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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd July, 2012

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MAC. APP. No.875/2010

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Ms. Neerja Sachdeva, Advocate

Versus

BHUPAL SINGH ADHIKARI & ORS. Respondents

Through: Mr. Gyan Prakash, Advocate.

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 ₹7,15,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Smt. Asha Adhikari, a housewife who died in a motor vehicle accident which occurred on 01.12.2006.
2. The finding on negligence is not challenged by the Appellant Insurance Company. The same has thus attained finality.
3. The following contentions are raised on behalf of the Appellant:
 - (i) The compensation of ₹5,40,000/- towards loss of dependency in case of a housewife is exorbitant and excessive; a compensation of ₹1,00,000/- towards loss of love and affection is also excessive.

- (ii) By examining R3W1 R.S. Kashyap, R3W2 Rajesh Kumar Sinha and R3W3 Sanjay Diwan, the Appellant was able to prove the breach of the terms of the policy as the owner did not possess a valid permit on the date of the accident. In spite of this, the Appellant was fastened with the liability; even the recovery rights were not granted.
4. As far as quantum of compensation is concerned, the case is covered by a judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, (MAC.APP.590/2011), decided on 30th January, 2012. This Court 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 principle 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.”*

5. There was no evidence as to the qualification of the deceased Asha Adhikari. Thus, minimum salary of a non-matriculate is to be taken into consideration to compute the loss of dependency. Applying *Master Manmeet Singh (Supra)*, the loss of dependency comes to ₹7,25,535/- (₹3505 + 15% x 12 x 15). Loss of dependency itself without addition of any compensation towards pecuniary and non-pecuniary damages comes to be more than what was awarded by the Claims Tribunal. Thus, the

compensation awarded cannot be said to be exorbitant or excessive.

6. As far as breach of the terms of the policy is concerned, Sanjay Diwan, Asstt. Secretary, STA Department (R3W3) admitted that the permit holder had deposited the fee for validity of the permit for a period of five years w.e.f. 02.03.2006 to 01.03.2011. The permit was thus valid upto 01.03.2011. There was one of the condition of the permit i.e. the DTC bus stop was to be used by the offending vehicle and for that purpose a DTC bus stand fee was required to be deposited with the DTC. R3W3 deposed that this vehicle permit was issued on 02.03.2006 and valid upto 16.09.2006. It was then renewed from 26.12.2006 to 26.03.2007 and then 05.11.2007 to 26.02.2008. The witness deposed that the DTC bus stand fee was paid only on 26.12.2006 and so the permit was renewed from that day. In cross-examination, the witness admitted the genuineness of the document Ex.R3W3/P-1 which showed that the permit was valid from 02.03.2006 to 26.02.2008. Thus, payment of fee for using DTC bus stand was a mere formality and the permit thereafter renewed from retrospective effect on deposit of the aforesaid fee as the Respondent No.6 (the owner) had already been issued a stage carriage permit for the period 02.03.2006 to 01.03.2011. On the basis of this evidence, the Claims Tribunal opined that it was not each and every violation of any condition of the permit which would make the permit ineffective for the purpose of insurance policy and thus declined

to grant recovery rights. The observations of the Trial Court are extracted hereunder:

“..... In my view it is not each and every violation of the condition of the permit which makes the permit ineffective for the purpose of insurance policy. For instance if a driver does not wear the uniform, it may be a violation of the permit condition but in no way it will affect the condition of the policy. Only those condition of the permit which substantially make the permit ineffective can be termed as violation of the condition of the policy. For example if the vehicle is a goods vehicle but used as a passenger vehicle. Another example is where the vehicle (a bus) has stage carriage permit but is used as a contract carriage. There can be so many examples. I need not incorporate them. I am not inclined to hold that because of late deposit of the stand fees by R2, he (R2) had violated the terms of the policy so as to justify the recovery rights in favour of R3.”

7. The fact that the stage carriage permit was valid for a period of five years w.e.f. 02.03.2006 and the renewal on fulfilling the condition of deposit of DTC charges was being granted retrospectively on payment of late fee would show that there was no substantial breach of the terms of the permit. This Court in *Mahender Singh v. Oriental Insurance Co. Ltd. & ors.* (MAC.APP.430/2010) decided on 10.05.2012 the question of breach of the terms of policy for using the vehicle for a purpose not allowed by the permit under which the vehicle is used was dealt with in great detail and relying on *State of Maharashtra and Ors. v. Nanded-Parebhani Z.L.B.M.V. Operator Sangh* (2000) 2 SCC 69 it was held that it is not each and every condition for

issuance of the permit which would result in breach of Clause (c) to Section 149(2)(a)(i) of the Act. It was held the user of a transport vehicle for the purpose not allowed by a permit would be using a goods vehicle as a passenger vehicle and vice-versa etc. As admitted by the R3W3 in his cross-examination, the validity of the permit was for the period 02.03.2006 to 26.02.2008 which covered the period of accident. The Appellant Insurance Company cannot avoid its liability to indemnify the insured.

8. Consequently, the Appeal is devoid of any merit; the same is accordingly dismissed.
9. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
10. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 23, 2012

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