

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

Reserved on: 16th April, 2012

Pronounced on: 19th April, 2012

+ **MAC.APP. 325/2011**

ORIENTAL INSURANCE CO. LTD. Appellant

Through Ms. Manjusha Wadhwa,
Advocate

versus

URMILA DEVI & ORS. Respondents

Through Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited impugns a judgment dated 16.12.2010 whereby a compensation of ₹12,92,400/- was awarded for the death of Babu Lal, who died in a motor accident which occurred on 01.05.2007.
2. The contentions raised on behalf of the Appellant are:-
 - (i) The deceased himself was standing near the rear gate of the bus and had fallen off the bus on account of a jerk. He himself contributed to the accident. The compensation is liable to be reduced by 50% on account of contributory negligence.

- (ii) The Motor Accident Claims Tribunal (the Claims Tribunal) assumed the deceased's potential income as a student of MCA to be ₹27,000/- per month. In the absence of any evidence as to the actual placement, the income taken was highly excessive or exorbitant. The compensation should have been awarded on the basis of the existing income of ₹ 5367/- per month.

NEGLIGENCE

3. It is urged by the learned Counsel for the Appellant that as per the Claimants' version, the deceased was standing in the over crowded bus. Since he was not seated on the seat he was guilty of contributory negligence and the compensation payable has to be reduced according to his negligence.
4. It may be noted that while driving a public transport it is the duty of the driver and the conductor of the bus to ensure that the occupants of the bus whether seated or standing is carried safely to their destination. If the driver and the conductor find it to be unsafe, the driver should not permit overcrowding of the bus and should not allow anybody to travel while standing in the bus.
5. In *Bhaskaran v. Ravindran & Ors.*, 1900 ACJ 1032 a Division Bench of the Kerala High Court had the occasion to deal with the question of passengers standing on the footboard while travelling in a bus. The Division Bench held as under:-

“16. The correct principle appears to be what we have already indicated. It is the duty of the conductor to see that the bus is set in motion only after all alighting passengers have alighted and passengers intending to travel in the bus board the bus. Boarding a bus does not mean merely entering the footboard. Boarding the bus means getting inside the bus and either sitting in a seat or standing in the space reserved for standing passengers. A conductor has a statutory duty to see that there are no footboard passengers. If a passenger is on the footboard and there is no space at all for him to sit or stand inside the bus, he must be asked to get down and the bus can be set in motion only after he alights. When there is sitting or standing space inside the bus, it is the duty of the conductor to see that a passenger who is on the footboard gets inside the bus and seats himself or stands in the space reserved for standing passengers before giving signal for the bus to start. This corresponds with the driver's duty to ensure that bus is moved only after ensuring safe travel conditions. In the discharge of his duty he is largely guided by the instructions of the conductor. If a bus with no vacant seat and no standing space is started when a passenger is on the footboard and he is not asked to alight from the bus or not cautioned against travel on footboard and accident takes place and the footboard passenger sustains injury, wholly or partly on account of his position on the footboard, he cannot be held to be guilty of contributory negligence. It may be that if he refuses to alight in spite of the direction by the conductor or if he is cautioned about the risk he is undertaking by travel on footboard, it is not possible to absolve him of the responsibility in the accident. We, therefore, hold that the claimant was not guilty of contributory negligence.”

6. It was the duty of the driver and conductor of the bus to take care that the passengers do not stand near the rear gate of the

bus. If a driver permits a passenger to stand near the gate of the bus, he cannot be absolved of negligence as it is the bounden duty of the driver to carry the passengers safely. Thus, it cannot be said that the deceased himself contributed to the accident by standing near the rear gate in an overcrowded bus.

7. In my view, the Claims Tribunal rightly held that rashness and culpable negligence on the part of Respondent No.3 was established.

QUANTUM OF COMPENSATION

8. It is proved on record that the deceased joined as Team Member - Trainee with Pantaloon Retail (India) Limited w.e.f. 18.06.2005 on a Gross salary of ₹48,046/- per annum. Within a period of six months, he was confirmed in the service and his salary was increased to ₹ 54,691/-. By another letter Ex.PW-3/4 dated 08.08.2006 his performance was adjudged as 'excellent' and his salary was increased to ₹70,239/- per annum. The Certificate Ex.PW-3/8 shows that he was a permanent and confirmed employee and was entitled to an average hike in the salary at the rate of 10%. Thus, the deceased's parents (Respondents No.1 and 2) were entitled to a compensation with an increase of 50% in the revised salary of ₹ 70,239/- which comes to ₹1,05,358/-.
9. The question for consideration is whether Respondents No.1 and 2 were entitled to compensation on the basis of the

deceased's potential income as he had joined MCA from the Indira Gandhi National Open University after completing his Graduation. On the basis of the documents Ex.PW-1/2 to PW-1/6 it is proved on record that the deceased had joined MCA by enrollment No.072100228 in the year 2006. He had also obtained Diploma in Computer Software (O level) from Delhi SC/ST/OBC/Minorities/Handicapped Financial Development Corporation Limited, (an Undertaking of GNCT of Delhi). The deceased would have completed his MCA in another two years and would have got employment on a higher salary. There are a number of judgments of the Superior Courts where the potential income of the deceased has been considered for awarding loss of dependency to the legal representatives.

10. 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/-.
11. 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 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 in 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/-.

12. The Claims Tribunal relied on a judgment of this Court in *Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006* decided on 20.01.2010 where the potential income of a BE (Bio-Technology) First year student was considered to be ₹ 38,333/- per month. The Claims Tribunal relied on *Draupadi Devi v. Inder Kumar 1998 ACJ 418*; *Divisional Manager v. T.Chelladurai 2010 ACJ 382*; and *B. Ramulamma v. Venkatesh Bus Union, 1 (2010) ACC 563*, where the future income after completion of the course was taken into consideration for awarding loss of dependency.
13. It is borne out from the record that the deceased was a dedicated employee and that is why he earned two increments during the short span of two years with M/s. Pantaloon Retail (India) Limited. It has to be borne in mind that he(the deceased) did his Graduation from Delhi University in Third Division only. He was pursuing MCA from IGNOU by correspondence. Yet, the potential income of a laborious worker can be taken at least 15,000/- per month. The Claims Tribunal, however, was not

justified in accepting the potential income to be ₹ 27,000/- per month along with future prospects. Since the deceased was not pursuing the MCA from any Prestigious University, I would take his potential income to be about ₹ 15,000/- per month only to award the loss of dependency.

14. The loss of dependency comes to ₹ 9,35,000/- (15,000/- x 12 – 10,000/- (income tax) x 1/2 (deduction in case of a bachelor) x 11).
15. On adding notional sums of ₹ 25,000/- towards Loss of Love and Affection, ₹ 10,000/- towards Funeral Expenses and ₹ 10,000/- towards Loss to Estate, the overall compensation comes to ₹ 9,80,000/-.
16. The overall compensation is, thus, reduced from ₹ 12,92,400/- to ₹ 9,80,000/-.
17. The compensation shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of deposit of the compensation with the Registrar General of this Court.
18. The excess amount of ₹ 3,12,400/- along with the proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Oriental Insurance Company Limited.
19. The compensation awarded shall be released in favour of the Respondents No.1 and 2 in terms of the impugned judgment.

20. The Appeal is allowed in above terms.
21. The statutory amount of ₹ 25,000/- shall also be refunded to the Appellant Insurance Company.
22. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 19, 2012

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