

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

Date of decision: 29th November, 2012

+ **MAC.APP. 1130/2011**

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

SMT. GANGA DEVI & ORS.

..... Respondents

Through: Mr. Uma Shankar Adv. for R-1 to R-6.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹8,00,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Respondents No.1 to 6 for the death of Dharamvir who died in a motor vehicle accident which occurred on 03.02.2008.
2. The finding on negligence is not challenged by the Appellant Insurance Company; thus the same has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the deceased was working as an Electrician and was earning ₹20,000/- per month. In the absence of any cogent evidence with regard to deceased's income or his profession, the Claims Tribunal took the Minimum Wages of a Matriculate (as per the deceased qualification), added 50% towards

inflation, deducted one-fourth towards personal and living expenses and applied the multiplier of 14 as per the age of the deceased (45 years) to compute the loss of dependency as ₹7,74,900/-.

4. The Claims Tribunal further awarded a sum of ₹10,000/- each towards loss to estate and loss of consortium and ₹5,000/- towards funeral expenses to compute the overall compensation of ₹7,99,900/- or say ₹8,00,000/-.
5. It is urged by the learned counsel for the Appellant Insurance Company that the addition of 50% towards inflation was not justified. On the other hand, there should be an addition of only 30%. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
6. On the other hand, learned counsel for the Respondents No.1 to 6 (the Claimants) urges that the deceased had a large family. The responsibility of Ms. Sonia, the deceased's married daughter also fell on the deceased as her husband Manoj also died in this very accident. It is stated that there should have been deduction of one-tenth towards the personal and living expenses. Learned counsel for the Claimants also place reliance on the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
7. 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 even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. 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."

8. Thus, in the absence of any evidence with regard to the future prospects, the Claimants were entitled to an addition of 30% on account of inflation.
9. As far as deduction of personal and living expenses is concerned reliance on *Santosh Devi* is misplaced. There are two types of expenses incurred by a person either in employment or engaged in any vocation. First, the personal expenses would be such as an employee or a self employed is expected to incur in the course of his employment. These can be termed as expenses incidental to employment, that is, the expenses towards tea, snacks and for reaching the place of employment. This would also include expenses for pleasure. The other expenses would be living expenses or in other words, the expenses for sustenance, that is, on food,

clothing etc. etc. The expenses on food and clothing would be equal for all the family members. A person having a very low income may not spend anything towards his pleasure or entertainment. He may spend very nominal amount on tea, snacks, etc. during the course of employment. In Para 15 of the report in *Santosh Devi*, the Hon'ble Supreme Court referred to the personal expenses which were confined to the expenses incidental to the employment. The rest of the money which is spent towards living expenses, that is, towards expenditure on food and clothing is normally spent equally for all the members of the family dependent on the deceased.

10. In this case the numbers of dependents were five. Respondent No.6 Smt. Sonia was married to Manoj. Unfortunately, she also lost her husband in this very accident for which she was awarded compensation separately. Thus, practically, there were five dependents. The deduction towards personal and living expenses was rightly made as one-fourth on the basis of the report in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.
11. The loss of dependency thus comes to ₹6,71,580/- (4100/- + 30% x 12 x 3/4 x 14) as against a sum of ₹7,74,900/- awarded by the Claims Tribunal.
12. The Respondents were not granted any compensation towards loss of love and affection and the compensation of ₹5,000/- awarded towards funeral expenses was on the lower side. I would make a provision of ₹25,000/- towards loss of love and affection and ₹10,000/- towards funeral expenses as against award of ₹5,000/-.

13. The Respondents No.1 to 6 are further awarded a sum of ₹10,000/- each towards loss of consortium and loss to estate as awarded by the Claims Tribunal.
14. The overall compensation thus comes to ₹7,26,580/- as against award of ₹8,00,000/- awarded by the Claims Tribunal which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
15. The excess compensation of ₹73,420/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
16. The compensation awarded shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.
17. The Appeal is allowed in above terms.
18. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
19. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 29, 2012

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