

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

Date of decision: 30th May, 2012

+ **MAC.APP. 1062/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

MEENAKSHI & ORS

..... Respondent

Through: Mr. S.N. Parashar, Advocate

+ **MAC.APP. 654/2012**

MEENAKSHI & ORS

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Respondent

Through: Ms. Neerja Sachdeva, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.10149/2012 (Cross Objections)

These are Cross Objections filed by the Claimants in MAC APP.1062/2011. The application is allowed.

The same be registered as MAC APP.

MAC.APP. 1062/2011 and MAC APP.654/2012

1. These two Cross Appeals (MAC APP.1062/2011 and MAC APP.654/2012) arise out of a judgment dated 19.07.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹ 8,00,260/- was awarded for the death of Smt. Saroj Devi who died in a motor accident which occurred on 05.07.2008.
2. During inquiry before the Claims Tribunal it was claimed that the deceased was engaged in the work of tailoring and knitting and used to earn ₹5,000/- per month. In the absence of any proof of deceased's earning, the Claims Tribunal took the minimum wages of a skilled worker, added 50% towards the future prospects to compute the loss of dependency.
3. It is urged by the learned counsel for the Insurance Company that the Claims Tribunal erred in taking the income of the deceased as ₹4057/- per month. The Claims Tribunal ought to have decided the case on the basis of the law laid down in *Arun Kumar Agrawal & Anr. v. National Insurance Company Limited.*, (2010) 9 SCC 218 and *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197.
4. On the other hand, it is urged by the learned counsel for the Claimants that on rejection of the Appellant's plea that the deceased was engaged in the tailoring work and was earning

₹5,000/- per month, they were entitled to compensation for loss of gratuitous services rendered by the deceased as a housewife.

5. I would agree with the learned counsel for the Claimants.
6. This Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012 noticed the following judgments of the Supreme Court:-
 - (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
 - (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
 - (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
 - (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
 - (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
 - (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
 - (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and

(viii) *Regan v. Williamson 1977 ACJ 331 (QBD England)*,

and laid down the principles for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*

- (vi) *If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) *There shall not be any deduction towards the personal and living expenses.*
- (viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*
- (ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

7. Thus, applying the ratio in *Master Manmeet Singh (supra)*, the loss of dependency comes to ₹ 8,60,850/- ($3826/- + 25\% \times 12 \times 15$).
8. The Claims Tribunal awarded a sum of ₹50,000/- 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 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 from ₹50,000/- to ₹ 25,000/- only.

9. Further, on adding a sum of ₹10,000/- towards funeral expenses, the overall compensation comes to ₹8,95,850/- (8,60,850/- + 35,000/-). (Since the deceased Saroj Devi's husband died in this very accident, no compensation towards loss of consortium has been awarded).
10. The overall compensation thus enhanced from ₹8,00,260/- to ₹8,60,850/- (including the interim compensation of ₹50,000/-), which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit.
11. Respondent Insurance Company is directed to deposit the excess amount along with proportionate interest in the name of the Claimants in UCO Bank, Delhi High Court, New Delhi within six weeks.
12. The enhanced compensation of ₹60,590/- along with the proportionate interest shall be equally payable to the Respondents No.1 and 2 (the Claimants).
13. The compensation already deposited shall be released in terms of the order passed by the Claims Tribunal.
14. The statutory amount of ₹25,000/- be refunded to the Appellant Insurance Company in MAC APP.1062/2011.

15. MAC APP.1062/2011 is dismissed and MAC APP.654/2012 filed by the Claimants is allowed in above terms.
16. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 30, 2012
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