

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

Date of decision: 18th October, 2012

+ **MAC.APP. 1093/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through Mr.J.P.N. Shahi, Advocate

versus

MUNNI DEVI & ORS. Respondents
Through Mr.Sanjeev Srivastava, Advocate for the
Respondents No.1 to 3.

+ **MAC.APP. 1128/2012**

MUNNI DEVI & ORS. Appellants
Through Mr.Sanjeev Srivastava, Advocates

versus

NEW INDIA ASSURANCE CO. LTD. Respondents
Through Mr.J.P.N. Shahi, Advocate

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 (MAC.APP.1093/2011 and MAC.APP.1128/2012) arise out of a common judgment dated 01.09.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in case No.84/07/11

whereby a compensation of ₹9,92,920/- was awarded in favour of the legal representatives of the deceased Anil Kumar, for his death in a motor vehicle accident which occurred on 08.09.2006.

2. The finding on negligence is not challenged by the parties. Thus, the same has attained finality.
3. For the sake of convenience, the Appellant New India Assurance Co. Ltd. in MAC. APP.1093/2011 shall be referred to as the Insurance Company whereas the Appellants in Cross-Appeal No.1128/2012 shall be referred to as the Claimants.
4. The following contentions are raised on behalf of the Appellant Insurance Company:
 - (i) The compensation of ₹1,00,000/- awarded towards loss of love and affection is on the higher side.
 - (ii) The Claims Tribunal made an addition of 50% in the deceased's assumed income, although there was no evidence with regard to future prospects.
5. On the other hand, the learned counsel for the Claimants urges that the compensation awarded is on the lower side inasmuch as the Claimants successfully proved that the deceased was working as a steward in a restaurant running in the name and style of A.R. Fisheries Pvt. Ltd. Thus, the Claimants ought to have been awarded compensation on the basis of the proved salary of ₹8,000/- instead of on the basis of minimum wages taken by the Claims Tribunal.

6. Before dealing with the contention raised by the Appellant Insurance Company, I would deal with the question of the deceased's income. Munni Devi, the deceased's mother filed her affidavit Ex.PW1/A. She testified that her son was working with a restaurant "Punjabi by Nature" and was getting a salary of ₹8,000/- per month. She produced the salary certificate Ex.PW1/5. The Claimants examined PW2 Yogesh Narang, Associate General Manager of the restaurant. He testified that deceased Anil Kumar had worked as a steward in their restaurant from 22.08.2005 to 07.09.2006 at a salary of ₹8,000/- per month. He also proved his authorization Ex.PW2/1 and the salary certificate produced on record by Smt. Munni Devi. In cross-examination, he admitted that in the salary certificate Ex.PW2/2, the year of the date upto which the deceased worked in the restaurant was not mentioned. Non-mentioning of the year by itself does not make the certificate doubtful. It may be mentioned that in the Claim Petition filed on 27.04.2007 in paras 4,5, and 6 it was mentioned that the deceased was working as a steward in the restaurant "Punjabi by Nature" (being run in the name and style of A.R. Fisheries Pvt. Ltd) 11, Vasant Vihar, New Delhi-110057 and was getting a salary of ₹8,000/- per month. The Appellant Insurance Company filed its written statement in the year 2011. It had enough time to verify the genuineness of the averments made in the Claim Petition, which was supported by the documents filed in March, 2011. Simply because, the year upto which the deceased Anil Kumar worked for the restaurant "Punjabi by Nature" was not mentioned in the salary certificate, it would not lose its credence particularly in view of the examination of Yogesh Narang Associate General Manager of the restaurant as PW2 and the fact

that the accident took place on 08.09.2006. In the absence of any rebuttal to the document Ex.PW2/2, the same should have been relied on by the Claims Tribunal. Thus, I accept that the deceased was working as a steward with the restaurant “Punjabi by Nature” and was getting a salary of ₹8,000/- per month.

7. Admittedly, there was no evidence with regard to the deceased’s future prospects. Thus, addition of 50% was not justified. On the other hand, the Claimants are entitled to an increase of 30% towards inflation/future prospects on the basis of the report in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. The loss of dependency thus comes to ₹15,91,200/- (₹8,000/- + 30% x 3/4 x 12 x 17).
8. The Claims Tribunal relied on the judgment of the Supreme Court in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 to award a compensation of ₹1,00,000/- towards loss of love and affection. In *Baby Radhika*, a total sum of ₹25,000/- only was awarded towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Normally, a notional sum is awarded towards loss of love and affection, which was ₹25,000/- only as per *Baby Radhika* and *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425. Thus, the compensation of ₹1,00,000/- is reduced to ₹ 25,000/- only.
9. The compensation of ₹10,000/- each towards loss to estate, loss of consortium and funeral expenses was rightly awarded by the Claims Tribunal. The overall compensation thus comes to ₹16,46,200/-.

10. The compensation is enhanced by ₹6,53,280/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
11. The Respondent No.4 remarried after the death of Anil Kumar and she was impleaded as a Respondent in the Claim Petition. She would be entitled to a sum of ₹50,000/- along with proportionate interest from the enhanced compensation. Claimants Munni Devi and Balbir Singh, who are the deceased parents, shall be entitled to a sum of ₹75,000/- each along with proportionate interest. Rest of the amount shall enure for the benefit of the Claimant Parinita who is the minor daughter of the deceased Anil Kumar. 75% of the enhanced compensation awarded to Claimant Rajni, Munni Devi and Balbir Singh shall be held in fixed deposit for a period of three years. Rest shall be released to them on deposit. Share of the Claimant Parinita shall be held in fixed deposit till she is 21 years of age. The Claimants shall be entitled to quarterly interest on the award amount. Guardian of Parinita shall be at liberty to approach the Claims Tribunal for premature release of any amount if the same is needed for her higher education or for her marriage.
12. The Appellant Insurance Co. Ltd. is directed to deposit the enhanced amount of ₹6,53,280/- along with interest with the Claims Tribunal within six weeks.
13. Both the Appeals stand disposed of.
14. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.

15. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 18, 2012

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