

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

Date of decision: 10th December, 2012

+ **MAC. APP. 599/2011**

NEW INDIA ASSURANCE COMPANY LTD. Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

SAIRA BANO & ORS. Respondents
Through Mr. Anshuman Bal, Adv. for R-1 to R-5.
Mr. Pankaj Seth, Adv. for R-9.

+ **MAC. APP. 1003/2011**

NEW INDIA ASSURANCE COMPANY LTD. Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

SAIRA BANO & ORS. Respondents
Through Mr. Anshuman Bal, Adv. for R-1 to R-5.
Mr. Pankaj Seth, Adv. for R-9.

+ **MAC. APP. 1007/2011**

NEW INDIA ASSURANCE COMPANY LTD. Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

SAIRA BANO & ORS. Respondents
Through Mr. Anshuman Bal, Adv. for R-1 to R-5.
Mr. Pankaj Seth, Adv. for R-9.

+ **MAC. APP. 27/2012**

SAIRA BANO & ORS. Appellants
Through: Mr. Anshuman Bal, Adv

versus

NEW INDIA ASSURANCE COMPANY LTD & ORS..... Respondents
Through Mr. Sameer Nandwani, Adv. for R-1
Mr. Pankaj Seth, Adv. for R-5.

+ **MAC. APP. 28/2012**

SAIRA BANO & ORS. Appellants
Through: Mr. Anshuman Bal, Adv.

versus

NEW INDIA ASSURANCE COMPANY LTD & ORS..... Respondents
Through Mr. Sameer Nandwani, Adv. for R-1
Mr. Pankaj Seth, Adv. for R-5.

+ **MAC. APP. 29/2012**

SAIRA BANO & ORS. Appellants
Through: Mr. Anshuman Bal, Adv

versus

NEW INDIA ASSURANCE COMPANY LTD & ORS..... Respondents
Through Mr. Sameer Nandwani, Adv. for R-1
Mr. Pankaj Seth, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The three Claim Petitions came to be decided by a common judgment dated 26.03.2011 whereby certain compensation was awarded in favour of the legal representatives of deceased Rehan, Ahsan and Firoz.

2. The three Appeals (MAC APP.599/2011, 1003/2011 and 1007/2011) have been filed by the Appellant New India Assurance Company Limited pleading that all the deceased were gratuitous passengers and that the compensation awarded is excessive and exorbitant. Whereas, other three Appeals being (MAC APP.27/2012, MAC APP.28/2012 and MAC APP.29/2012) have been filed by the legal representatives of the three deceased for enhancement of compensation on the ground that the compensation awarded is niggardly and low.
3. For the sake of convenience the Appellant in (MAC APP.599/2011, 1003/2011 and 1007/2011) shall be referred to as the Insurance Company and the Appellants in Cross Appeals (MAC APP.27/2012, MAC APP.28/2012 and MAC APP.29/2012) shall be referred to as the Claimants.
4. Unfortunately, in this accident the first Claimant lost her three sons and the Claimants No.2 to 5 lost their three brothers while they (the deceased) were repairing truck No.DL-1LE-7505 in front of Banke Bihari Dental College, Ghaziabad, which was parked on the extreme left side of the road.
5. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of truck No.UA-06G-3366 being driven by its driver Suraj Pal, (Respondent No.6 and 2) in the respective Appeals.
6. The Claims Tribunal further found that the deceased Rihan was working as a driver. In the absence of any cogent evidence with regard to his

income, the Claims Tribunal took the minimum wages of an unskilled worker to award the loss of dependency.

7. The following contentions are raised on behalf of the Insurance Company:-

- (i) There was no negligence on the part of the driver of the truck No.UA-06G-3366.
- (ii) The three deceased's were gratuitous passengers and the Insurance Company has no liability to pay the compensation.
- (iii) The Claims Tribunal made an addition of 50% in the minimum wages, which was not justified. In the absence of any evidence with regard to future prospects, an addition of only 30% should have been made on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.

8. On the other hand, the learned counsel for the Claimants urges that it was established that the deceased Rihan was a driver on the truck as his driving licence was proved as Ex.PW-2/2. Thus, even if there was no evidence with regard to his income, the Claims Tribunal should have made an assessment with regard to the income of a truck driver.

9. It is further contended that deduction towards personal and living expenses in case of a bachelor, who leaves behind a widowed mother and younger siblings is to be one-third as against one-half taken by the Claims Tribunal.

NEGLIGENCE

10. In order to prove negligence, the Claimants examined PW-1 Salim as an eye witness of the accident. He testified that on 04.09.2008 he was taking tea at a shop situated in front of Banke Bihari Dental College. He noticed that the driver, cleaner and one more person were repairing the truck No.DL-1LE-7505, which was parked on the extreme left side of the road. In the meanwhile, a truck No.UA-06G-3366 came from Hapur side and hit against the earlier said truck. The jack of the truck came out and the truck was dragged for some distance. Two persons who were repairing the truck died at the spot and the third one succumbed to the injuries later.
11. The accident took place at about 6:00 A.M. in the month of September when there is broad day light. The driver of truck No. UA-06G-3366 has not come forward to rebut PW-1's testimony. Thus, the Claims Tribunal's finding on negligence cannot be faulted.
12. Since the deceased were not travelling in the offending vehicle, they were not gratuitous passenger vis-à-vis the offending vehicle. The Insurance Company, therefore, cannot escape the liability.

QUANTUM *(for death of Rihan in MAC APP.1007/2011 & 27/2012)*

13. As stated above, it was proved that the deceased Rihan was working as a driver on the truck which met with an accident. Although, in the Claim Petition it was stated that the deceased was earning salary of ₹7,000/- per month, yet no cogent evidence was produced with regard to his income. This accident took place in the year 2008. The salary of a truck driver in the year 2008 can be estimated to be at least ₹200/- per day which comes to ₹5,000/- for 25 working days.

14. The deceased left behind the widowed mother and four younger brothers and sisters. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 it was laid down that deduction towards personal and living expenses in case of a bachelor as a thumb rule should be one-half, however, where the deceased leaves behind a widowed mother and younger siblings, there should be deduction of one-third towards the personal and living expenses.
15. The Claims Tribunal made an addition of 50% towards inflation. In the absence of any evidence with regard to future prospects, an addition of 50% should not have been made. 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.”

16. Thus, there would be an addition of 30% in the deceased's income to compute the loss of dependency instead of 50%.
17. In view of the foregoing discussion, the loss of dependency comes to ₹6,75,999/- or ₹6,76,000/- (5000/- + 30% x 2/3 x 12 x 13).
18. The Claimants are further entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
19. The overall compensation is thus comes to ₹7,21,000/- as against ₹5,04,700/- awarded by the Claims Tribunal.
20. The enhanced compensation of ₹2,16,300/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

QUANTUM *(for death of Firoz Khan in MAC APP.1003/2011 & 28/2012) and (for death of Ahsan in MAC APP.599/2011 & 29/2012)*

21. In these cases, no evidence was produced with regard to deceased Firoz Khan and Ahsan's qualification or income. The Claims Tribunal, therefore, awarded compensation on the basis of minimum wages of an unskilled worker.
22. The minimum wages of an unskilled worker at the time of the accident were ₹3683/-. Following the principles as stated above, the loss of

dependency in each of the cases comes to ₹4,97,941/- (3683/- + 30% x 2/3 x 12 x 13).

23. The Claimants are further entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
24. The overall compensation is thus comes to ₹5,42,941/- as against ₹3,76,000/- awarded by the Claims Tribunal in each of the case.
25. The enhanced compensation of ₹1,66,941/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
26. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.
27. The compensation awarded by the Claims Tribunal shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.
28. The enhanced compensation shall enure for the benefit of the First Claimant.
29. Seventy five per cent of amount shall be held in fixed deposit for a period of five years. Rest 25% shall be released on deposit. The First Claimant shall be entitled to quarterly interest on the fixed deposit.
30. The Appeals are allowed in above terms.
31. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company in each of the cases.

32. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 10, 2012

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