

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

Date of decision: 10th October, 2012

+ **MAC. APP. 401/2012**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

SMT. SAROJ & ORS.

.... Respondents

Through Mr. Aftab Rasheed, Adv. for R-1 to R-4.

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 ₹11,42,820/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No.1 to 4 for the death of Tek Chand, who died in a motor vehicle accident which occurred on 01.05.2011.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
3. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a Mason and was earning ₹15,000/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of dependency.
4. The following contentions are raised on behalf of the Appellant:-

- (i) There was no evidence with regard to deceased's future prospects, yet an addition of 50% was made towards future prospects.
 - (ii) There should have been deduction of one-third towards personal and living expenses instead of one-fourth made by the Claims Tribunal as Respondents No.2 to 4 were major.
 - (iii) The compensation awarded under non pecuniary heads is on the higher side.
5. I have before me the Trial Court Record. The first Respondent filed her Affidavit by way of evidence as Ex.PW-1/1. She testified that her husband was a Mason (skilled labour) by profession and he was earning ₹15,000/- per month. In PW-1's cross examination the extent of deceased's income was disputed but his employment as Mason was not disputed. In the circumstances, the Claims Tribunal ought to have taken the Minimum wages of a skilled worker, i.e. ₹7826/- per month instead of ₹6084/- to compute the loss of dependency.
6. Admittedly, there was no evidence with regard to deceased's future prospects. Thus, addition of 50% towards future prospects could not have been made. (*Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors.*, AIR 2006 SC 1255; and *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121). Yet, the Claimants were entitled to an addition of 30% towards inflation on the basis of the latest judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
7. As regards dependency of the Respondents No.2 to 4, the deceased left behind two sons aged 22 years and 20 years and a daughter aged 21

years. All the three children were still studying. PW-1's testimony that her children were not employed was not challenged in cross-examination. Thus, the deduction of one-fourth towards personal and living expenses on the basis of the ratio in *Sarla Verma* made by the Claims Tribunal cannot be faulted.

8. The loss of dependency thus comes to ₹10,58,075/- ($7826/- + 30\% \times \frac{2}{3} \times 12 \times 13$).
9. The Claims Tribunal awarded a sum of ₹30,000/- towards loss of love and affection; ₹20,000/- towards funeral expenses and ₹25,000/- towards loss of consortium. Normally, only a sum of ₹25,000/- is awarded towards loss of love and affection and in the absence of any evidence with regard to the expenditure only a sum of ₹10,000/- is awarded towards funeral expenses.
10. Thus, even if, a compensation of ₹25,000/- is awarded towards loss of love and affection and ₹10,000/- each towards funeral expenses, loss of consortium and loss to estate, the overall compensation comes to ₹11,13,075/-.
11. In the circumstances, the award of compensation of ₹11,42,820/- made by the Claims Tribunal cannot be said to be exorbitant or excessive.
12. The Appeal is devoid of any merit; the same is accordingly dismissed.
13. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 10, 2012

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