

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

Date of decision: 31st October, 2012

+ **MAC. APP. 384/2010**

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD.. Appellant
Through: Ms. Suman Bagga, Adv.

versus

SMT. SUSHMA DUA & ORS. Respondents
Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv.

+ **MAC. APP. 1177/2011**

SMT. SUSHMA DUA & ORS. Appellants
Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD
..... Respondent
Through: Ms. Suman Bagga, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 26.04.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹20,10,000/- was awarded in favour of the legal representatives of the deceased Ashok Kumar who died in a motor vehicle accident which occurred on 18.06.2006.

2. MAC APP.384/2010 has been preferred by IFFCO TOKIO General Insurance Company Limited, the Insurer of the vehicle No.DL-4C-AD-1402, a Tavera car involved in the accident, on the ground that the Claimants failed to prove the negligence on the part of Ajay Singh, driver of the Tavera car and that the compensation awarded is excessive and exorbitant.
3. Cross Appeal being MAC APP.1177/2011 has been filed by the legal representatives of deceased Ashok Kumar stating that the compensation awarded is on the lower side.
4. For the sake of convenience the Appellant in MAC APP.384/2010 shall be referred to as the Insurer and the Appellants in Cross Appeal being MAC APP.1177/2011 shall be referred to as the Claimants.

NEGLIGENCE

5. Immediately after the accident DD No.34 dated 18.10.2006 was recorded in Police Station Roorkee by Subhash Chand, one of the occupants of Tavera car No. DL-4C-AD-1402. In the DD entry, it was stated that on the fateful day, i.e. on 18.10.2006 at about 3:00 A.M. his brother Ashok Kumar (the deceased) and his friend Ajay Singh were returning from Haridwar to Delhi. The car was being driven by the driver Prince Kumar (Respondent No.6). His brother Ashok Kumar was sitting beside the driver's seat. In the meanwhile, a cow suddenly appeared before the car. The driver hit the car against a truck No.UP-10G-3416 which was parked on the side of the road. It was stated in the DD entry by Subhash Chand that his brother Ashok Kumar suffered grievous injuries and he died at the spot.

6. The Claimants also examined PW-2 Siya Ram Mishra who also deposed about the collision of the car with the truck which was parked on the side of the road (on the pavement).
7. It is urged by the learned counsel for the Appellant that the accident occurred because of the appearance of a cow on the road and thus there was no negligence on the part of the car driver. I would not agree. It has to be borne in mind that the car was being driven at 3:00 AM, i.e. at the dead of night when visibility is very poor. Driver of a vehicle is expected to drive it at a reasonable speed so as to stop it in case of any emergency. From the DD entry as well as from PW-2's testimony it is evident that the driver was not in control of the car and that is why it struck against the truck which was properly parked.
8. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

9. The observations of the Supreme Court in *Bimla Devi* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
10. Thus, culpable negligence on the part of driver of car No.DL-4C-AD-1402 was sufficiently established.

QUANTUM OF COMPENATION

11. During inquiry before the Claims Tribunal it was claimed that the deceased was in business in the name and style of M/s. New Cheap Store, Shop No.14, Guru Nanak Market, R Block, Greater Kailash-II, New Delhi. The deceased's widow Smt. Sushma Dua as PW-1 testified that her husband (the deceased) was earning ₹25,000/- per month. The income tax return (ITR) for Assessment Years 2004-05 and 2005-06 were proved on record as Exs.PW-1/F-1 and PW-1/F-5 wherein the deceased returned the income of ₹79,435/- and ₹76,204/- respectively. The ITR for the Assessment year 2006-07, that is upto the period 31.03.2006 was proved as Ex.PW-1/F-9 wherein the deceased's income was shown to be ₹1,15,628/- from the business and ₹41,850/- from part time tuition. This return was filed only on 20.03.2007. Deceased Ashok Kumar admittedly was not having any income from the part time tuition. It is evident that the ITR was filed to claim higher compensation.
12. The only ground of challenge is that the Claims Tribunal should not have considered the Income Tax Return for the A.Y.2006-07 which was filed on 20.03.2007, that is, after five months two days of the accident as the accident occurred on 18.10.2006. Reliance is placed on *V. Subbulakshmi & Ors. v. S. Lakshmi & Anr.*, 2008 ACJ 936 where the accident occurred

on 07.05.1997 and the Income Tax Return filed on 23.06.1997 was not taken into consideration.

13. No other evidence was produced to show that the deceased had an income of ₹1,15,628/- from business during the relevant period. The fact that income from tuition was added in the income tax return Ex.PW1/P-9 shows that the claimant wanted to claim higher compensation. In view of *V. Subbulaxmi* it would not be possible to rely on such an ITR. Thus, the Claims Tribunal committed error in assuming the deceased's income to be ₹1,50,000/- on the date of the accident.
14. The deceased's income can be taken only on the two previous ITRs which comes to ₹79,435/- + 76,204/- ÷ 2 = 77,819/-. In the absence of any evidence with regard to future prospects, the Claimants were entitled to an addition of 30% towards future prospects/ inflation on the strength of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
15. The loss of dependency comes to ₹9,86,355/- (77819/- + 30% x 3/4 x 13) as against a sum of ₹19,50,000/- awarded by the Claims Tribunal.
16. On adding a sum of ₹60,000/- as awarded by the Claims Tribunal towards non-pecuniary damages, the overall compensation comes to ₹10,46,355/-.
17. The compensation awarded shall carry interest @ 8% per annum from the date of filing of the Petition till its payment, as awarded by the Claims Tribunal.
18. By an order dated 05.07.2010, the execution of the impugned judgment was stayed subject to deposit of 50% of the award amount and a sum of

₹10 lacs was ordered to be released in favour of the Claimants by order dated 20.08.2010.

19. The Appellant Insurance Company is directed to deposit the balance amount along with proportionate interest within six weeks in UCO Bank, Delhi High Court Branch, New Delhi in the name of the First Responent (the Claimant).
20. The amount of compensation shall be disbursed/held in fixed deposit in terms and in proportion as directed by the Claims Tribunal.
21. In view of the above discussion, MAC APP.384/2010 is allowed and MAC APP.1177/2011 (Cross Appeal) is hereby dismissed.
22. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
23. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 31, 2012

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