

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

Date of decision: 2nd May, 2012

+ **MAC.APP. 786/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Adv. with
Mr. Shashank Sharma, Adv.
versus

ADITI JAIN & ORS Respondent
Through: Mr. S.M. Suri, Advocate.

+ **MAC.APP. 788/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Adv. with
Mr. Shashank Sharma, Adv.
versus

ADITI JAIN & ORS Respondent
Through: Mr. S.M. Suri, Advocate.

+ **MAC.APP. 790/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Adv. with
Mr. Shashank Sharma, Adv.
versus

ADITI JAIN & ORS Respondent
Through: Mr. S.M. Suri, Advocate.

+ **MAC.APP. 793/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Adv. with
Mr. Shashank Sharma, Adv.
versus

ADITI JAIN & ORS Respondent
Through: Mr. S.M. Suri, Advocate.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These four Appeals arise out of a judgment dated 19.07.2010 passed by the Claims Tribunal whereby four Claim Petitions bearing Suit No.101/2007 (MAC APP.793/2010), Suit No.93/2007 (MAC APP.790/2010), Suit No.100/2007 (MAC APP.788/2010) and Suit No.114/2007 (MAC APP.786/2010) were disposed of.
2. In the accident involving a blueline bus No.DL-1P-1259 and a car No.DL-2CH-1438, the Appellants lost their entire family. Two minor girls Ms. Aditi Jain and Ms. Ridhima Jain were left to fend for themselves in the company of their aged grandmother Smt. Kusum Lata Jain. Kusum Lata Jain lost her husband Mam Chand Jain, her son Arun Kumar Jain, her daughter-in-law Renu Jain and her grandson Master Vardhan Jain. Aditi Jain and Ridhima Jain lost their grandfather Mam Chand Jain, aged 65 years, their father Arun Kumar Jain, their mother Ranu Jain and their younger brother Master Vardhan Jain.

3. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal), it was established that the accident was caused on account of the rash and negligent driving of bus No.DL-1P-1259 by its driver Rishi @ Bhola (Respondent No.2 in these Appeals). The said driver was also convicted in the criminal case under Section 279/304-A IPC. Since the finding on negligence is not disputed by the Appellant Insurance Company, my task is only to go into the quantum of compensation.

MAC APP.793/2010 (Suit No.101/2007)

4. It is urged by the learned counsel for the Appellant Insurance Company that this case relates to the death of Master Vardhan Jain (Aditi and Ridhima's younger brother). Apart from a compensation of ₹3,75,000/- on the basis of the judgment of this Court in *Chiranjilal & Ors. v. Mangat Ram & Ors. I (2010) ACC 855*, a compensation of ₹75,000/- each was awarded to the two sisters on account of loss of their younger brother; it is urged that it is not in consonance with the law and the compensation of ₹1,50,000/- is excessive and exorbitant. The same is liable to be set aside.
5. The Claims Tribunal took this case to be an exceptional case where the two minor girls apart from losing their parents and grandfather in the same accident, also lost their younger brother.
6. In Para 26 of the impugned judgment, the Claims Tribunal held

as under:-

“26. This is case of two sisters who in young age have lost not only their younger brother, but also mother, father. In Indian families, if parents die then generally brother is the great source of emotional, psychology and monetary support and strength for the sisters before and after the marriage. In our community, there is festival of Rakhi which gives very special importance to the bond between sister and brother and survives the life of parents and now for these two sisters every Raksahbandhan will remind them throughout their life that their only brother died I the young age. In my considered view, for this particular loss the sisters are to be compensated in addition to ₹3,75,000/- as pronounced by Hon’ble High Court. I award additional ₹75,000/- each to both the sisters on account of loss for their youngest brother who would have been great life support and sense of security to them in their lives. Thus, total compensation awarded to these sisters comes to ₹5,25,000/- to be shared equally.”

7. Normally, irrespective of the financial status, a compensation of ₹3.75 lacs is awarded in case of the death of a school going minor child. (*National Insurance Company v. Farzana & Ors.*, 2009 ACJ 2763).
8. The Claims Tribunal noticed the special facts of this case where the two small girls lost not only their only brother but their parents and grandfather. In the special circumstances, extracted hereinabove, I would not interfere with the award of the compensation of ₹75,000/- each to the two small girls who lost everybody in this world and were left with a hostile relation (an uncle) who, as it was claimed during the inquiry before the

Claims Tribunal, was himself interested in swallowing whatever was left in the business, being carried out by their father.

MAC APP.788/2010 (Suit No.100/2007)

9. This case relates to the death of Claimants' mother Renu Jain. She was 39 years on the date of the accident. With a great effort Shri S.M. Suri, Advocate, who was appointed as Amicus Curiae during the pendency of the Claim Petition, could dig out the Income Tax Return (ITR) filed by the deceased on 31.10.1995 returning an income of ₹54,465/-. On this, a compensation of ₹9,69,000/- was awarded by adopting a multiplier of 17. The Claims Tribunal observed that as per the Second Schedule, the appropriate multiplier was '16' but it was adopting the multiplier of '17' because of the exceptional circumstances and hardship of the Claimants who were two minor girls, who lost both their parents in the accident. Though, this accident relates to the year 1996, but the Claim Petition came to be decided on 19.07.2010. The appropriate multiplier as per *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* was '15' and not '16', although it is '16' as per the second Schedule. Thus, the multiplier of '17' was adopted by the Claims Tribunal as against the multiplier of '15' which was relevant to the age of the deceased. It may be noticed that in this case no compensation has been awarded towards Loss of Love and Affection and towards the Loss of Gratuitous Services and the

moral support rendered by their mother Smt. Renu Jain to the minor girls.

10. There is no Cross Appeal by the Claimants. The increase of '2' in the multiplier would mean excess compensation of ₹1,00,000/- considering that a compensation of ₹25,000/- was payable towards the Loss of Love and Affection, I would take the remaining amount towards the Loss of Gratuitous services rendered by the deceased to the Claimants. Thus, there is no ground to interfere in the award of the compensation except the rate of interest with which I would deal a little later.

MAC APP.786/2010 (Suit No.114/2007)

11. This Appeal relates to the death of Mam Chand Jain, grandfather of Aditi Jain and Ridhima Jain and the husband of Smt. Kusum Lata Jain, who died during the pendency of the Claim Petition.
12. The Claims Tribunal accepted the deceased's income to be ₹10,000/- per month, which is not challenged during the course of arguments. It is, however, urged by the learned Counsel for the Appellant that only Kusum Lata Jain was financially dependent on the deceased and therefore, there should have been a deduction of 50% towards the personal and living expenses instead of one-third made by the Claims Tribunal. It is a matter of record that the Claimants Aditi Jain and Ridhima Jain also lost both their parents in this very accident. They were

therefore financially dependent on their deceased grandfather also.

13. In this view of the matter, there was nothing wrong in making deduction of one-third towards the personal and living expenses of the deceased. Here again, no compensation was awarded towards loss of love and affection. The compensation of ₹4,00,020/- was awarded by the Claims Tribunal on an annual dependency of ₹80,004/- and on applying multiplier of '5'. The Claims Tribunal made an addition of ₹10,000/- on account of Loss of Consortium and ₹10,000/- on account of Funeral Expenses. There appears to be a clerical error as the compensation payable by adding this sum would come to ₹4,20,020/- and not ₹5,20,020/- as held in Para 30 (Page 26) of the impugned judgment. Thus, it is held that Respondents No.1 and 2 were entitled to a compensation of ₹4,20,020/-.

MAC APP.790/2010 (Suit No.93/2007)

14. This Appeal relates to the award of compensation of ₹13,52,344/- on account of death of Arun Kumar Jain, (the deceased) father of the Claimants.
15. During inquiry before the Claims Tribunal, it was claimed that the deceased was a businessman and an industrialist. He had an income of ₹1,50,000/-. However, copy of the ITR Ex.PW-3/114 showed that the deceased returned the income of ₹1,60,028/- in the year 1995-96. The Claims Tribunal deducted

one-third towards the personal and living expenses and adopted the multiplier of '16' instead of '14', appropriate to the age of the deceased.

16. The Claims Tribunal further awarded a sum of ₹50,000/- each towards Loss of Love and Affection to both the Claimants.
17. Learned Counsel for the Appellant Insurance Company urges that adopting the multiplier of '16' was not justified and the award of compensation of ₹50,000/- each totaling to ₹1,00,000/- towards loss of love and affection is excessive and exorbitant.
18. It is true that normally, a compensation of ₹25,000/- only is awarded towards Loss of Love and Affection as against ₹1,00,000/- in this case. (*Sunil Sharma v. Bachitar Singh (2011) 11 SCC 425* and *Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627*). In this case, a sum of ₹1,00,000/- was awarded which was on the higher side.
19. During inquiry before the Claims Tribunal, it was established that the deceased Arun Kumar Jain was an industrialist. He was living in a posh area of Delhi in Bengali Market. Both the Claimants were studying in Mater De, a reputed Public School in Delhi whereas their deceased brother was studying in St. Columbus School.
20. As stated earlier, Sh. S.M.Suri, Advocate who was appointed as Amicus by the Claims Tribunal made personal efforts to

retrieve the ITR returning an income of ₹1,50,000/- in the relevant year. The Amicus was handicapped to bring in all the evidence to prove that the deceased had good future prospects. Deceased Arun Kumar Jain was aged 42 years on the date of the accident. Normally, people settle in their business in the forties. Other ITRs could not be produced to show that the deceased's income was increasing. Considering all the facts and circumstances including that the deceased's children were studying in the best schools in Delhi and he was residing in one of the best areas in the city, the Claimants were entitled to some addition towards future prospects. That having not been granted, I would not interfere with the award of ₹13,52,344/- (although the multiplier of '16' as against the settled multiplier of '14' has been applied by the Claims Tribunal) and an excess sum of ₹75,000/- has been awarded towards loss of love and affection. The Claimants by virtue of the provision of Order XLI Rule 22 CPC can resist the Appeal for reduction of compensation on other grounds without filing of any Cross Appeal or Cross Objections. The question of resisting the Appeal on quantum of compensation awarded by the Claims Tribunal without filing any Cross Appeal or Cross Objection was considered by three Judge Bench in *Jayakodi & Ors. v. Branch Manager, NIC & Anr., Civil Appeal No.401/2008 (arising out of SLP (Civil) No.13746/2004 decided on 11.01.2008)*. The Supreme Court held that the Court can change the compensation under various heads so long as the

compensation is not reduced in an Appeal filed by the Claimant. The relevant portion of the report is extracted hereunder:

“5.....When an appeal is filed by claimants claiming enhancement, the appellate court will calculate the just compensation, in accordance with law. If the amount so calculated is in excess of what is awarded, the difference is awarded as additional compensation. If the amount calculated is found to be less than or equal to the amount awarded by the court below, then the amount awarded by the court below is maintained. But there cannot be any objection for recalculation of compensation under various heads in accordance with law. So long as the total amount awarded is not less than what is awarded by the court below, there cannot be any objection if the amount is reduced under any particular head.”

Thus the claimants can resist the Appeal for reduction of compensation without filing any cross objection on the ground that no future prospects were granted by the Claims Tribunal.

21. It is contended by the learned Counsel for the Appellant that this Claim Petition was instituted in the year 2002 (although the accident occurred in the year 1996). The rate of interest on long term deposit since the year 2000 upto the year 2007 was in the vicinity of just 7% to 8%. It was only since the year 2008 that the rate of interest started rising. It is urged that in *Sarla Verma (supra)* the Supreme Court granted the interest @ 7.5% per annum only; the interest awarded @ 12% per annum in all four Appeals is excessive and calls for reduction.
22. While awarding interest several factors including the bank rate of interest, the peculiar circumstances of the case, as in the

present case where the Claimants were left without any family members except their aged grandmother who also died during the proceedings are to be taken into consideration.

23. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India*, (2003) 3 SCC 148, the Supreme Court culled out the factors to be taken into consideration while awarding interest in a motor accident case. Paras 6 and 18 of the report are extracted hereunder:-

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

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18. Three decisions were cited before us by Mr. A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded

by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deducted nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

24. In any case, award of interest @ 12% per annum would be excessive. The same is reduced to 9% per annum.
25. The award of compensation in the four Appeals is maintained and the rate of interest is reduced from 12% per annum to 9% per annum from the date of filing of the Petition till the date of deposit in this Court.
26. The excess compensation on account of reduction in the rate of interest shall be refunded to the Appellant Insurance Company with the accrued interest, if any, during the pendency of the

Appeal.

27. The statutory amount of ₹25,000/- in each of the Appeal shall be refunded to the Appellant Insurance Company.
28. The Appeals are allowed in above terms.
29. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 02, 2012
vk/pst