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

Date of decision: 9th October, 2012

+ **MAC.APP. 656/2010**

SHALINI SHARMA & ORS. Appellants
Through Mr.Navneet Goyal with Ms. Suman N.
Rawat, Advocates
versus

KULDEEP SINGH & ORS. Respondents
Through Mr.Kanwal Chaudhary, Advocate for
Respondents No.3 Insurance Company.

+ **MAC.APP. 850/2010**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through Mr.Kanwal Chaudhary, Advocate
versus

SHALINI SHARMA & ORS. Respondents
Through Mr.Navneet Goyal with Ms. Suman N.
Rawat, Advocates

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.656/2010 and MAC.APP.850/2010) arise out of a common judgment dated 11.05.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹5,74,000/- was awarded for the death of Rajnish Sharma who died in

a motor vehicle accident which occurred on 09.10.1994. For the sake of convenience, the Appellant in MAC.APP.850/2010 shall be referred as the Insurance Company and the Appellants in MAC.APP.656/2010 shall be referred as the Claimants.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus No.DL-1P-3970 by its driver who was Respondent No.1 before the Claims Tribunal. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company.
3. During inquiry before the Claims Tribunal, The Claimants led evidence to prove the deceased's income. This is in the shape of affidavit Ex.PW3/A filed by the Claimant Shalini Sharma. She testified that her husband was graduate and was running a flourishing business of Stickers and Tag Making. Para 8 of the affidavit is extracted hereunder:

“That the deceased was graduate and he was running a flourishing business of Stickers and Tag Making and promoting their sale through advertisement of various firm like TATA, OPERA, RNCL, KATHAK, K Exports, Punia Exports, H.M. International, AAJ KA India, KALAMKARI etc. etc. His business got flourished within few months due to his sheer hard work and intelligence. He hold a very good reputation and name in the markets. He was holding many contracts with the reputed companies. The deceased at the time of his death, his net earning was more than ₹1,00,000/- per annum and his income was increasing month by month and had great future prospects.”

4. In the absence of corroborative evidence, the Claims Tribunal took the deceased's income to be ₹4,000/- per month, deducted 1/3rd towards

personal and living expenses and adopted a multiplier of 17 as per the age of the deceased to compute the loss of dependency as ₹5,44,000/-.

5. The following contentions are raised on behalf of the Appellant Insurance Company:

(i) There was no cogent evidence with regard to the deceased's income. In the circumstances, the Claims Tribunal ought to have taken the minimum wages of a graduate to arrive at the multiplicand.

(ii) The Claims Tribunal by an order dated 16.01.2007 observed that the Claim Petition remained dismissed for non-prosecution for the period 15.01.2002 to 16.01.2007. While restoring the Claim Petition, it was ordered that the Claimants would not be entitled to interest for this period. While awarding interest, the Claims Tribunal missed out this fact and granted interest throughout from the date of the filing of the Petition till its payment.

(iii) It is urged that the award of interest @ 8% per annum is exorbitant and excessive.

6. On the other hand, it is urged on behalf of the Claimants that the First Claimant's testimony with regard to the deceased's income as mentioned in para 8 of the affidavit was not challenged in the cross-examination. The Claims Tribunal was, therefore, justified in assessing the deceased's income at least ₹4,000/- per month. It is stated that the compensation

awarded needs to be enhanced as the deceased's future prospects were not taken into account while awarding the compensation.

7. I have hereinbefore extracted para 8 of the affidavit Ex.PW3/A sworn by Ms. Shalini Sharma. I have before me cross-examination of PW3. There is no gainsaying that PW3's testimony that her husband had a flourishing business of stickers, tag making and promoting advertisement of various firms like TATA, OPERA, RNCL, KATHAK, K Exports, Punia Exports, H.M. International, AAJ KA India, KALAMKARI etc. etc. was not challenged in cross-examination. Even the fact that the deceased was earning ₹1,00,000/- per annum was not challenged. But, at the same time, the Court cannot be oblivious of the fact that in the A.Y. 1994-95 any income beyond ₹35,000/- was subject to payment of Income Tax. Admittedly, no Income Tax Return was placed on record. The deceased was not paying any income tax. Thus, although it stands established that the deceased was carrying on business of stickers, tag making, etc., that is, material for sale promotions and was dealing with some well-known companies, yet his income could not have been assessed as more than ₹35,000/- (as the income beyond this was taxable). In the circumstances, I would assess the deceased's income to be ₹35,000/- per annum.
8. The deceased was a young boy of 27 years and there is no documentary evidence with regard to advancement in his business. Thus, the Claimants would be entitled to an addition of 30% only on account of inflation on the basis of judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. The

loss of dependency thus comes to ₹5,15,666/- (₹35,000/- + 30% x 2 ÷ 3 x 17).

9. The compensation awarded towards non-pecuniary damages was on the lower side. I would make a provision of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate, loss of consortium and funeral expenses. The overall compensation comes to ₹5,70,666/- as against the award of ₹5,74,000/-. Thus, the compensation awarded by the Claims Tribunal cannot be said to be exorbitant and excessive. Rather the same is just and reasonable.
10. As far as rate of interest is concerned, this accident took place in the year 1994. Rates of interest on long term deposit were quite high till the end of 2000. This started falling in the beginning of this century and started firming up again since the year 2008. In the circumstances, grant of interest @ 8% per annum cannot be said to be excessive. A perusal of the impugned judgment reveals that the Claims Tribunal took note of the Claimants' fault in not pursuing the Claim Petition from the year 2002 when it was dismissed in default. The Claim Petition was restored only on 16.01.2007 subject to the condition that the Claimants would not be entitled to interest from 15.01.2002 till 16.01.2007. It appears that the Claims Tribunal lost track of this fact while awarding interest in the last para of the judgment.
11. While maintaining the award of compensation and the rate of interest, the impugned judgment is varied to the extent that the Claimants would be entitled to interest @ 8% per annum from the date of the filing of the

Petition till its deposit with the Claims Tribunal/this Court less the period 15.01.2002 to 16.01.2007 within six weeks.

12. The award amount along with interest was ordered to be deposited by this Court by an order dated 21.12.2010. The Appellant Insurance Company shall be entitled to refund of the interest amount for the period as stated earlier. Rest of the amount shall be disbursed in favour of the Claimants in terms of the orders passed by the Claims Tribunal.
13. Both the Appeals are allowed in above terms.
14. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
15. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 09, 2012

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