

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

Date of decision: 5th November, 2012

+ **MAC. APP. 462/2012**

HDFC ERGO GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. Sunil Kapoor, Adv.

versus

SMT. ANITA ANAND & ORS. Respondents

Through: Mr. Monika Arora, Adv. with
Mr. Anuj Kumar Pandey, Adv.

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 ₹21,87,500/- awarded in favour of the Respondents No.1 and 2 for the death of Rahul Anand, a young boy aged 19 years in a motor vehicle accident which occurred on 07.03.2009.
2. The Appellant Insurance Company does not challenge the finding on negligence reached by the Claims Tribunal. Thus, the same has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the deceased Rahul Anand was getting a salary of ₹12,000/- per month from M/s. JMD Cargo Pvt. Ltd., apart from incentives. On the basis of the payment of salary @ ₹10,500/- by ECS and an incentive of ₹67,510/- (after deducting a sum of ₹ 2,490/- towards income tax paid) after the

death of Rahul Anand to his mother's account, the Claims Tribunal took the deceased's income to be ₹1,95,000/- per annum, added 50% towards future prospects and applied the multiplier of 14 (as per the age of the deceased's mother) to compute the loss of dependency as ₹20,47,500/-. The Claims Tribunal further awarded a sum of ₹25,000/- towards funeral expenses, ₹5,000/- towards loss to estate and ₹1,00,000/- towards loss of love and affection.

4. The following contentions are raised on behalf of the Appellant Insurance Company:-
 - (i) Incentive of ₹70,000/- cannot be said to be regular income. Thus, the same could not have been taken into consideration to compute the loss of dependency. At the most, the same could have been awarded for just one year.
 - (ii) There was no evidence with regard to deceased's further prospects. The Claims Tribunal, therefore, erred in making an addition of 50% towards future prospects.
 - (iii) The compensation of ₹25,000/- awarded towards funeral expenses in the absence of any evidence in this regard and ₹1,00,000/- towards loss of love and affection is on the higher side.
5. On the other hand, learned counsel for Respondents (the Claimants) urges that the compensation awarded is just and reasonable.

LOSS OF DEPENDENCY

6. I have before me the Trial Court record. PW-1 Kawaljeet Singh Anand filed his Affidavit Ex.PW-1/A by way of his evidence. He testified that

deceased Rahul Anand was working as Sales Executive with Ms/. JMD Cargo Pvt. Ltd. and was getting a salary of ₹12,000/- per month exclusive of incentives on sales and was entitled to other benefits. The Claimants also produced Subhash Magan to prove that salary of ₹12,000/- was being paid to Rahul Anand. PW-2 also proved a consolidated statement Ex.PW-2/2 in respect of the employees of M/s. JMD Cargo Pvt. Ltd. which showed the breakup of the salary, which reveals that out of salary of ₹12,000/-, a sum of ₹1440/- was being deducted towards EPF.

7. In *National Insurance Co. Ltd. v. Indira Srivastava & Ors.*, 2008 (2) SCC 763, it was held that the entire salary of the deceased including contributory provident fund etc. which is for the benefit of the family should be taken into consideration to compute the loss of dependency. Thus, the Claims Tribunal ought to have taken the salary of the deceased as ₹12,000/- per month instead of ₹10,560/-.
8. PW-1 Kawaljeet Singh Anand testified that his son was entitled to incentives apart from salary. The deceased had worked for full one year before he met with an unfortunate accident. The amount of the incentives was credited to the account of the deceased's mother in April, 2009. As per PW-2's statement the amount of incentive was ₹70,000/- and after deducting a tax of ₹2490/- an amount of ₹67,510/- was credited to her account. The testimony of PW-2 with regard to payment of incentive was not disputed. It was not suggested to PW-2 that the incentive was not regular income.
9. It is well settled that income of the deceased at the time of his death is to be taken into consideration to compute the loss of dependency. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6

SCC 121). Therefore, the incentive was required to be added in the deceased's income. The total income of the deceased comes to ₹2,14,000/- (12,000/- x 12 + 70,000/-).

10. Deceased Rahul Anand had joined M/s. JMD Cargo Pvt. Ltd. just about a year back. There was no evidence with regard to his bright future prospects with this company in which his father was one of the Directors. Thus, the Claims Tribunal erred in making an addition of 50% towards future prospects. Rather, on the basis of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. The Claimants were entitled to only an addition of 30% towards inflation.
11. Thus, the loss of dependency comes to ₹ 18,92,800/- (2,14,000/- - 6,000/- (income tax) + 30% x 1/2 x 14).
12. The Claims Tribunal awarded compensation of ₹25,000/- towards funeral expenses. PW-1 in his Affidavit claimed to have spent a sum of ₹10,000/- towards last rites. Thus, the Claimants were entitled to a sum of ₹10,000/- only towards funeral expenses.
13. The Claims Tribunal awarded a sum of ₹1,00,000/- towards loss of love and affection. 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. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.

14. The Claims Tribunal awarded a sum of ₹5,000/- towards loss to estate. Normally, a sum of ₹10,000/- is awarded irrespective of the income of the deceased provided where full loss of dependency is granted on the basis of the income.
15. The overall compensation comes to ₹19,37,800/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
16. The excess amount of ₹2,49,700/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
17. Rest of the compensation shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.
18. The statutory deposit of ₹25,000/- shall 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

NOVEMBER 05, 2012

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