

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

Decided on 24th July, 2012

+ **MAC.APP. 872/2011**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Neerja Sachdeva, Advocate

versus

JANNAT & ORS

..... Respondents

Through Mr. Navneet Goyal, Adv.
Ms. Suman N. Rawat, Adv.

+ **MAC.APP. 154/2012**

JANNAT & ORS

..... Appellants

Through Mr. Navneet Goyal, Adv.
Ms. Suman N. Rawat, Adv.

versus

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Respondent

Through Ms. Neerja Sachdeva, Advocate

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.872/2011 and MAC APP.154/2012) arise out of a common judgment dated 29.07.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹12,56,136/- was

awarded for the death of Mohd. Shamim, a bachelor aged about 26 years.

2. During inquiry before the Claims Tribunal, it was claimed that the accident was caused on account of rash and negligent driving of truck No.HR-38K-0923 by Bachittar Singh, Respondent No.6. It was claimed that the deceased was employed as a labourer at Chicken shop and was earning ₹9,000/- per month.
3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of truck No.HR-38K-0923 by Bachittar Singh, Respondent No.6. The Claims Tribunal declined to believe the Claimants' version that the deceased was working at Chicken shop at GTNB Enclave, Nand Nagri and was getting a salary of ₹9,000/- per month. It, therefore, took the Minimum Wages of an unskilled worker; added 50% towards the inflation; deducted one-third towards the personal and living expenses and applied the multiplier of '17' to compute the loss of dependency.
4. For the sake of convenience, the Appellants in MAC APP.872/2011 shall be referred to as the Insurance Company and the Cross Objectionists in MAC APP.154/2012 shall be referred to as the Claimants.
5. It is urged on behalf of the Insurance Company that the deceased Mohd. Shamim was a bachelor, aged 26 years. The deceased's mother was aged 47 years. In the circumstances,

there should have been a deduction of 50% towards the personal and living expenses and the multiplier of '14' should have been applied as per the age of the mother. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. It is contended that there was no evidence with regard to the future prospects and addition of 50% towards inflation could not have been made.
7. On the other hand, learned counsel for the Claimants argues that the deceased father Nasruddin was a cancer and a heart patient. Deceased Mohd. Shamim had to take care of his younger siblings. In the circumstances, the Claims Tribunal ought to have made a deduction of one-fourth instead of one-third made by it towards personal expenses and not one-half as claimed by the Insurance Company. The appropriate multiplier in the circumstances, according the learned counsel was rightly selected by the Claims Tribunal.
8. It is urged by the learned counsel for the Claimants that no compensation was awarded under the head of loss of love and affection.
9. While departing from the normal rule of deduction of 50% towards the personal and living expenses in case of a bachelor and adopting the multiplier as per the age of the deceased, the Claims Tribunal observed as under:-

“Deceased is stated to be survived by his mother, father and three unmarried sisters. As per Ex.PW1/6 copy of ration card father of deceased is shown to have three sons and three daughters. There is however, no claim on behalf of second minor brother of deceased. It is stated that father was suffering from cancer and heart disease and was not doing any work for a long time. It is also stated that there was elder brother of the deceased who was living separately and not supporting the family. Age of unmarried sisters of the deceased are stated to be 19 years, 18 years & 17years respectively. In view of the averment that the father of the deceased was a cancer and heart patient and was unable to work and that there are three unmarried sisters, therefore, there being 05 dependents, accordingly, only 1/3rd to be deducted as personal expenses of unmarried deceased. On the basis of age of deceased which was 26 years on the date of accident, the relevant multiplier would be 17.”

10. Thus, it is established that apart from his mother, the deceased was expected to look after his ailing father who was a heart and a cancer patient. He had further responsibility of three young unmarried sisters who were to be married.
11. In *Sarla Verma* which is relied upon by the learned counsel, the Supreme Court referred to *Fakeerappa v. Karnataka Cement Pipe Factory*, 2004 (2) SCC 473 where it was observed that normally there would be deduction of 50% towards personal and living expenses while awarding loss of dependency for the death of a bachelor. The Supreme Court held that there cannot be a rigid rule or formula of universal application. Every case shall have to be decided on its own facts and circumstances. The Supreme Court held that where the family of the bachelor is

large and depends on the income of the deceased as in a case where he has a widowed mother and a large number of younger non earning sisters or brothers, his personal and living expenses may be restricted to one-third.

12. In the instant case, although the deceased's father is alive but he is suffering from cancer and heart disease. Further, he had the responsibility of three younger sisters. In the circumstances, the Claims Tribunal was justified in making deduction of one-third towards the personal and living expenses and adopting a multiplier of '17' as per the age of the deceased.
13. The Claimants contention that there should have been deduction of one-fourth also cannot be accepted because deduction of one-third is made in case of a bachelor as an exception, for the reasons which have been stated earlier.
14. In the absence of any cogent evidence with regard to deceased's income, the Claims Tribunal was justified in taking minimum wages of an unskilled worker to compute the loss of dependency, particularly when no evidence was led as to the nature of job performed by the deceased.
15. 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 *Santosh Devi (supra)* provided for an increase of 30% in the victims income towards inflation in case of persons having fixed income or self employed, manual, skilled, unskilled workers, like barber, blacksmith, cobbler, mason, carpenter, etc. etc. Relevant portion of the *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."

16. Thus, there would be an addition of 30% instead of 50% granted by the Claims Tribunal.
17. The loss of dependency thus comes to ₹10,75,651/- (6084/- + 30% x 2/3 x 12 x 17).
18. While awarding compensation, the Claims Tribunal did not make any provision towards loss of love and affection. Loss of love and affection can never be measured in terms of money. 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 ₹25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would award a sum of ₹ 25,000/- under this head.
19. The Claimants are further awarded a sum of ₹ 10,000/- each towards loss to estate and funeral expenses.
20. The overall compensation is thus reduced from ₹12,56,136/- to ₹11,20,651/-.
21. The excess amount of ₹1,35,485/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
22. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company in MAC APP.872/2011.
23. Both the Appeals are disposed of in above terms.

24. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 24, 2012
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