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

Date of decision: 18th October, 2012

+ **MAC.APP. 695/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through Mr.Pankaj Seth, Advocate

versus

SNEH LATA & ORS. Respondents
Through Mr.Anshuman Bal, Advocate for the
Respondents No.1 to 5.

+ **MAC.APP. 858/2012**

SNEH LATA & ORS. Appellants
Through Mr.Anshuman Bal, Advocates

versus

RADHEY SHYAM. & ORS. Respondents
Through Mr.Pankaj Seth, Advocate for the
Respondent No.3 Insurance Company

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 (MAC.APP.695/2011 and MAC.APP.858/2012) arise out of a common judgment dated 18.04.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹42,05,000/- was awarded in favour of the Claimants by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Joginder Pal Singh who died in a motor vehicle accident which occurred on 11.08.2010.
2. MAC.APP.695/2011 has been filed by the Appellant Insurance Company primarily on the ground that the Respondents Claimants failed to prove that the accident was caused on account of rash and negligent driving of vehicle No.DL-1L-K-3550 driven by Radhey Shyam and thus the owner or for that matter the Appellant Insurance Company could not have been liable to pay the compensation. It is stated by the learned counsel for the Appellant that the compensation awarded is excessive and exorbitant.
3. On the other hand, in Cross-Appeal (MAC.APP.858/2012) the plea raised by the Cross-Objectors (Claimants) is that the Claims Tribunal erred in deducting a sum of ₹46,800/- towards tax liability which was not correctly assessed.
4. For the sake of convenience, the Appellant New India Assurance Co. Ltd. shall be referred to as the Insurance Company whereas the Appellants in the Cross-Appeal shall be referred to as the Claimants.

5. I have before me the Trial Court record. On 18.12.2010, a legal offer was submitted by the Appellant Insurance Company, which is extracted hereunder:

“Smt. Sneha Lata & Others v. Radhey Shyam & Others

FIR No.227/10-PS Dwarka

Date of Hearing 18.12.2010

LEGAL OFFER

Sir,

New India Assurance Co. has examined copies of the papers received from the court and on the basis of the photo copy of the Pay Slip, no legal offer can be made for the following reasons:

1. From copy of the pay slip it is not possible to make out as to by which office it has been issued, for which month and the year it relates to. Under the circumstances, its verification is not possible. Name of the HQ(ITB Police) is of course mentioned as RAIPUR (Madhya Pradesh).
2. On perusal of the copy of the Pay Slip it is also observed the Gross Pay has been mentioned as ₹18,656/- and if its total is checked, the Gross comes to ₹27236/- and which of the two is correct. This discrepancy raises natural doubts about the accuracy of the certificate.
3. ITB Police is one wing of the Armed Forces and on enquiries it has been advised that any request from any private person will not be entertained by the Armed Forces and only way for the verification of the income of the deceased for the purpose of loss of dependency, Govt record has to be summoned by the Hon'ble Court.
4. Since ITB Police is a wing of the Armed Forces where pension is payable to the family of the retiring or unfortunate death of the employee for whatever reasons, this certificate does not make a

mention of pension. For the purpose of loss of dependency, pension has got to be taken into account while calculating the loss of dependency.

It is therefore submitted that for the aforesaid circumstances, legal offer cannot be made.

Sd/- (Seal of the Company)

Designated Officer

New India Assurance Co. Ltd.

Divn No.15, 7 A Green Park Main,

Behind MCD Office New Delhi.

Dated 18.12.10”

6. On 05.02.2011, it was represented on behalf of the Appellant Insurance Company that it did not dispute the negligence aspect. The Claims Tribunal proceeded to frame issues, record evidence and made an award dated 18.04.2011 as stated earlier. The learned counsel for the Appellant states that proof of negligence is *sine qua non* in a Petition under Section 166 of the Motor Vehicles Act. The Claims Tribunal awarded the compensation without going into the question of negligence. Reliance is placed on *Oriental Insurance Company Limited v. Meena Variyal (2007) 5 SCC 428*.
7. I have hereinabove referred to an order dated 18.12.2010 passed by the Claims Tribunal. Since it was admitted by the Appellant Insurance Company that the negligence aspect was not disputed, the Claims Tribunal preferred not to frame an issue thereon. In the circumstances, the Claims Tribunal was not required to deal with the issue of negligence.

From the legal offer dated 18.12.2010 placed on record also, it is evident that the Insurance Company was only concerned about the proof of the deceased's salary. This legal offer coupled with the statement made by the counsel for the Insurance Company that the negligence was not disputed, the Claims Tribunal was justified in not going into the question of negligence in detail. Thus, the impugned judgment cannot be faulted on this count.

8. As far as quantum of compensation is concerned PW1 HC Munish examined by the Claimants proved the salary certificate and certified copy of the documents which established that the deceased was getting a total salary of ₹18,656/-. In column No.1, Pay in Pay Band and in column No.2 Basic Pay which was Pay in Pay Band + Grade Pay is mentioned in the salary certificate. Thus, the amount mentioned in Column No.1 was included in Column No.2. This is further supported from the order dated 12.11.2010 issued by the Senior Administrative Officer(Accounts) in the Home Ministry. Thus, the deceased's salary on the date of death inclusive of all allowances was ₹18,656/- per month or ₹2,23,872/- per annum. There was a liability of about ₹1,700/- towards Income Tax. If the amount of House Rent Allowance is excluded and the aforesaid Income Tax is deducted, the loss of dependency comes to ₹37,49,152/- (₹18,656/- x 12 – 1700/-(Income Tax) + 50% x 3/4 x 15).
9. The Claims Tribunal awarded a sum of ₹1,00,000/- towards loss of love and affection. 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 only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.

10. I would further make a provision of ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses. The overall compensation thus comes to ₹38,04,152/-.
11. Excess amount of ₹4,00,848/- along with proportionate interest shall be refunded to the Appellant Insurance Company. Rest of the compensation amount shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.
12. Both the Appeals are disposed of in above terms.
13. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
14. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 18, 2012

pst