

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

Date of decision: 5th November, 2012

+ **MAC. APP. 839/2010**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. L.K. Tyagi, Adv.

versus

HARISH ARORA & ORS. Respondents
Through: Mr. Sanjeev Mehta, Adv. with
Ms. Aruna Mehta, Adv. Adv. for the
Claimants.
Mr. Rakesh Kumar, Adv. for R-7.

+ **MAC. APP. 1075/2012**

HARISH ARORA & ANR. Appellants
Through: Mr. Sanjeev Mehta, Adv. with
Ms. Aruna Mehta, Adv. Adv.

versus

NATIONAL INSURANCE COMPANY LTD. & ORS..... Respondents
Through: Mr. L.K. Tyagi, Adv. for R-1.

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.839/2010 and MAC APP.1075/2012 arise out of a common judgment dated 14.09.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹16,02,000/- was awarded for the death of Neelam Arora who died in a motor vehicle accident which occurred on 05.12.2005.

2. MAC APP. 839/2009 is for reduction of compensation on the ground that the compensation awarded is exorbitant and excessive while Cross Appeal being MAC APP.1075/2012 is for enhancement of compensation on the ground that the compensation awarded is on the lower side.
3. For the sake of convenience, the Appellant in MAC APP.839/2009 shall be referred to as the Insurance Company and the Appellants in MAC APP. 1075/2012 shall be referred to as the Claimants.
4. The finding on negligence has not been challenged by the Appellant Insurance Company. Thus, the same has attained finality.
5. During inquiry before the Claims Tribunal it was claimed that the deceased Neelam Arora was self employed and was running a boutique in the name and style of *Neelam Boutique* in the front portion of her house. Her husband was earning just ₹2,000/- per month. The Claims Tribunal believed the income of the deceased to be ₹8,000/- per month, added 50% towards future prospects, deducted one-fourth towards the personal and living expenses and applied the multiplier of '14' as per the deceased's age to compute the loss of dependency as ₹15,12,000/-.
6. The Claims Tribunal further awarded a sum of ₹15,000/- towards medical expenses, ₹ 10,000/- each towards loss of consortium and loss to estate, ₹ 50,000/- towards loss of love and affection and ₹ 5,000/- towards funeral expenses to compute the overall compensation of ₹16,02,000/-.
7. The following contentions are raised on behalf of the Appellant Insurance Company:-

- (i) The Claims Tribunal erred in believing the deceased's income to be ₹ 8,000/- per month. In the absence of any documentary evidence with regard to running of the boutique in the name and style of *Neelam Boutique*, the Claims Tribunal ought to have awarded compensation on the basis of minimum wages of a skilled worker.
 - (ii) The Claims Tribunal erred in making an addition of 50% with regard to future prospects in the absence of any evidence with regard to the same.
 - (iii) Deceased Neelam Arora's husband was alive thus, her parents-in-law were not dependent on the deceased. Thus, there were two or at the most three dependents on the deceased. There should have been one-third deduction towards the personal and living expenses instead of one-fourth.
8. On the other hand, it is urged on behalf of the Claimants that the deceased's income was sufficiently proved to be ₹8,000/- per month. Even if there was no evidence with regard to deceased's future prospects, the Claimants were entitled to an addition of 30%. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
9. It is urged that the husband was earning just ₹2,000/- per month and thus he was dependent on the deceased wife. The parents in law were also dependent on Neelam Arora. It is stated that on the basis of judgment in *Santosh Devi* the Claims Tribunal ought to have made deduction of one-tenth towards the personal and living expenses.

INCOME OF THE DECEASED

10. The Claimants proved a certificate in knitting and stitching Ex.PW-2/2 purported to have been issued by Weaker Section Welfare Federation (Regd.) in the year 1994. The genuineness of this certificate was not disputed by the Appellant Insurance Company by leading any evidence in rebuttal. Apart from PW-2 Harish Arora's testimony the Claimants examined PW-5 Kanta Rai, PW-6 Raj Kumari Setia and PW-9 Mamta Aggarwal to prove that deceased Neelam Arora was running a Boutique in the name and style of *Neelam Boutique*. Kanta Rai (PW-5) and Raj Kumari Setia (PW-6) gave details of the charges for stitching of *Salwar Kameez*, blouse, etc. There was no rebuttal to PWs 5, 6 and 9's testimonies. The Claims Tribunal noticed that in case of a woman below 65 years an income beyond ₹1,35,000/- was taxable. There was sufficient evidence to believe the deceased's income of ₹8,000/- per month as stated by the Claimants. The finding on the deceased's income is well reasoned and logical. The same does not call for any interference.

LOSS OF DEPENDENCY

11. Deceased Neelam Arora was a self employed person. There was no evidence with regard to deceased's future prospects and how the deceased's income grew during the last ten years since the time she obtained the diploma in knitting and stitching.
12. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors*, (2006) 3 SCC 242, *Sarla Verma & Ors. v.*

Delhi Transport Corporation & Anr, (2009) 6 SCC 121 and Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559 and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of Santosh Devi is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by

high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

13. Thus, in the absence of any specific evidence with regard to deceased's future prospects, the Claimants were entitled to only an addition of 30% in the deceased's income.
14. PW-2 Harish Arora, the deceased's husband claimed that he was earning ₹2,000/- only per month. He produced a receipt of *tehbazari*. Since PW-2 had a regular place of selling toys, it can be assumed that he was earning much more than the minimum wages of an unskilled worker. Otherwise also, he being an able bodied person was expected to take the responsibility of his parents and children. Thus, practically, there were just two dependents; at the most the husband could be taken as partially dependent on the deceased. In the circumstances, there should be 1/3rd deduction instead of 1/4th taken by the Claims Tribunal.
15. The deceased was aged 39 years, the appropriate multiplier would be 15.

16. The loss of dependency would thus come to ₹12,48,000/- (8,000/- + 30% x 12 x 2/3 x 15) as against ₹15,12,000/- awarded by the Claims Tribunal.
17. 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 to ₹ 25,000/- only.
18. The compensation of ₹5,000/- awarded towards funeral expenses is raised to ₹10,000/-.
19. The overall compensation is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Dependency	₹12,48,000/-
2.	Medical Expenses (as awarded by the Claims Tribunal)	₹ 15,000/-
3.	Loss of Consortium (as awarded by the Claims Tribunal)	₹ 10,000/-
4.	Loss to Estate (as awarded by the Claims Tribunal)	₹ 10,000/-
5.	Funeral Expenses	₹ 10,000/-
6.	Loss of Love & Affection	₹ 25,000/-

	Total	₹ 13,18,000/-
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20. The overall compensation thus comes to ₹13,18,000/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
21. The excess amount of ₹2,84,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
22. Rest of the compensation shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.
23. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
24. MAC APP.839/2010 preferred by the Appellant Insurance Company is allowed and the MAC APP.1075/2010 filed by the Claimants is dismissed.
25. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 05, 2012
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