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

Date of decision: 26th September, 2012

+ **MAC.APP. 310/2012**

ORIENTAL INSURANCE CO. LTD Appellant
Through Mr.Punit Vinay & Mr.Abhishek Kumar,
Advocate

versus

KUSUM & ORS Respondents
Through Mr.Sahil Aeron, Advocate for R1 to R-5

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 reduction of compensation of ₹14,65,455/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No.1 to 5 for the death of Vasudev who died in a motor vehicle accident, which occurred on 23.04.2011.
- 2) On appreciation of evidence, the Claims Tribunal found that the deceased suffered fatal injuries on account of rash and negligent driving of a Baleno Car bearing No.DL-3C-AJ-6295 by Respondent No.6. Respondents No.1 to 5 claimed that the deceased was working as a labourer and was earning ₹8,000/- per month.
- 3) The Claims Tribunal in the absence of any evidence with regard to the deceased's income took the minimum wages of an unskilled worker as ₹6422/-, deducted 1/4 towards loss of personal and living expenses and

applied a multiplier of 15 to compute the loss of dependency as ₹13,00,455/-

- 4) The Claims Tribunal further awarded a sum of ₹50,000/- towards funeral expenses, ₹1,00,000/- towards love and affection, ₹10,000/- towards loss of consortium and ₹5,000/- towards loss to estate to award an overall compensation of ₹14,65,455/-
- 5) The finding on negligence is not challenged by the Appellant Insurance Company.
- 6) The following contentions are raised on behalf of the Appellant Insurance Company:
 - i. In the absence of any evidence with regard to the future prospects, the Claims Tribunal was not justified in making an addition of 50% towards future prospects/inflation.
 - ii. A compensation of ₹50,000/- towards funeral expenses and ₹1,00,000/- towards love and affection is on the higher side.
- 7) Smt. Kusum, the deceased's wife filed an affidavit, Ex. PW1/A, and testified that the deceased was working as a labourer and was earning ₹8,000/- per month.
- 8) In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker fixed by the Govt. of NCT of Delhi under the Minimum Wages Act to compute the loss of dependency, which cannot be faulted.

- 9) Admittedly, there was no evidence with regard to the deceased's future prospects, the Claims Tribunal relied on '*National Insurance Company Ltd. v. Kailash Devi*', II(2008) ACC 770, to make an addition of 50% towards inflation.
- 10) This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra

efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not

think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

- 11) Since the deceased was a self employed person working as a labourer, only an addition of 30% would have been made towards inflation to compute the loss of dependency. The loss of dependency thus comes to ₹11,27,061/-(6422 + 30% x 3/4 x 12 x 15).
- 12) 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.
- 13) The compensation of ₹1,00,000/- towards love and affection is on the higher side. The same is reduced to ₹25,000/-.
- 14) No evidence was laid down by the Claimants with regard to the funeral expenses. In the absence of any evidence, the award of sum of ₹50,000/-

towards funeral expenses was excessive. The compensation under this head is reduced to ₹10,000/-

- 15) The compensation of ₹5,000/- awarded towards loss to estate is enhanced to ₹10,000/-.
- 16) The overall compensation thus comes to ₹ 11,82,061/-. The excess amount of ₹2,83,394/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
- 17) The amount awarded along with proportionate interest shall be disbursed/ held in fixed deposit in favour of Respondents No.1 to 5 in terms of the order passed by the Claims Tribunal.
- 18) The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
- 19) The Appeal is allowed in above terms.
- 20) Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 26, 2012

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