

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

Date of decision: 10th December, 2012

+ **MAC.APP. 513/2009**

UNITED INDIA INSURANCE COMPANY LTD. ... Appellant
Through: Mr. Shivali Bansal, Adv.

versus

DR. JIA LAL PRASHAR & ORS. Respondents
Through: Dr. Kanwal Sapra, Adv. for R-1 & R-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 ₹44,83,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Respondents No.1 & 2 for the death of Himanshu Prashar, who died in a motor vehicle accident which occurred on 13.05.2002.
2. The finding on negligence is not challenged by the Appellant Insurance Company; thus the same has attained finality.
3. The Claims Tribunal by impugned judgment held that the deceased Himanshu Prashar was a final year student pursuing B.E. Industrial Production Engineering from BVB College of Engineering and Technology, Hubli. The Claims Tribunal referred to the testimony of deceased's father as PW-1 who testified that the deceased would have been placed in the salary of ₹6 lacs to ₹ 12 lacs per annum after completing the course. In the circumstances, the Claims Tribunal made assessment of the deceased's income to be ₹45,000/- per month, added

50% towards future prospects, deducted 50% towards personal and living expenses to compute the loss of dependency as ₹44,55,000/-.

4. The Appeal is filed by the Appellant Insurance Company on the premise that the compensation awarded is highly exorbitant and excessive.
5. By an order dated 21.12.2009, this Court directed summoning of the record from BVB College of Engineering regarding placement of the students. The same is extracted hereunder:-

“ 1. The deceased was the student of final year of B.V.B. College of Engineering and Technology, Hubli, Karnataka.

2. The learned Tribunal has taken the earning capacity of the deceased to be Rs.45,000/- per month. The learned Tribunal has thereafter taken the future prospects into consideration by adding 50% of the said amount.

3. In order to ascertain the earning capacity of the deceased, this Court is of the view that Dean of B.V.B. College of Engineering and Technology, Hubli, Karnataka should be examined to find out the average income of the students after completing the course which the deceased was doing.

4. Notice be, therefore, issued to the Dean of B.V.B. College of Engineering and Technology, Hubli, Karnataka to be personally present or send a competent officer to appear before this Court as a Court witness along with a certificate and supporting material giving the average income which the students of the course which the deceased was doing, are earning.

5. Notice to the Dean of B.V.B. College of Engineering and Technology, Hubli, Karnataka be given Dasti to learned counsel for respondent Nos.1 and 2 who shall serve the same dasti.....”

6. Summons were repeatedly sent to the Principal of the College either to appear by his own or to produce some responsible officers to produce the record with regard to the placement of the students. The same was, however, not produced. Ultimately, on 20.11.2012, the Principal of the College deposed that the placement record pertaining to the year 2001-

2003 has not been preserved and the same is not available.

7. It is urged by the learned counsel for the Appellant that in the year 2002, the salary of a Class I officer in the Central Govt. inclusive of HRA was about ₹15,000/- per month. The deceased was not pursuing engineering from any prestigious institute like IIT, Delhi College of engineering or any Regional Engineering College. He was pursuing Engineering in Industrial Production from BVB College of Engineering and Technology, Hubli. Thus, at the most the deceased's income could be taken as ₹15,000/- per month.
8. On the other hand, learned counsel for the Respondents (the Claimants) has relied upon some of the documents placed on record of the Claims Tribunal. The Respondents placed on record the photocopy of the letter dated 19.02.2007 addressed to Mr. Suresh Nagaraja, Senior Consultant, who was informed that his salary had been increased to ₹6,23,362/-p.a. Similarly, annual salary of Mr. Rajeev Biradar placed on record by the Respondents in the year 2007 was ₹4,00,000/-; salary of Amit Dixit in the year 2007 was ₹3,28,900/- and the salary of Mr. Vishwas V. Hukkeri was ₹4,95,012/-. Salary of Sandeep Kammar was ₹ 4,00,008/-. They were claimed to be studying Engineering with the deceased. None of these persons were produced by the Respondents for the purpose of cross-examination.
9. It is *no longer res integra* that potential income of a student pursuing professional course has to be taken into consideration to award the loss of dependency. (*Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*; and *Ramesh Chand Joshi v. New India Assurance Company MAC APP. 212-213/2006 decided on 20.01.2010*).

10. The Respondents have not produced any evidence as to what was the potential salary of a student passing out from that college in the year 2002. The evidence produced by the Respondents themselves showed that the persons who passed out simultaneously with the deceased were getting a salary between ₹3,28,000/- to ₹6,23,000/- in the year 2007. Their salaries immediately after passing out was not produced. As stated above, these classmates were not produced for the purpose of cross-examination.
11. In any case, it is not disputed that the deceased Himanshu Prashar was not pursuing his BE from IIT or any Regional Engineering College.
12. A Division Bench of Andhra Pradesh High Court in *B. Ramulamma v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar, 2011 ACJ 1702*, held that it was very difficult to determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take a salary at the entry level fixed by the Govt. for such jobs.
13. In the instant case, even if the deceased was not pursuing his BE from IIT or any Regional Engineering College. But, BVB College of Engineering and Technology, Hubli appeared to be an old College. Its golden Jubilee celebration was celebrated in the year 1999-2000. The court can take judicial notice of fact that salary of a Group A officer or for that matter an Engineering on basic pay of ₹8,000/- with all allowances would be about ₹15,000/- per month. Since the deceased was a final year student, the Respondents can be granted addition of 30% towards inflation. (*Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*).

14. The loss of dependency thus comes to ₹13,52,000/- (15,000/- x 12 – ₹20,000/- (income tax) + 30% x 1/2 x 13) as against ₹ 44,55,000/- awarded by the Claims Tribunal.
15. The Respondents (the Claimants) are further entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
16. The overall compensation is reduced from ₹44,83,000/- to ₹13,97,000/- which shall carry interest 7.5% per annum from the date of filing of the Petition till its payment.
17. The excess amount of ₹ 30,86,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
18. The compensation awarded shall be disbursed/held in fixed deposit in favour of the Respondents in terms of the order passed by the Claims Tribunal.
19. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
20. The Appeal is allowed in above terms.
21. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 10, 2012

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