

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

Date of decision: 12th October, 2012

+ **MAC. APP. 745/2010**

THE ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Santosh Paul, Adv. with
Ms. Mohita Bagati, Adv.

versus

SMT. RANJANA MISHRA & ORS. Respondents

Through Mr. Peeush Sharma, Adv. for R-1 to R-6.

+ **MAC. APP. 401/2011**

SMT. RANJANA MISHRA & ORS Appellants

Through: Mr. Peeush Sharma, Adv.

versus

THE ORIENTAL INSURANCE COMPANY LTD. Respondent

Through: Mr. Santosh Paul, Adv. with
Ms. Mohita Bagati, Adv.

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 arise out of a common judgment dated 27.08.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Suit No.1382/2008 whereby a compensation of ₹50,40,940/- was awarded in favour of the legal representatives of deceased Nagendra Mishra, who died in a motor vehicle accident which occurred on 04.11.2008.

2. MAC APP.745/2010 has been filed by the Oriental Insurance Company Limited on the ground that the compensation awarded is exorbitant and excessive whereas in MAC APP.401/2011, the legal representatives of the deceased Nagendra Mishra claim that the compensation awarded particularly the rate of interest is very low.
3. For the sake of convenience, the Appellant in MAC APP.745/2010 shall be referred to as the Insurance Company whereas the Appellants in MAC APP.401/2011 shall be referred to as the Claimants.
4. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as an Assistant Manager (Purchase) with Distilleries & Chemicals Pvt. Ltd., Gehlab Road, Hathin, District Mewat, Haryana and was getting a salary of ₹23,618/- per month. The Claimants during the course of inquiry proved a salary certificate Ex.PW-1/12 to show that the deceased received annual salary of ₹2,96,352/- at the time of his death. This certificate was not disputed. The Claims Tribunal deducted one-fourth towards the personal and living expenses of the deceased; applied the multiplier of 15 to compute the loss of dependency as ₹50,00,940/-.
5. The Claims Tribunal further awarded a sum of ₹10,000/- each towards loss of love and affection, loss of consortium, loss to estate and funeral expenses to compute the overall compensation of ₹ 50,40,940/-.
6. The only ground of challenge raised by the Appellant Insurance Company is that for the computation of loss of dependency, actual income less income tax should have been taken into consideration. Reliance is placed

on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

7. On the other hand, learned counsel for the Claimants urges that the compensation awarded is just and reasonable. It is stated that the compensation awarded towards loss of love and affection is on the lower side. Moreover, the Claims Tribunal awarded interest @ 5% per annum whereas in the year 2009 when the Claim Petition was filed and the year 2010 when the same was decided the rate of interest on long term fixed deposits were very high. The Claims Tribunal ought to have awarded interest @ 12% per annum.
8. It is well settled that while computing the compensation, the actual income of the deceased less income tax is to be taken into consideration. After taking out the House Rent Allowance for the purpose of calculation of income tax, the liability of income tax in the Assessment Year 2009-10 was about ₹8,000/-. The loss of dependency thus comes to ₹48,65,940/- (2,96,352/- - ₹8,000/- (income tax) + 50% x 3/4 x 15) as against an award of ₹50,00,940/-.
9. Normally a compensation of ₹25,000/- is awarded towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. 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 enhance the compensation under this head from

₹ 10,000/- to ₹ 25,000/- while maintaining the award of ₹10,000/- each towards loss to estate, loss of consortium and funeral expenses.

10. The overall compensation thus comes to ₹49,20,940/-.
11. The award of interest by the Claims Tribunal is compensation for the retention of the money held by the Insurance Company. The rate of interest was very low till about the year 2006. It started rising since the year 2007. From the year 2009 onwards, the interest on long term deposits is in the vicinity of about 9% per annum. Thus, the rate of interest on long term deposits during the pendency of the Claim Petition was varying between 8% - 8.5% per annum. The award of interest @ 5% per annum by the Claims Tribunal was totally unreasonable. The Claimants would be entitled to interest @ 8% per annum from the date of filing of the Petition till the amount was deposited in pursuance of the order of this Court.
12. Although the compensation amount stands reduced by ₹1,20,000/-, since there is an enhancement in the rate of interest by 3%, there would be an overall increase in the amount payable to the Claimants on account of the increase in the rate of interest. The balance amount of compensation shall be deposited with the Claims Tribunal within six weeks.
13. The enhanced amount shall enure for the benefit of the first Claimant, who is the deceased's widow.
14. Fifty of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest shall be released on deposit.

15. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
16. Both the Appeals stand disposed of in above terms.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 12, 2012

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