ors. Respondents
Through: Mr.Deepak Kandpal, Advocate

+ MAC. APP. 1010/2011

Smt. Pushpa Devi & Ors. Appellants
Through: Mr.Deepak Kandpal, Advocate
versus

The New India Assurance Co.Ltd. Respondent
Through: Mr.Abhishek Kumar &
Mr.Punit Vinay, Advocates for
R-1

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.17815/2011

1. It is submitted by the learned counsel for the Claimants that the name of the deceased's father was Bhagwat Singh. It has wrongly been mentioned as Bhagwan Singh in the impugned

judgment. Resulting into preparation of FDR in the name of Bhagwan Singh.

2. It is stated that Respondent No.6 Bhagwat Singh has expired. His legal representatives have already been placed on record. His name is deleted from the array of the parties. It is further stated by the learned counsel for the Claimants that in the impugned judgment his name was mentioned as Bhagwan Singh in place of Bhagwat Singh. His name shall be read as Bhagwat Singh.
3. As the name of Bhagwat Singh has been deleted from the array of parties; the share already allotted to Bhagwat Singh deceased father shall now enure for the benefit of Respondent No.7, widow of Bhagwat Singh.
4. The Application stands disposed of.

MAC. APP. 277/2011 & MAC. APP. 1010/2011

1. These Appeals arise out of a common judgment dated 07.01.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹22,82,785/- was awarded for the death of Hira Singh, who died in a motor vehicle accident, which occurred on 24.09.2005.
2. MAC APP. 227/2011 is filed by the New India Assurance Company Ltd. for reduction of compensation on the ground that the Claims Tribunal erred in making an addition of 50% towards future prospects and that it was entitled to exoneration or at least recovery rights.

3. The Cross MAC APP. 1010/2011 is filed by the legal representatives of the deceased Hira Singh on the ground that the compensation awarded is on the lower side. It is stated that although the Claims Tribunal purported to grant an addition of 50% towards future prospects, but while actually computing the loss of dependency the benefit of 50% was not given.
4. It is stated that the multiplier selected by the Claims Tribunal was on the lower side, however, during the course of arguments, it is conceded that the deceased Hira Singh was aged 36 years at the time of accident, and the multiplier of 15 selected by the Claims Tribunal was appropriate.
5. I have before me the Trial Court record and the salary certificate Ex.PW1/23. The deceased Hira Singh was getting a salary of ₹16,391/- including a sum of ₹2,540/- towards House Rent Allowance. It is well settled that income tax is to be deducted from the actual income of the deceased for computation of the loss of dependency.
6. The Claimants were entitled to an addition of 50% as there is ample evidence to show that the deceased was earning promotions and was in permanent employment. He had joined M/s Control & Switchgear Co.Ltd. in the year 1997 as a Steno Secretary. He was promoted as marketing executive in December, 1999. He continued to work with the same Employer till his unfortunate death in the accident dated 24.09.2005.
7. Thus, the Claims Tribunal was justified in making an addition of 50% on account of the future prospects. The same is

inconsonance with the case of *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121.

8. At the same time, it is noticed that while actually computing the loss of dependency, the addition of 50% was not made.
9. The loss of dependency thus, comes to ₹30,66,052/-(16,391/- x 12 = 1,96,692/- -15,000/- + 50% x 3/4 x 15). The Claimants would be further awarded a sum of ₹25,000/- towards love and affection and ₹10,000/- each towards loss of consortium, loss to estate and loss to funeral expenses. The overall compensation thus, comes to ₹31,21,052/-.
10. As far as the breach of the terms of policy is concerned, the Claimants produced a driving licence No.C05121999133963. However, the Appellant Insurance Company sought to verify the driving licence No. C-05121999133953. The Second copy of the licence was also provided during the inquiry before the Claims Tribunal and was handed over to the Appellant Insurance Company for verification. The verification report in respect of the second licence provided by the owner was not filed perhaps the Appellant Insurance Company was satisfied that it was genuine. In any case, the owner's evidence that he took the driving licence before employing the driver and was satisfied with its genuineness was not challenged. Thus, firstly it was not proved that the licence possessed by the driver was fake and secondly the owner took reasonable care to satisfy himself while handing over the vehicle to a person duly licensed.

11. In this view of the matter, the Appellant Insurance Company failed to prove that there was willful breach of the terms of the policy and was not entitled to avoid its liability.
12. Thus, the compensation is enhanced by ₹8,38,267/- which shall carry interest @ 7.5% per annum from the date filing of the Petition till its payment. The enhanced compensation shall be deposited with Claims Tribunal within six weeks.
13. Fifteen percent of the enhanced compensation along with proportionate interest shall be payable to Respondents No.4, 5 & 7. Rest 50% shall enure for the benefit of Respondent No.3, the deceased's widow.
14. The compensation awarded to Respondents No.4 & 5 shall be held in fixed deposit till they attained the age of 25 years. They shall be entitled to premature withdrawal of the amount if the same is needed for their higher education, or for their marriage and they shall be entitled to approach the Claims Tribunal for that purpose.
15. The compensation awarded to Respondent No.7 shall be released on deposit. 75% of the enhanced compensation awarded to Respondent No.3 shall be held in fixed deposit for a period of 2, years, 4 years, 6 years and 8 years in equal proportion. Rest shall be released on her deposit.
16. Both the Appeals are disposed of in above terms

- 17.** Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

OCTOBER 19, 2012

v