

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

Date of decision: 11th December, 2012

+ **MAC.APP. 577/2012**

UNITED INDIA INSURANCE CO.LTD. Appellant

Through: Mr.Punit Vinay, Advocate
versus

RUPA GANDHI CHAUDHARY & ORS. Respondents

Through: Mr.Sanjay Agnihotri & Mr.Rahul
Chaudhary, Advocates for R-1 to R-
3.

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 a compensation of ₹ 1,13,16,152/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No.1 to 3 (Claimants) for the death of Ajay Chaudhary who died in a motor vehicle accident which occurred on 25.02.2003.
2. On the fateful day, deceased Ajay Chaudhary was travelling in his Accent Car No.DL-3C-AB-1011 from Agra to Udaipur (Rajasthan). When they reached near PS Bhim (District Rajsamand, Rajasthan), a Truck No.HR-38-2398 came from the wrong side and struck the right rear portion of the Truck with the Accent Car in which the deceased was travelling and an iron angle got attached on rear of the Truck and pierced the chest of the deceased. He died at the spot. A police report

was lodged by Smt. Rupa Gandhi Chaudhary, deceased's widow on the basis of which FIR bearing No.50/2003 was registered at PS Bhim, District Rajsmand, Rajasthan.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the Truck No.HR-38-2398 by its driver Respondent No.5 (herein). It was claimed that the deceased was working as a Deputy News Director with TV Today Networks Ltd. and was getting a salary of ₹ 1,50,002/- per month. The Claims Tribunal on the basis of the salary certificate Ex.PW-1/D-3 opined that the deceased was getting a salary of ₹ 67239/- per month; added 50% towards future prospects; deducted 1/3 towards personal and living expenses (as the number of dependents were three) and applied the multiplier of 14 to compute the loss of dependency as ₹ 1,12,96,152/.
4. The Claims Tribunal further made a provision to award a sum of ₹ 10,000/- towards loss of love and affection and ₹ 5,000/- each towards loss of funeral expenses and loss to estate to award an overall compensation as ₹ 1,13,16,152/-.
5. The following contentions are raised on behalf of the Appellant Insurance Company:
 - i) There was contributory negligence on the part of the deceased himself; the Appellant Insurance Company cannot be made liable to pay the entire compensation.
 - ii) The deceased was aged 41 years, addition towards future prospects in view of the report of the Supreme Court in

Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559, should have been only 30%. The Claims Tribunal erred in making an addition of 50%.

iii) The Claims Tribunal did not deduct the amount payable towards income tax resulting in payment of excessive compensation.

6. On the other hand, learned counsel for the Respondents (Claimants) urges that there was no contributory negligence on the part of the deceased. Learned counsel also states that the compensation awarded is on the lower side inasmuch as from the salary certificate Ex. PW-1/D-3 it was clear that the deceased was getting house rent allowance ₹ 40343/- per month, which was not taken into account in allowing the loss of dependency.

NEGLIGENCE

7. While dealing with the issue of negligence, the Claims Tribunal observed as under:-

“To prove this issue, the petitioners have examined Ms. Rupa Gandhi Chaudhary wife of the deceased Ajay Chaudhary as PW-1. She filed her affidavit Ex. P-1 wherein she reiterated the averments as made in the claim petition. She has stated that she along with deceased Ajay Chaudhary and his mother Mrs. Kamlesh Chaudhary (Petitioner No.2) were coming from Agra and were going to Udaipur (Rajasthan) by N.H.-8 in Accent car bearing No. DL-3C AB-1011. Her husband deceased Ajay Chaudhary was driving the car. Her husband was driving the car on his side of the road and the speed of the car was within limit.

She further stated that the offending truck bearing No. HR-38-2398 came from the wrong side of the road at a very high speed and in most rash and negligent manner driven by Respondent No.2. It banged into the front side of the car on the driver side. He further stated that accident took place due to the sole negligence and carelessness of Respondent No. 2. She further stated that due to the rash and negligent driving of Respondent No.2, her husband suffered serious injuries in the accident. Her husband was taken to the local hospital where he was declared brought dead.

It was submitted by Ld. Counsel for the Petitioner that the accident took place due to rash and negligent driving of the offending vehicle. It was further submitted that an FIR bearing No.50/03 regarding the accident was registered at Police Station Bhim, District Rajsamand (Raj.) and the copies of the said criminal case record are placed on record. Nothing could come out in her cross examination which could shake her credibility.

It was contended by the Ld. Counsel for Respondent No.3 Insurance Company that the R-3 is not liable to pay compensation as the accident has taken place due to the rashness and negligent of the deceased.

There is nothing in the cross examination of PW-1 which could shake her credibility regarding rash and negligent on the part of driver of the offending truck. On the other hand, no evidence has come on record that the driver of the offending vehicle was not rash and negligent.”

8. Learned counsel for the Appellant argues that the rear portion of the Truck or for that matter any angle attached on the tyre could not hit the deceased unless there was a negligence on the part of the deceased himself. The testimony of PW-1 is very clear and categorical about the manner of the accident. Offending Truck which is a very large vehicle travelled into wrong side and rear portion of the Truck struck against the deceased's Car resulting in the injuries which proved fatal. The driver of the Truck did not come forward to give his version of

the accident. On the basis of PW-1's unchallenged testimony, the Claims Tribunal rightly reached the conclusion that the accident was caused on account of rash and negligent driving of the Truck No.HR-38-2398 by its driver Respondent No.5 (herein).

QUANTUM OF COMPENSATION

9. I have before me the Trial Court record. The salary certificate Ex. PW-1/D-3 is duly proved and is not disputed by the Appellant Insurance Company. Its perusal shows that a sum of ₹ 40,343/- was being paid to the deceased towards house rent allowance. It is well settled that the entire salary of the deceased including all the allowances which are for the benefits of the family are to be taken into consideration for awarding the loss of dependency. I am fortified, in this view, by a report of the Supreme Court in *National Insurance Co. Ltd. v. Indira Srivastava*, I (2008) ACC 162 (SC). Thus, the Claims Tribunal ought to have taken the salary of the deceased as ₹ 1,07,582/- instead of ₹ 67,239/- The learned counsel for the Appellant is right that there should have been deduction of income tax before computing the loss of dependency and addition towards future prospects is to be confined to 30% if the deceased is aged more than 40 years and less than 50 years (*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121).
10. The loss of dependency thus, comes to ₹ 1,27,51,939/- (1,07,582/- x 12-2,40,000/- + 30% x 2/3 x 14).

11. The Respondents (Claimants) further entitled to a sum of ₹ 25,000/- towards loss of love and affection and ₹ 10,000/- each towards loss of consortium, loss to estate and funeral expenses.
12. The overall compensation thus comes to ₹ 1,28,06,939/-, which is more than the compensation awarded by the Claims Tribunal.
13. In this case no Cross-Appeal or Objection has been preferred by the Respondents. In the case of *Oriental Insurance Company Limited v. Mamta Rani & Ors.*, MAC APP.629/2010, decided on 06.09.2012 this Court noticed the Supreme Court judgments in *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274; *Ibrahim v. Raju*, AIR 2012 SC 534; *New India Assurance Co. Ltd. v. Gopali & Ors.*, Civil Appeal No.5179 of 2012 decided on 05.07.2012 and a judgment of the learned Single Judge of this Court in *National Insurance Co. Ltd. v. Komal & Ors.*, MANU/DE/2870/2012, and held that the Court can increase the compensation without filing any Cross Appeal or Cross Objections.
14. The compensation is enhanced by ₹ 14,90,787/- which shall carry interest @ 7.5% per annum from the date of filing the Petition till its payment.
15. The enhanced compensation shall enure for the benefit of the First Respondent who is deceased's widow. 75% of the enhanced compensation shall be held in fixed deposit for a period of 5 years, 10 years in equal proportion in any Nationalized Bank as per convenience of the First Respondent on which the First Respondent

shall be entitled to quarterly interest. Rest 25% shall be released on deposit.

16. By an order dated 01.06.2012, 75% of the award amount was directed to be deposited by the Appellant Insurance Company within six weeks. The amount awarded by the Claims Tribunal shall be released in favour of the Respondents (Claimants) including legal representatives of the deceased Respondent No.2 in terms of the order passed by the Claims Tribunal.
17. The compensation payable to the legal representatives of deceased Respondent No.2 shall be in equal share.
18. The Appellant Insurance Company is directed to deposit the enhanced compensation with the Claims Tribunal within eight weeks.
19. Statutory deposit of ₹ 25,000/-, if any, shall be refunded to the Appellant Insurance Company on filing of a compliance report of deposit.
20. The Appeal is dismissed in above terms.
21. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 11, 2012

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