

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

Reserved on: 17th September, 2012
Pronounced on: 28th September, 2012

+ **MAC. APP. 850/2011**

ICICI LOMBARD GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Rajat Brar, Adv.

versus

KASTURI DEVI & ORS. Respondents
Through Mr. S.S. Sisodia, Adv. for R-1 to R-5.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for reduction of compensation of ₹7,37,000/- awarded for the death of Prakash Chand who died in a motor vehicle accident which occurred on 29.09.2009.
2. During inquiry before the Claims Tribunal it was claimed that deceased Prakash Chand used to work as a hawker in market and in local fairs and would also do catering work in marriages. He used to earn about ₹300/- per day.
3. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker; added 50% towards future prospects; deducted one-fourth towards personal and living expenses and applied the multiplier of 13 to compute the loss of dependency.

4. The finding on negligence is not challenged by the Appellant Insurance Company.
5. The following contentions are raised on behalf of the Appellant:-
 - (i) There was no evidence with regard to the deceased's future prospects. 50% addition in the assumed income on the basis of minimum wages was not justified.
 - (ii) Respondent No.2 was a major son of the deceased. He was therefore, not financially dependent on the deceased. Since Respondent No.5 was the major daughter, deduction towards the personal and living expenses should have been one-third instead of one-fourth made by the Claims Tribunal.
6. On the other hand, it is urged by the learned counsel for Respondents No.1 to 5 that the compensation awarded was just and reasonable, rather, the Claims Tribunal ought to have taken into consideration the deceased's income on the date of judgment to award loss of dependency. The learned counsel for Respondents No.1 to 5 places reliance on a report of the Supreme Court in *Rathi Menon v. Union of India*, AIR 2001 SC 1333.
7. Before advertng to the contentions raised on behalf of the Appellant, it would be apposite to deal with the plea raised on behalf of Respondents No.1 to 5.
8. *Rathi Menon* relied upon by the learned counsel for Respondents No.1 to 5 is not attracted to the facts of the instant case as it was rendered in the context of Section 124-A of the Railways Act, 1989 and the Railway Accident Compensation Rules, 1990 framed by the Central Govt. in

exercise of the power conferred to it by Section 129 of the Railways Act. Section 124-A of the Railways Act, 1989 is extracted hereunder:-

“When in the course of working a railway an untowards incident occurs, then whether or not there has been any wrongful act, neglect, or default on the part of the railway administration such as would entitle a passenger, who has been injured or the dependant of a passenger who has been killed, to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to a passenger as a result of such untoward incident.”

9. Thus, under Section 124-A, of the Railways Act, 1989, the compensation was payable for an accident as was prescribed under the Rules. The Rules were amended from time to time to enhance the compensation. Since Section 124-A was silent as to the date to be taken into consideration for award of the compensation. The Supreme Court noticed that by virtue of Notification issued w.e.f. 01.11.1997, the compensation payable under the Rules was enhanced to ₹4 lacs instead of ₹ 2 lacs, ₹3.20 lacs instead of ₹1.4 lacs and ₹2 lacs instead of ₹1 lac. The income of the deceased or the injured was irrelevant for the purpose of claiming compensation under Section 124-A of the Railways Act, 1989.
10. As far as award of compensation under the Motor Vehicles Act, 1988 (the Act) is concerned, it is well settled that actual income of the deceased at the time of the death is to be taken into consideration for the purpose of computation of loss of dependency and addition towards future prospects is to be made if there is evidence with regard to the same. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC

121). Since instant case relates to the claim of compensation under the Act and the compensation is to be awarded as per the deceased's income, *Rathi Menon* relied upon by the learned counsel for Respondents No.1 to 5 is not attracted to the facts of the present case.

11. Admittedly, there was no evidence with regard to deceased's future prospects.
12. 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 as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. 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."

13. Thus, relying on *Santosh Devi* I am of the view that even in the absence of any evidence with regard to the deceased's future prospects, the Claimants were entitled to an addition of 30% instead of 50% given by the Claims Tribunal towards the inflation.
14. PW-2 Kasturi Devi's testimony that apart from her married daughter, all the Claimants were financially dependent on deceased Prakash Chand, was not challenged in cross-examination. Although, Respondent No.2 had attained majority, yet till the children complete their education and are engaged in some vocation, they remain dependents on their parents. In the circumstances and in view of the unchallenged testimony of PW-2, it cannot be said that Respondent No.2 was not financially dependent on deceased Prakash Chand at the time of his death. Excluding Respondent No.5, the married daughter, the number of dependents were four, the Claims Tribunal thus, rightly deducted one-fourth of the deceased's income towards his personal and living expenses.
15. The loss of dependency thus comes to ₹6,08,400/- ($4,000/- + 30\% \times \frac{3}{4} \times 12 \times 13$).
16. On adding a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate, funeral expenses and loss of consortium, the overall compensation comes to ₹6,63,400/-.
17. The compensation thus stands reduced from ₹7,37,000/- to ₹6,63,400/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

18. The excess amount of ₹ 73,600/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
19. The compensation of ₹6,63,400/- shall be released in favour of Respondents No.1 to 5 in terms of the order passed by the Claims Tribunal.
20. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
21. The Appeal is allowed in above terms.
22. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 28, 2012

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