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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 19th July, 2012

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MAC. APP. No.757/2011

CHOLAMANDALAM MS GENERAL INS CO. LTD.

..... Appellant

Through: Ms. Suman Bagga, Advocate

Versus

RAM KUMAR & ORS.

..... Respondents

Through: Mr. Himanshu Yadav, Advocate
proxy counsel for Mr. V.K.
Sharma, Advocate for the
Respondents No.1 & 2.

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 compensation of ₹7,63,352/- awarded in favour of the Respondents No.1 and 2 for the death of Yogesh Kumar who died in a motor vehicle accident which occurred on 28.06.2009.
2. On appreciation of evidence the Motor Accident Claims Tribunal (the Claims Tribunal) found that the accident was caused on account of rash and negligent driving of Eicher Canter No.HR-55E-7530 driven by the Respondent Vinod Kumar. The said finding is not challenged by the Appellant.

3. While awarding a compensation towards loss on dependency, the Claims Tribunal found that the deceased was a matriculate; it took minimum wages of a matriculate, added 50% towards inflation to compute the loss of dependency as ₹6,38,352/-. The Claims Tribunal further awarded a sum of ₹1,00,000/- towards loss of love and affection and ₹25,000/- towards funeral expenses.
4. The learned counsel for the Appellant argues that in this case there was no evidence of bright future prospects and thus the Claims Tribunal erred in granting 50% addition.
5. In *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, the Supreme Court laid down that in case of self-employed and persons having fixed income, an increase to the extent of 30% could be given towards inflation. Para 14 of the report 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.”

6. Following *Santosh Devi(supra)*, this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012 held that the claimants would be entitled to an increase in the income on account of inflation.
7. Thus, the Respondents were entitled to an increase of 30% on account of inflation. The loss of dependency thus comes to ₹5,56,670/- (₹6488/- + 30% x 12 x 1/2 x 11) as against ₹ 6,38,352/- awarded by the Claims Tribunal.
8. It is urged that the compensation of ₹1,00,000/- awarded towards loss of love and affection is excessive. Normally, when full compensation towards loss of dependency is granted only a nominal sum is awarded towards loss of love and affection. The trend of the High Court and the Supreme Court is to grant a sum of ₹25,000/- under this head. Such a sum was granted by 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 towards love and affection. However, in a later judgment in *Amrit Bhanu Shali &*

Ors. v. National Insurance Company Ltd. & Ors. (2012) 6 SCALE 1, in case of a death of bachelor, a compensation of ₹1,00,000/- was awarded by the Supreme Court. In the circumstances, I am not inclined to interfere in the award of a compensation of ₹1,00,000/- towards loss of love and affection.

9. The Claims Tribunal awarded a sum of ₹25,000/- towards funeral expenses, which in the absence of any evidence as to the actual expenditure is on the higher side. The same is reduced to ₹10,000/-. The Claims Tribunal did not award any compensation towards loss to estate. I make a provision for a sum of ₹10,000/-.
10. The overall compensation is reduced from ₹7,63,352/- to ₹6,76,670/-.
11. The amount awarded by this Court shall be disbursed in favour of the Respondents No.1 and 2 in terms of the order passed by the Claims Tribunal. The excess amount of ₹86,682/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
12. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
13. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 19, 2012
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