

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

Reserved on: 27th September, 2012

Pronounced on: 9th October, 2012

+ **MAC.APP. 639/2009**

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LTD.

.... Appellants

Through: Mr. M.K. Tiwari, Advocate

versus

SMT. MANJU & ORS.

..... Respondents

Through: Mr. Kundan Kumar, Adv. for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Royal Sundaram Alliance Insurance Company Limited impugns a judgment dated 20.10.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in a Petition under Section 163-A of the Motor Vehicles Act, 1988 (the Act), a compensation of ₹7,00,000/- was awarded in favour of the Respondents No.1 and 3 for the death of Manoj Kumar who died in a motor vehicle accident which occurred on 08.12.2005.
2. During inquiry before the Claims Tribunal, the First Respondent Manju filed her Affidavit Ex.PW-1/A testifying that her husband was aged 26 years and was working as a driver with Respondent No.4 Lal Chand at the time of the accident. She deposed that he used to earn ₹40,000/- per annum. The First Respondent's testimony with regard to the deceased's employment or the quantum of salary was not challenged in cross-examination.
3. The following contentions are raised on behalf of the Appellant:-

- (i) The deceased was not a third party and he was not covered under the policy of insurance.
 - (ii) The compensation awarded is excessive as under Section 163-A of the Motor Vehicles Act, 1988 (the Act), compensation is to be paid strictly on the basis of the structured formula given in Schedule-II of the Act.
4. It is true that the deceased was not a third party as he himself was the driver of the car No.DL-3C-AD-5404 which met with an accident. The manner of the accident is stated in the FIR Ex.PW-1/1 and was dealt with by the Claims Tribunal. The Claims Tribunal found that the accident occurred as few *Neelgais* came on the road from the fields on the left side and in order to save them, the deceased driver struck the car against a tree. In the absence of any suggestion with regard to the manner of the accident, the Claims Tribunal rightly held that it could not be said that the accident was caused on account of deceased's own negligence. A copy of the cover note is available on the Trial Court record which shows that a sum of ₹25/- was paid by the insured to cover the liability (under Workmen's Compensation Act, 1923 of the driver) (IMT-28). As per IMT-28 issued by the Tariff Advisory Committee, the legal liability to paid driver, etc. is covered as under:-

“IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE

(For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the Workmen's

Compensation Act, 1923 , the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured's general employees;

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

**(3) the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.*

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

**In case of Private cars/ motorised two wheelers (not used for hire or reward) delete this para."*

5. Thus, the Appellant Insurance Company covered the legal liability not only under the Workmen's Compensation Act, 1923 but also under the common law. Although, it has not been proved that deceased Manoj Kumar was himself responsible for the accident, yet even if an employee received an employment injury on account of his own negligence, he cannot be denied

the compensation. In the circumstances, the Appellant cannot escape the liability to pay the compensation.

6. As far as quantum of compensation is concerned, in a Petition under Section 163-A of the Act, the compensation has to be awarded strictly accordingly to the Second Schedule. This question was dealt with in great detail in a judgment of this Court in *NEW INDIA ASSURANCE CO. LTD. v. PITAMBER & ORS.*, MAC.APP. 304/2009 decided on 23.01.2012. This Court referred to the decision in *Oriental Insurance Company Limited v. Smt. Pataso & Ors.*, MAC APP.962/2005 decided on 01.09.2008; *Oriental Insurance Company Limited v. Om Prakash & Ors.*, 1 (2009) ACC 148; *Jagdish & Anr. v. Madhav Raj Mishra and Anr.* MAC APP.190/2011 decided on 19.04.2011; and *Oriental Insurance Company Limited v. Anita Devi & Ors.*, 20011 (5) AD (Delhi) 138, decided on 10.05.2011; *Oriental Insurance Company v. Hansrajibhai v. Kodala*, (2001) 5 SCC 175; and *Deepal Girishbhai Soni v. United India Insurance Company Limited*, (2004) 5 SCC 385; and held that in a Petition under Section 163-A of the Act there is a cap of ₹40,000/- on the annual income and the compensation including non-pecuniary damages have to be awarded as per the Second Schedule.
7. Turning to the facts of the instant case, deceased Manoj Kumar's income was claimed by PW-1 to be ₹40,000/- per annum. This was not challenged in cross-examination. The deceased was aged 26 years at the time of the accident. Thus, the loss of dependency comes to ₹4,80,000/- ($40,000/- \times \frac{2}{3} \times 18$).
8. The Claimants would be further entitled to a sum of ₹9,500/- under non-pecuniary damages (i.e. ₹2,500/- towards loss to estate, ₹5,000/- towards loss of consortium and ₹2,000/- towards funeral expenses).

9. The overall compensation thus comes to ₹4,89,500/- as against award of ₹7,00,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
10. The compensation stands reduced by ₹2,10,500/-.
11. By an order dated 07.04.2010, the amount deposited was ordered to be released to the Claimants in terms of the order passed by the Claims Tribunal, subject to their furnishing security and undertaking to the Registrar that in case the decision is reversed, they shall refund the amount drawn by them.
12. It is reported by the office that in terms of order dated 07.04.2010 nobody from the Claimants turned up to furnish security and undertaking. The Application filed for modification of the order was also dismissed on 02.12.2011.
13. The amount awarded shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.
14. The excess amount of ₹2,10,500/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
15. The statutory deposit of ₹25,000/- be refunded to the Appellant.
16. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 09, 2012

vk