

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

Date of decision: 15th October, 2012

+ **MAC.APP. 1068/2011**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through Ms. Shantha Devi Raman, Adv.

versus

POONAM & ORS Respondents
Through Mr. A.P.S. Jadaun, Adv. with
Mr. Alok Kumar Gupta, Adv. for
R-1 to R-5.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Company Limited seeks reduction of compensation of ₹15,83,000/- awarded for the death of Jitender who died in a motor vehicle accident which occurred on 15.11.2009.
2. It is alleged that on 15.11.2009 at about 4:30 P.M. deceased Jitender was returning to his residence in Village Chhawla on his two wheeler No.DL-4S-AH-2119, when he reached Samalkha red light, Dwarka, a Maruti Van No.DL-2C-AH-4592 being driven by Respondent No.6 Purushottam Pandey in a rash and negligent manner struck the two wheeler, as a result of the forceful impact, the deceased fell down and received grievous injuries. He was immediately removed to Ayushman Hospital where he succumbed to the injuries.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Maruti Van No. DL-2C-AH-4592 being driven by Respondent No.6. It was claimed that the deceased was earning a salary of ₹8,000/- per month. The Claims Tribunal further took the deceased's salary to be ₹6854/-; added 50% towards future prospects; deducted one-fourth towards personal and living expenses to compute the loss of dependency as ₹13,87,260/-. The Claims Tribunal further awarded a sum of ₹1,25,000/- towards loss of love and affection; ₹ 20,000/- each towards loss of consortium, loss to estate and funeral expenses and ₹10,000/- towards medicines and treatment, before the deceased succumbed to the injuries.
4. The following contentions are raised on behalf of the Appellant Insurance Company :-
 - (i) The involvement of Maruti Van No.DL-2C-AH-4592 was doubtful. The Claims Tribunal erred in fastening the liability on the insured and consequently upon the Insurance Company.
 - (ii) The compensation awarded towards loss of love and affection and other pecuniary heads was excessive and exorbitant.
 - (iii) There was no evidence with regard to deceased's future prospects. The Claims Tribunal erred in making addition of 50% towards future prospects.
5. On the other hand, learned counsel for the Claimants urges that involvement of Maruti Van was duly established. The compensation awarded was on the lower side in as much as the contribution towards the

Provident Fund, bonus and Leave Travel Allowance payable to the deceased were part of his salary and for the benefit of the deceased and his family members. These should have been taken into consideration to compute the loss of dependency.

NEGLIGENCE

6. It is urged by the learned counsel for the Appellant that immediately after the accident the deceased was removed to Ayushman Hospital. In the MLC it is recorded that Jitender Kumar suffered injuries by a vehicle (Tata Safari). In the FIR recorded in the Police Station it was stated that no eye witness was available at the spot. Statement of the eye witness was recorded by the police on 26.03.2010 i.e. four months after the accident. Presence of Ashwani Rana, the so-called eye witness at the time of the accident was doubtful and thus the involvement of Maruti Van No.DL-2C-AH-4592 in the accident is not established. The Appellant Insurance Company was, therefore, not liable to pay the compensation.
7. Ashwani Rana was examined as PW-1. He deposed as under:-

“On 15.11.2009 at about 4.30 p.m. I got down at Samalka red light from the bus and was proceeding towards my house on foot. At that time I noticed a person driving his two wheeler scooter who was proceeding towards Dwarka from Samalka red light, at that time an Omni Van bearing no.DL-2CAH-4592 came from Samalka red light side and was proceeding towards Dwarka. The driver of the said van was driving the same at a fast speed. The driver of said van who was coming from the back side of the scooter, in the process of overtaking the same, struck the side of van against the scooter, as a result of which the scooterist fell down. Many public persons gathered there. A person in his car also stopped to help the victim. The driver of Maruti van stopped for a while but thereafter ran away from the spot. I with the help of public

persons brought the injured to Ayushman Hospital in the said car. I thereafter from the phone of the injured informed his family members, who after some time came at the spot and thereafter I left the spot.

I due to my some personal work had gone to Rajasthan. I was informed that police for the purpose of making inquiry had come to my place. I after coming back from Rajasthan stated the facts to the police vide my statement. Copy of which is Ex.PW-1/A and it bears my signature at point A.”

8. In cross-examination on behalf of Respondents No.6 and 7, a mere suggestion was given to PW-1 that he had deposed falsely. In the cross-examination of this witness by the Insurance Company nothing substantial could be brought out to suggest that the witness had told a lie. He gave an explanation that after the accident he went to Rajasthan and returned after three months. Of course, on the MLC, it appears to have been recorded that the accident was caused by a vehicle (Tata Safari). A perusal of the MLC shows that injured Jitender was admitted in the hospital by one Dhiraj. He had suffered head injuries and was immediately admitted in ICU. It is also recorded that there was history of LOC (loss of consciousness). It is, therefore, not clear as to who had given the history of the accident caused by a vehicle (Tata Safari). Thus, merely on the basis of MLC, it cannot be said that the accident was caused by a Tata Safari and not by a Maruti Van.
9. In a civil case an issue has to be decided on the basis of preponderance of probability. As per the FIR, on receipt of information regarding accident, the IO first went to the spot. On finding that the injured had already been removed to Ayushman Hospital, he proceeded to the same. A perusal of the FIR further shows that the deceased was admitted to ICU and was not

in a position to make the statement. It is further recorded that the injured was removed to Jaipur Golden Hospital for further treatment. Thus, the condition of the deceased was precarious and that is the reason he was immediately kept in ICU in Ayushman Hospital then was shifted to Jaipur Golden Hospital. He could not be saved and he succumbed to his injuries on that very day.

10. There was nothing unusual for IO to have met with a witness either at the spot or in the hospital. PW-1 Ashwani Rana was categorical that he with the help of other public persons removed injured to Ayushman Hospital in the car of a public person who had gathered there. The driver of the Maruti Van did not prefer to enter the witness box to rebut involvement of his vehicle in the accident. The Appellant Insurance Company also preferred not to examine the driver to prove that Maruti Van No.DL-2C-AH-4592 was not involved in the accident.
11. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a Petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

12. The observations of the Supreme Court in *Bimla Devi* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
13. On appreciation of evidence and in the absence of any rebuttal of PW-1's testimony there is no manner of doubt that involvement of Maruti Van No. DL-2C-AH-4592 in the accident is established. It is proved that the accident was caused on account of rash and negligent driving of Maruti Van by its driver Respondent No.6 Purushottam Pandey, who fled from the spot after the accident.

QUANTUM

14. As far as quantum of compensation is concerned, the deceased's salary certificate was proved as Ex.PW-1/1. The deceased was getting a salary of ₹8,000/- per month including the PF, ex-gratia bonus and LTA. The Claims Tribunal erred in taking the deceased's income for computation of loss of dependency as ₹6854/- instead of ₹8,000/- per month. It is important to note that although deceased was a Graduate from Delhi University but he was working as a driver with SMEC India Pvt. Ltd. an ISO 9001:2000 Certificate Company. The letter Ex.PW-1/1 shows that he was granted an increase of ₹1,000/- w.e.f. 01.04.2009. Unfortunately, this accident took place just after seven months. Thus, there was reliable evidence that the deceased was in permanent employment with a good company and was, therefore, entitled to future prospects. The impugned judgment granting future prospects to the extent of 50%, therefore, cannot be faulted.

15. The Claims Tribunal awarded a sum of ₹1,25,000/- towards loss of love and affection, i.e. ₹25,000/- each to all the Claimants.
16. 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 only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹25,000/- only.
17. The Claims Tribunal awarded a sum of ₹20,000/- each towards loss of consortium, loss to estate and funeral expenses. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* it was laid down that a nominal sum of ₹5,000/- to ₹10,000/- should be awarded towards loss to estate and loss of consortium. It was held that the actual expenditure towards last rites should be granted. In the instant case, the Claimants did not produce any evidence as to how much was the expenditure on last rites. In the circumstances, I would award a sum of ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses.
18. The award of compensation of ₹10,000/- towards treatment is not disputed by either side, the same is accordingly maintained.
19. I have held above that the Claimants should have been awarded compensation on the deceased's income @ ₹8,000/- per month, whereas the compensation was awarded @ ₹6854/- per month.

20. In the case of *Oriental Insurance Company Limited v. Mamta Rani & Ors.*, MAC APP.629/2010, decided on 06.09.2012 this Court noticed the Supreme Court judgments in *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274; *Ibrahim v. Raju*, AIR 2012 SC 534; *New India Assurance Co. Ltd. v. Gopali & Ors.*, Civil Appeal No.5179 of 2012 decided on 05.07.2012 and a judgment of the learned Single Judge of this Court in *National Insurance Co. Ltd. v. Komal & Ors.*, MANU/DE/2870/2012, and held that the Court can increase the compensation without filing any Cross Appeal or Cross Objections.
21. Thus, there would be an increase in the compensation awarded. On account of taking income of ₹8,000/- per month, the loss of dependency thus comes to ₹16,20,000/- (₹8,000/- + 50% x 12 x 3/4 x 15).
22. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Dependency	₹16,20,000/-
2.	Loss to Estate	₹ 10,000/-
3.	Loss of Consortium	₹ 10,000/-
4.	Funeral Expenses	₹ 10,000/-
5.	Love & Affection	₹ 25,000/-
6.	Medicines & Treatment	₹ 10,000/-
	Total	₹ 16,85,000/-

23. The enhanced compensation of ₹1,02,000/- shall carry interest @ 9% per annum from the date of filing of the petition till its deposit.

24. Appellant National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
25. The enhanced compensation shall enure for the benefit of First Respondent, the deceased's widow.
26. Seventy five percent of the enhanced compensation shall be held in fixed deposit in any Nationalized Bank. Rest shall be released on deposit.
27. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
28. Appeal stands disposed of in above terms.
29. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 15, 2012
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