

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

Date of decision: 5th October, 2012

+ **MAC. APP. 614/2012**

SMT. PURNIMA & ORS. Appellants
Through: Mr. Chander Prakash, Adv.

versus

NEW INDIA ASSURANCE COMPANY LTD. & ORS. Respondents
Through Mr. Pankaj Seth, Adv. for R-1.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹3,69,008/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Bhavesh Singh, a bachelor, aged 20 years, who was a second year student in LLB at Symbiosis Law College, Pune.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of blue line bus No.DL-1PB-4609 by its driver Respondent No.3 Sunil Kumar. The Claims Tribunal took the average of the minimum wages of a Matriculate and a Graduate and applied the multiplier on taking the average of the ages of deceased's parents.
3. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.

4. The only ground raised in the Appeal is that the deceased was pursuing LLB from a prestigious law college, that is, Symbiosis Law College, Pune and was paying a hefty fee of ₹36,500/- for the relevant year. The Law Graduates from the said College, it is argued, get very high placement with the Law Firms. The Claims Tribunal, it is argued, erred in taking the average of the minimum wages of a Matriculate and a Graduate to compute the loss of dependency.
5. I am in perfect agreement with the submissions raised on behalf of the Appellants. During cross-examination of Appellant's witnesses, it was not disputed that the deceased was pursuing LLB from Symbiosis Law College, Pune and was in the second year. Documents, i.e. receipt of payment of fees for the year 2004-05, identity card, etc. were duly proved on record.
6. It is well settled that potential income of a student pursuing a professional course must be taken into consideration to award loss of dependency.
7. 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 happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.
8. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors.*, MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of ₹ 9,35,352/- on the basis of the minimum wages of a

Graduate. This Court observed that although the deceased was getting a stipend of ₹ 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ₹ 16,000/- per month to ₹ 25,000/- per month. Thus, the average monthly income of the deceased was taken as ₹ 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ₹21,36,000/-

9. In *Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006* decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) ₹38,333/- per month.
10. A Division Bench of Andhra Pradesh High Court in *B.Ramulamma & Ors. v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar & Anr., 2011 ACJ 1702*, held that it was very difficult to determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take the salary fixed by the Govt. at the entry level for such jobs.
11. Since the deceased was pursuing LLB from a prestigious College, following the Division Bench judgment of the Andhra Pradesh High Court in *B. Ramulamma*, I would take the salary of a Gazetted Officer at entry level to compute the loss of dependency, which was about ₹14,000/- per month inclusive of all allowances. Taking HRA to be non taxable and making a provision of ₹15,000/- towards income tax, the loss of dependency comes to ₹9,94,500/- (14,000/- x 12 – 15,000/- (income tax) x 1/2 x 13).

12. I would make a provision of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses. The overall compensation comes to ₹10,39,500/- as against ₹3,69,008/- awarded by the Claims Tribunal.
13. The compensation thus stands enhanced by ₹6,70,492/-.
14. The Claims Tribunal did not award any interest from 12.10.2006 to 23.02.2010 whereas the Claim Petition was instituted on 15.01.2005 and came to be decided on 31.10.2011. The Claims Tribunal has given reason for the same. Thus, the Appellants would be entitled to interest @ 7.5% per annum from the date of filing of the Petition till its payment, except for the period from 12.10.2006 to 23.02.2010.
15. Respondent No.1 the New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
16. The enhanced compensation shall be equally shared between the First and the Second Appellant.
17. This accident took place in the year 2004, 50% of the enhanced compensation shall be released on deposit. Rest 50% shall be held in fixed deposit in any Nationalized bank for a period of three years.
18. The Appeal is allowed in above terms.
19. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 05, 2012/vk