

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

Reserved on: 17th May, 2012
Pronounced on: 25th May, 2012

+ **MAC APP. 631/2009**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Santosh Paul with Ms.
Mohita Bagai, Advocates

Versus

SANDEEP TOMAR & ORS Respondents
Through: Mr. Anil Gera with Mr. Rakesh
Chaudhary, Advocates for the
Respondents No.1 & 2.

WITH

+ **MAC.APP. 27/2010**

SANDEEP TOMAR & ANR Appellant
Through Mr. Anil Gera with Mr. Rakesh
Chaudhary, Advocates

versus

ORIENTAL INSURANCE CO LTD & ORS Respondent
Through Mr. Santosh Paul with
Ms. Mohita Bagai, Advocates

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Cross-Appeals arise out of a judgment dated 30.09.2009 passed by the Claims Tribunal whereby while

deciding the Claim Petition Suit No.656/2008, a compensation of ₹2,17,33,666/- was awarded for the death of Satyabir Singh Tomar in an accident which occurred on 30.12.2003.

2. The Appellant Oriental Insurance Company Ltd. impugns the judgment on the ground, inter alia, that the Respondents (the Claimants) did not adduce any evidence to prove the damages actually suffered by them and the compensation awarded is exorbitant and excessive.
3. On the other hand, in the Cross-Appeal being MAC APP. No.27/2010, the Claimants' grievance is that the deceased Satyabir Singh Tomar had a flourishing business of building contractor; thus he had bright future prospects which was not translated in terms of money by the Claims Tribunal. The two sons of the deceased (their mother, grand-mother and sister having died in this very accident apart from their father) were very young, one aged 18 years and the other 21 years at the time of the accident; the Claims Tribunal erred in adopting a multiplier of '5' which was too low and in violation of the settled law.
4. It is not in dispute that the deceased Satyabir Singh Tomar was running a proprietorship firm in the name and style of M/s Tomar Construction Company. The said firm was dissolved on the death of the deceased. The Claimants formed a partnership concern in the same name and carried on the business of building contractor from the same premises. The Claimants'

case is that they did not have the requisite number of years of experience as contractor and, therefore, were not qualified to accept building contracts. This is disputed by the Appellant Insurance Company whose plea is that the Claimants have withheld material evidence as to their income from the business in the name and style of M/s Tomar Construction Company. It is urged that a Claims Tribunal awards damages for the loss suffered and if there is any gain on account of unfortunate death, it has to be deducted from the damages suffered.

5. In *New India Assurance Company Ltd. v. Yogesh Devi & Ors.*, (2012) 3 SCC 613, the Supreme Court relied on the judgment in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484 where it was observed as under:

“8. This Court in Jasbir Kaur case held that the Tribunal is required to make a just and reasonable award determining the compensation to be paid to the dependants of the victim of a fatal motor vehicle accident. Explaining the concept of just and reasonable award in the context of a motor vehicle accident claim, this Court held as follows:

“7. It has to be kept in view that the tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’ which in turn appears to it to be ‘just and reasonable’. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not

expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just' a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.(Helen C. Rebello v. Maharashtra SRTC)".

6. In *United India Insurance Co. Ltd. v. Patricia Jean Mahajan*, (2002) 6 SCC 281, it was held that the benefit received which has relation only to the accidental death is liable to be deducted from the damages payable to him.
7. Perusal of the Trial Court record shows that the Claims Tribunal directed the Claimants to produce the Partnership Deed entered into between the Claimants to carry out the business. Section

168 of the Act enjoins every Claims Tribunal to hold an inquiry to award a compensation which appears to it to be just. Therefore, even if the Claimants had failed to produce their Income Tax Returns for the period after the accident, the same could have been elicited by the Claims Tribunal to award just compensation. Similarly, the disability of requisite experience was also required to be gone into after eliciting evidence in this regard from the parties.

8. It is true that while awarding compensation, the Court can make some guess work, but it cannot be merely on wild guesses, speculation and arbitrariness. In the circumstances, it would be difficult to sustain the impugned order with regard to the grant of compensation for the death of the deceased Satyabir Singh Tomar.
9. The impugned order is set aside and the case is remanded back to the Claims Tribunal with directions:
 - (i) to elicit evidence with regard to the income of the partnership firm of M/s Tomar Construction Company constituted after the death of the deceased; and
 - (ii) to elicit evidence with regard to the disability of the partnership firm in not having requisite experience in obtaining the contracts.
10. It is made clear that the Appellant Insurance Company shall have the right of rebuttal. The Claims Tribunal after recording

the evidence shall be entitled to take an independent decision with regard to the quantum of compensation without being bound by the view taken in the impugned judgment.

11. Since the accident relates to the year 2003, it shall be appreciated if the Petition is decided expeditiously.
12. The Appeals are disposed of in above terms.
13. The parties are directed to appear before the Claims Tribunal on 16th July, 2012.
14. TCR be returned.

(G.P. MITTAL)
JUDGE

MAY 25, 2012
pst