

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

+ **MAC.APP. 239/2011 & CM No.5347/2011 (for stay)**

% *Judgment reserved on: 11th April, 2013*
Judgment delivered on: 26th April, 2013

NEW INDIA ASSURANCE CO LTD. Appellant

Through: Mr. Sameer Nandwani, Advocate.

Versus

POOJA BHATIA & ORS Respondents

Through: Mr. Harish Chander Kamra, Advocate
for Respondent Nos. 5 and 6.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal has been preferred against the impugned award dated 29.11.2010, whereby the learned Tribunal has granted compensation in favour of the respondents/claimants and against the appellant/Insurance Company as under:-

“1. Loss of Income	:	Rs.33,69,600/-
2. Loss of Estate	:	Rs. 10,000/-
3. Loss of consortium	:	Rs. 10,000/-
4. Funeral expenses	:	Rs. 10,000/-
5. Conveyance Expenses	:	Rs. 10,000/-

Total : **Rs.34,09,600/-**
(Rupees Thirty four lacs nine thousand six hundred)

2. Learned counsel appearing on behalf of the appellant/Insurance Company has mainly argued that the learned Tribunal has failed to appreciate the fact that neither any eye witness nor any other witness had been produced to prove the negligence on the part of the driver of the offending vehicle, inspite of the fact that the claim petition has been filed under Section 166 r/w S. 140 of the Motor Vehicles Act, 1988 (for short 'the Act'). He argued that to prove the negligence, onus was on the claimants and not on the appellant/Insurance Company, however, the learned Tribunal has failed to consider this aspect.

3. Secondly, the learned counsel has argued that the deceased was not on permanent job as he was working with a private company and in such a company, there is no security of job. He submitted that it has not been proved that what was the status of the deceased in the company and what would be his future while staying in the said company.

4. Learned counsel submitted that PW3, Sh. Pushpender Singh, who has proved the salary certificates of the deceased for the months of May, 2007 to September, 2007 as Ex. PW3/1 to 5, which show that the deceased was getting a salary of Rs.15,600/- per month. He submitted that the learned Tribunal has considered the total salary as it is without deducting any allowance applicable as per Rules. Moreover, the said certificates do not prove/show as to how much were the salary and the deductions therein.

5. On the other hand, learned counsel appearing on behalf of the respondents/claimants has submitted that PW2 Sh. Charles Tirkey, ASI, who investigated the FIR No. 299/2007, registered at P.S. Delhi Cantt, has proved the FIR as Ex.PW2/1, charge sheet as Ex.PW2/2, DD report as

Ex.PW2/3 and the rough site plan as Ex.PW2/4. He also proved the seizure memo of the offending vehicle, i.e., TATA 407 as Ex. PW2/5 and a notice issued under Section 133 of the Act as Ex.PW 2/6.

6. Learned counsel submitted that this witness also proved the superdari order of the vehicle as Ex. PW2/7 and the order of MM vide which the driver of the offending vehicle was charged as Ex.PW2/8.

7. Moreover, the said witness has proved the statement of Sh.Vikram recorded U/s 161 Cr.P.C. as Ex.PW2/12 and the MLC of Sh. Sanjay Bhatia, deceased has been proved by him as Ex.PW2/13 and post-mortem report as Ex.PW2/14. He also seized the driving licence of driver Ranjeet Singh vide seizure memo Ex.PW2/15.

8. Learned counsel submitted that in the motor accidents claim cases, the learned Tribunal has to inquire the matter as these proceedings are different from the civil and the criminal cases. Therefore, the claimants/respondents have placed all the documents of criminal case before the learned Tribunal.

9. He further submitted that in rebuttal of the same neither the appellant/Insurance Company has called any witness to cross-examine on any of the issue nor produced any witness to disprove the case of the respondents/claimants.

10. On the issues of salary, learned counsel for the respondents/claimants has submitted that the learned Tribunal has considered the salary certificates Ex.PW3/1 to 5 and appointment letter Ex.PW 3/6 of the deceased produced by PW3, Sh.Pushpender Singh, Accounts Executive of VCS Enterprises Limited.

11. PW3 deposed that in their company, there is provision for overtime work. He also clarified that there are certain other amounts like perks and bonus etc. given by the company, but the same are not mentioned in the salary certificate of any of the employees. He clarified that the deceased was getting phone allowance and travelling allowance and these are not mentioned in the said salary certificate.

12. In view of the above, it is submitted by the learned counsel for the respondents/claimants that the learned Tribunal has rightly considered the salary of the deceased with 50% future prospects keeping in view the age of the deceased and number of dependents.

13. He further submitted that though no cross-appeal has been filed by the respondents/claimants, however, this Court has power to enhance the compensation amount; if on any account, the compensation granted by the learned Tribunal is less or the same has not been granted by it on any account. Learned counsel also submitted that as the learned Tribunal has failed to grant any compensation towards loss of love and affection, therefore, he has orally prayed to this Court to grant compensation on this aspect too.

14. I have heard ld. Counsels for the parties. As far as the issue of negligence is concerned, claimants have to prove either by examining the witnesses or by the criminal record. In the present case PW-2 Shri Charles Turkey, ASI, who investigated the FIR No. 299/ 2007 registered at PS Delhi Cant has been examined to prove the aforesaid FIR Exhibit PW-2/1, Charge Sheet as Exhibit PW-2/2, DD Report as Exhibit PW-2/3 and rough site plan as Exhibit PW-2/4. The aforesaid witness also proved the seizure

memo of the offending vehicle as Exhibit PW-2/5 and notice issued under Section 133 of the Act as Exhibit PW-2/6. Moreover, the aforesaid PW-2, who was the IO of the case, also proved the superdari order of the vehicle Exhibit PW-2/7 and order of the Id. MM by which the driver of the offending vehicle was charged as Exhibit PW-2/8.

15. Apart, the statement of Shri Vikram recorded under Section 161 Cr.PC proved as Exhibit PW-2/12 and MLC of Sanjay Bhatia, deceased, has been proved by him as Exhibit PW-2/13. Post-mortem report has also been proved as Exhibit PW-2/14. Seizure memo of driving licence of the driver Ranjit Singh is proved vide Exhibit PW-2/15.

16. It is true that the inquiry under motor accident claim cases is different from the proceedings of civil and criminal cases. Moreover, the appellant has not produced any document or examined any witness contrary to the case of the claimants. As far as the job and the salary of the deceased is concerned, PW-3 Shri Pushpender Singh proved the salary certificate of the deceased for the months of May, 2007 to September, 2007 Exhibit PW-3/1 to 5 which proved that the deceased was getting a salary of Rs.15,600/- per month. The said witness has not deposed that the service of the deceased was not permanent. The said witness further deposed that in their company there was provision for overtime work. He clarified that there were certain other emoluments like perks and bonus etc. but the company does not mention the same in the salary of any of the employees. He further clarified that the deceased was getting phone allowance and travelling allowance but these were also not mentioned in the salary certificate of the deceased.

17. In view of the above discussion, I find no merit in the instant appeal, therefore, the same is dismissed with no order as to costs.

18. Before parting with the judgment, I note that the Id. Tribunal has not granted any compensation towards loss of love and affection. The deceased died at the age of 35 years and left behind his widow wife, a minor daughter and parents. Therefore, while dismissing the instant appeal, I grant Rs.50,000/- on account of loss of love and affection.

19. The appellant insurance company is directed to pay an amount of Rs.50,000/- in favour of respondent No.1/widow of the deceased with interest @ 7.5 % per annum from the date of institution of the petition, i.e., 23.02.2008 till its realisation.

20. The Registrar General of this Court is directed to release the compensation amount in favour of the respondents/claimants in terms of order dated 29.11.2010 passed by the Id. Tribunal; and the amount of Rs.50,000/- in favour of respondent No.1/widow of the deceased with interest as ordered above vide today's order.

21. It is further directed that the statutory amount of Rs.25,000/- be released in favour of the appellant.

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In view of the above, the instant application has become infructuous and the same is dismissed as such.

SURESH KAIT, J

APRIL 26, 2013

Sb/RS