

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

Date of decision: 17th December, 2012

+ **MAC. APP. 511/2011**

ICICI LOMBARD GENERAL INSURANCE CO. LTD..... Appellant
Through: Ms. Suman Bagga, Advocate.

Versus

SMT.MUKESH & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Insurance Company impugns a judgment dated 14.02.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹ 6,75,904/- the Appellant Insurance Company was made liable to pay the compensation with a right to recover the same from Respondents No.1 and 2 as the driving licence possessed by Respondent No.5 had expired on 06.09.2006, whereas the accident took place on 21.12.2006.
2. The only ground of challenge to the impugned judgment is that although there was no evidence with regard to the future prospects, the Claims Tribunal made an addition of 50% towards future prospects.
3. I have perused the record.
4. During the inquiry before the Claims Tribunal, it was claimed that deceased Naresh Kumar was working as a Painter and was earning ₹

8,000/- per month. The Claims Tribunal in the absence of any cogent evidence with regard to the deceased's income or his profession took the Minimum Wages of an un-skilled worker; added 50% towards inflation and applied the multiplier of 16 (as per the age of the deceased) to compute the loss of dependency as ₹ 6,35,904/-.

5. In *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors*, (2006) 3 SCC 242 and *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121, it was laid down that in the absence of any evidence with regard to the future prospects or unless the deceased was in a settled employment, there cannot be any addition towards future prospects.
6. 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 the 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."

7. In the circumstances, the Respondents (Claimants) were entitled to an augmentation to the extent of 30% towards inflation instead of 50% as taken by the Claims Tribunal. The loss of dependency thus comes to ₹ 5,51,116/- (3312/- + 30% x 2/3 x 12 x 16).
8. The Claims Tribunal awarded a sum of ₹ 10,000/- each towards loss of love and affection, loss of consortium, loss to estate and funeral expenses.
9. 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 ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would increase the compensation under this head to ₹ 25,000/-.
10. The compensation is recomputed hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of dependency	₹ 6,35,904/-	₹ 5,51,116/-
2.	Loss of Love & Affection	₹ 10,000/-	₹ 25,000/-
3.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
4.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
5.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
	Total =	₹ 6,75,904/-	₹ 6,06,116/-

11. In view of the above discussion, the overall compensation stands reduced from ₹ 6,75,904/- to ₹ 6,06,116/-.

12. The excess amount of ₹ 69,788/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal, shall be refunded to the Appellant Insurance Company.
13. The amount awarded shall be released proportionately in favour of Respondents No.1 to 3 (Claimants) in terms of the orders of the Claims Tribunal.
14. The Appeal is allowed in above terms.
15. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.
16. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 17, 2012

v