

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

Decided on: 10th January, 2012

+ **MAC APP. 576/2008**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Adv. with
Mr. Amit Gaur, Advocate

versus

SMT. SHINY & ORS. Respondents

Through: Mr. Manish Maini, Adv. for R-
1 to R-4.

+ **MAC APP. 40/2009**

SMT. SHINY & ORS. Appellants

Through: Mr. Manish Maini, Advocate

versus

MOHD. AKIL & ORS. Respondents

Through: Mr. Pradeep Gaur, Adv. with
Mr. Amit Gaur, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These are two cross Appeals. MAC APP. 576/2008 is preferred by the Oriental Insurance Company Limited whereas MAC APP. 40/2009 is filed by the Appellants Shiny & Ors.

2. The Appellants Oriental Insurance Company shall be referred to as the Insurance Company and the Appellants in MAC APP. 40/2009 shall be referred to as the Claimants for the sake of the convenience.
3. The Claimants seek enhancement of compensation of ₹ 6,91,500/- on the ground that the Motor Accident Claims Tribunal (the Tribunal) erred in making deduction of 25% and then again of one-third from the deceased's income of ₹7,000/- per month while calculating the loss of dependency.
4. The Insurance Company's plea is that the compensation awarded was on the higher side and no recovery rights were granted to it, although, it was proved that the driving licence of the driver Respondent No.5 Mohd. Akil (in MAC APP. 576/2008) was fake.
5. The accident took place on 26.02.2006. As per the driving licence of deceased Rajesh @ Rajesh Joseph, his date of birth was 10.05.1970. Thus, he was aged about 35 years and 7 months on the date of the accident.
6. In order to establish the deceased's salary, the Claimant Shiny deposed that her husband was getting a salary of ₹7,000/- per month. Her testimony was corroborated by PW-2 Hirotoshi Endo who was the deceased's employer. He deposed that the deceased was being paid a salary of ₹7,000/- per month inclusive of medical allowance, conveyance and lunch since the

time of his employment in January, 2005. From PW-2's testimony, it is apparent that the deceased was getting a lumpsum salary of ₹ 7,000/-. No deduction was required to be made in the amount of income apart from the deduction towards personal and living expenses of the deceased. The Tribunal fell into error in initially deducting 25% from the income towards the personal expenses and then again deducting one-third towards the personal and living expenses of the deceased.

7. The Supreme Court in the case of *Sarla Verma v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 laid down the following principles for grant of compensation in death cases:-

“I. MULTIPLIER

Age of the deceased (in years)	Multiplier
15-20	18
21-25	18
26-30	17
31-35	16
36-40	15
41-45	14
46-50	13
51-55	11
56-60	09
61-65	07
Above 65	05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

- (i) Deduction towards personal expenses.
: 1/2 (50%)
- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased.
: 1/3rd (33.33%)

Deceased – married

- (i) 2 to 3 dependent family members. : 1/3rd
- (ii) 4 to 6 dependent family members : 1/4th
- (iii) More than 6 family members : 1/5th
- (iv) Subject to the evidence to the contrary. : Father, brother and sisters will not be considered as dependents.

III. FUTURE PROSPECTS

- (i) Permanent job : Actual salary – tax + 50%
Below 40 years of age towards future prospects.
- (ii) Permanent job : Actual salary – tax + 30%
Between 40-50 years towards future prospects.
- (iii) More than 50 years with: Actual salary only.
permanent job. No addition for future prospects.
- (iv) Deceased employed at a fixed: Only actual income to be
Salary (without provision for taken. No addition.
Annual increments)”

8. As per Sarla Verma (supra) father is not to be treated as a

dependant. Hence, one-third shall have to be deducted towards the deceased's personal and living expenses and the multiplier of 15 should have to be applied as per the age of the deceased.

9. The revised loss of dependency works out to ₹ 8,40,000/- (i.e. ₹ 7,000/- minus one-third x 12 x 15).
10. On adding a sum of ₹25,000/- towards loss of love and affection, ₹ 10,000/- each towards loss of consortium and loss of estate and ₹5,000/- towards funeral expenses, the overall compensation comes to ₹ 8,90,000/-.
11. The amount of compensation shall carry interest @ 7% per annum from the date of filing of the petition till the date of payment as granted by the Tribunal.
12. The amount shall be payable to the Claimants in proportion and will be held in fixed deposits as directed by the Tribunal in Para 17 of the impugned judgment.
13. With regard to the right of recovery, the driving licence number T-17640 issued on 21.10.2002 was placed on the record of the Tribunal. It is urged by the learned counsel for the Insurance Company that the driving licence was found to be fake. On this issue, the Tribunal held as under:-

“16.... T3W2 proved insurance policy as EX.R3W3/D. He further deposed that notice under Order 12 Rule 8 CPC was issued to Sh. Harender Kumar and Sh. Mohd. Akil respondent Nos. 2 and

1 respectively. He proved the copy of notice as Ex.R3W2/A. He further stated that notice was sent to them by registered AD. R3W1 deposed as per record brought by him regarding issuance of licences for the period 01.06.2005 to 15.07.2005 licences No.T-7103 to 7158 were issued during this period. He further deposed that driving licence No.T-1764 was not issued from his office. T series licence numbers were not issued after 15.07.2008. He proved relevant page of register as Ex.R3W1/A. In cross examination he admitted that he did not bring the record of 21.10.2002 or 20.10.2005. Ex.P4 is copy of driving licence dated 21.10.2002 or 20.10.2005.Ex.P4 is copy of driving licence dated 21.10.2002 purportedly issued to Mohd. Akil respondent No.1. His testimony could not create any suspicion that driving licence Ex.P4 is fake licence.....”

14. It is urged by the learned counsel for the Insurance Company that the serial number of the driving licence 17640 issued in the year 2002 by itself would show that the same was fake as R3W1 deposed that the licence number T-7103 to T-7158 were issued during the period 01.06.2005 to 15.07.2005. It is well settled that the onus to prove the breach of terms of policy is on the Insurance Company. The Insurance Company was required to summon and prove the record of the issuance of the licence on 21.10.2002 and its renewal on 20.10.2005. The same having not been done, it cannot be said that the Insurance Company discharged the onus of proving the breach of the terms of policy.

15. Thus, no fault can be found in the finding of the Tribunal that the insurer failed to establish the violation of the terms and conditions of the Insurance Policy. Thus, the insured was entitled to be indemnified by the Insurance Company as the vehicle was duly insured.
16. In view of the above MAC APP.576/2008 filed by the Insurance Company is hereby dismissed. MAC APP. 40/2009 filed by the Claimants is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

JANUARY, 10, 2012

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