

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

Reserved on: 31st January, 2011
Pronounced on: 6th February, 2012

+ **MAC. APP. No.646/2010**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. K.L.Nandwani, Advocate

Versus

ASHA DALMIA & ORS.

..... Respondents

Through: Mr. Navneet Goyal with Ms.
Suman N. Rawat, Advocates for
the Respondents /Claimants
/Cross-Objectors

WITH

+ **MAC. APP. No.129/2012**

ASHA DALMIA & ORS.

..... Appellants

Through Mr. Navneet Goyal with
Ms. Suman N. Rawat,
Advocates

Versus

NEW INDIA ASSURANCE CO. LTD.

..... Respondent

Through: Mr. K.L.Nandwani, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Cross-Appeals arise out of a judgment dated 04.06.2010 whereby a compensation of ₹ 11,74,360/- was

awarded in favour of the Respondents No.1 to 7 in MAC APP. No.646/2010 (hereinafter referred to “the Claimants”), for the death of Raju Dalmia who died in an accident which took place on 13.11.2005.

2. The deceased was aged 38 years. He was in his own business. He was Director of M/s. Haryana Polysacks (P) Ltd. and M/s. Khatu Shyam Polyweave (Petitioner) Ltd. The Claims Tribunal took the deceased’s income as ₹ 1,07,747/-, deducted 1/3rd towards the personal and living expenses and applied the multiplier of 16 as per the deceased’s age to compute the loss of dependency as ₹ 11,14,360/-.
3. It is contended on behalf of the Appellant New India Assurance Co. Ltd. (in MAC APP No.646/2010) that the major part of the deceased’s income as reflected in the Income Tax Return was from earning as interest. The dependents continued to get the income. The Tribunal erred in taking the entire income to calculate the loss of dependency.
4. On the other hand, it is urged on behalf of the Claimants that the deceased was in his own business; he was an Income Tax Assessee; his future prospects should have been considered to compute the loss of dependency. It is contended that since the number of dependents were five, there should have been reduction of 1/4th of the deceased’s income towards his personal and living expenses.
5. The Appellant New India Assurance Co. Ltd. has not disputed the liability or the fact that the incident occurred on account of

rash and negligent driving by the driver of the Tata Sumo bearing No.UP-14H-8398. I would like to refer to the affidavit Ex.PW1/A of Asha Dalmia and her cross-examination to reach to the conclusion as to what was the actual financial loss suffered by the Claimants on account of Raju Dalmia's death.

6. PW1 deposed that apart from Raju Dalmia being Director of M/s. Haryana Polysacks (P) Ltd. and M/s. Khatu Shyam Polyweave (Petitioner) Ltd., he was engaged in money lending business. The deceased was earning about ₹ 50,000/- per month and would give to her (the deceased's wife) a sum of ₹ 35,000/- per month for regular household expenses. She proved the deceased's Income Tax Return as Exhibits P17 and P18. In cross-examination, she denied that her husband was not giving her ₹ 35,000/- per month for household expenses. At the same time, it cannot be lost sight that the Income Tax Return for the Assessment Year 2004-05 (previous year 2003-04) and for the Assessment Year 2005-06 (previous year 2004-05), there was only an income of ₹ 34,800/- from the salary. Rest of the income was from other sources i.e. interest as admitted by the PW1. Although, PW1 deposed that her deceased's husband was Director of M/s. Haryana Polysacks (P) Ltd. and M/s. Khatu Shyam Polyweave (Petitioner) Ltd., but no evidence was produced as to the income of these two companies and his share holding. No evidence as to the payment of dividend or distribution of profit was adduced.

Therefore, the deceased's income can be considered only on the basis of the Income Tax Return filed by him.

7. As I have already noticed above, the major part of the deceased's income was from his business of money lending, and the dependents still continued to be the owner of the capital even after the deceased's death and they could still earn interest if they wanted to do the business. Of course, the deceased would have spent some time in the business of money lending and the dependents have to be compensated for the loss on account of the work rendered by him for money lending business.
8. The deceased's income from salary in the Assessment Year 2005-06 as in the previous year also was ₹ 34,800/-. There was an income of ₹ 70,151/- from other sources which can be presumed to be the income from the money lending business. Since the dependents continued to get that income, I would take 50% of the income from money lending on account of the deceased's personal effort and supervision and would hold that the dependents were liable to be compensated to the extent of ₹ 35,000/- only for the income from the money lending business. The total income for computation of loss of dependency would be ₹ 69,800/- (₹ 34,800 + ₹ 35,000).
9. Turning to the plea for refusal of future prospects, there cannot be any dispute that even in the cases of self-employment, the future prospects can be granted in appropriate cases provided there is evidence of increase in income on year to year basis. It

was not so in this case. Thus, the future prospects cannot be added to compute the loss of dependency.

10. On the principles laid down in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, for computing the loss of dependency, there has to be deduction of 1/4th towards personal living expenses as the number of dependents were more than four. The dependency comes to ₹ 7,85,250/- (₹ 69,800 x $\frac{3}{4}$ x 15). On adding the conventional sum of ₹ 25,000/- towards the loss of love and affection, ₹ 10,000/- towards loss of consortium, ₹ 15,000/- towards funeral expenses and ₹ 10,000/- towards loss to estate, the overall compensation comes to ₹ 8,45,250/-.
11. Thus the compensation is reduced to ₹ 8,45,250/- from ₹ 11,74,360/-.
12. The Claims Tribunal granted interest @8% per annum. Since the interest rates have started rising, I would not like to interfere in the same. The compensation awarded shall be distributed amongst the Claimants in the proportion as ordered by the Claims Tribunal.
13. The excess compensation deposited shall be returned to the Appellant New India Assurance Co. Ltd. with interest, if any, during the pendency of the Appeal.
14. In view of the discussion above, MAC APP. No.646/2010 is allowed.
15. The statutory amount, if deposited by the Appellant New India Assurance Co. Ltd. shall also be returned.

16. The Cross-Appeal being MAC APP No.129/2012 is devoid of any merit, the same is accordingly dismissed.
17. No costs.

(G.P. MITTAL)
JUDGE

FEBRUARY 06, 2012
pst