

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

Date of decision: 22nd November, 2012

+ **MAC.APP. 555/2011**

NEW INDIA ASSURANCE COMPANY LTD. Appellant
Through: Ms. Neerja Sachdeva, Adv.

versus

RAJIV PRATAP SINGH & ORS. Respondents
Through: Mr. J.S. Kanwar, Adv. for R-1 to 3.

+ **MAC.APP. 1212/2012**

RAJIV PRATAP SINGH & ORS. Appellants
Through: Mr. J.S. Kanwar, Adv.

versus

NEW INDIA ASSURANCE COMPANY LTD. & ORS..... Respondents
Through: Ms. Neerja Sachdeva, 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 Appellant New India Assurance Company Limited seeks reduction of compensation of ₹6,59,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Ajay Pal Singh, who died in a motor vehicle accident which occurred on 27.02.2010.

2. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company. Thus, the same has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the deceased was working in SSB Bricks Field, Kathfori and was earning ₹6,000/- per month.
4. In the absence of any cogent evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of a semi-skilled worker, i.e. ₹ 4,000/- per month, added 50% towards inflation to compute the loss of dependency as ₹6,24,000/-.
5. The Claims Tribunal further awarded a sum of ₹10,000/- each towards loss of love and affection, loss to estate, loss of consortium and ₹5,000/- towards funeral expenses.
6. The only ground of challenge raised by the Appellant Insurance Company is that in the absence of any evidence with regard to deceased's future prospects, an addition of 50% could not have been made. At the most, an addition of 30% could have been made towards inflation on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
7. Respondents No.1 to 3 (the Claimants) preferred Cross Objections which were registered as MAC APP.1212/2012.
8. The Cross Objectionists, on the other hand, contended that there was no reasonable ground to discard the income of the deceased as ₹6,000/- per month as had been claimed by the Claimants.

9. PW-1 Sanjeev Pratap Singh in his examination-in-chief testified that the deceased was working in SSB Brick Field, Kathfori and was earning ₹ 6,000/- per month through sale and purchase of bricks. Neither any supporting oral evidence nor any documentary evidence was produced in support of the same. The Claims Tribunal, therefore, rightly took the minimum wages of a semi-skilled worker to compute the loss of dependency. The Claims Tribunal's finding on this aspect cannot be faulted.
10. The Claims Tribunal made an addition of 50% towards inflation. 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 even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. 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. Thus, the Claimants were entitled to an addition of 30% in the deceased's assumed income as against 50% awarded by the Claims Tribunal.
12. The loss of dependency thus comes to ₹5,40,800/- (4,000/- + 30% x 2/3 x 12 x 13) as against a compensation of ₹6,24,000/- awarded by the Claims Tribunal.
13. The compensation awarded towards non pecuniary damages was on the lower side. I would make a provision of ₹25,000/- towards loss of love and affection in addition to ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses.
14. Thus, the overall compensation comes to ₹5,95,800/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
15. The excess compensation of ₹63,200/- along with interest and the interest accrued, if any, during pendency of the Appeal shall be refunded to the Appellant Insurance Company.
16. The compensation awarded shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.
17. Both the Appeals are allowed in above terms.
18. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.

19. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 22, 2012

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