

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

Reserved on: 23rd January, 2013

Pronounced on: 24th January, 2013

+ **MAC.APP. 911/2012**

NATIONAL INSURANCE COMPANY LTD ... Appellant
Through: Ms.Namita Sharma & Ms.Preeti
Bhardwaj, Advocates
versus

VIJAY KISHAN BARIK & ORS. Respondents
Through: Mr.Navneet Goyal & Mr.Pawan Kumar,
Advocates

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against a judgment dated 10.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹6,83,300/- was awarded in favour of Respondents No.1 to 4 for the death of Arti, an unmarried lady, who died in a motor vehicle accident which occurred on 07.03.2011.
2. The finding on negligence is not challenged by the Appellant Insurance Company; thus the same has attained finality.
3. The only ground of challenge is that Respondents No.1 to 4 were not financially dependent on deceased Arti, and therefore, the Respondents being the legal representatives (Class-II heirs) were only entitled to a statutory compensation under Section 140 of the Motor Vehicle Act,

1988 ('the Act').

4. During inquiry before the Claims Tribunal, it was established that deceased Arti was working as a Court Attendant in Delhi High Court and was getting a salary of ₹17,552/- including a sum of ₹2,320/- as Transport Allowance and ₹500/- as washing allowance. Reba Barik the deceased's sister entered into witness box as PW-1 and she testified that her deceased sister was unmarried; her parents had pre-deceased her; she had two sisters and one surviving brother; eldest brother had expired leaving behind a widow and five children. She deposed that the deceased used to provide financial help to them and they were dependents on her earnings. This part of PW-1's testimony was not challenged in cross-examination rather in the cross-examination of PW-1 it was illustrated that PW-1's husband was mentally retarded and was not able to earn his livelihood. She denied the suggestion that her deceased sister was not rendering any financial help to them. She admitted that she was a nominee of her deceased sister in her (deceased's) service book. She admitted that her nephew Deepu Barik was also working in Delhi High Court as a Court Attendant and was getting his salary. She stated that their younger sister Saraswati Barik was unmarried and was living with deceased Arti in Delhi.
5. The Claims Tribunal dealt with the quantum of compensation in Paras 7 to 12 of the impugned judgment, which are extracted hereunder:-

7. It has been held in a catena of judgments that emphasis in cases of personal injury and fatal accident should be on awarding substantial, just and fair compensation and not a token amount. General principle in calculating such sum of compensation, should be so as to put the injured or legal heirs of a deceased in case of fatal accident, in the same position as

he would have been, if accident had not taken place. The amount of compensation no doubt cannot bring back the dead but it certainly helps the LR's and dependents to live life with dignity and comfort as they were living during the lifetime of the deceased. The amount of compensation is awarded on the basis of age, the earning capacity and other liabilities of the deceased. The appropriate method of calculating compensation in fatal cases is multiplier method. The Hon'ble Supreme Court in plethora of judgments has laid down that in India, the multiplier method is proper for calculation of compensation.

8. In order to calculate the amount of compensation, the sum is required to be considered under the various head:

(a) LOSS OF ESTATE:

9. PW1 Ms. Reba Barik has stated that the deceased had been working as Court Attendant and getting a salary of Rs. 18,000/- p. m. In this case salary slip of the deceased has been filed as per which her salary in the month of February, 2011 was Rs. 17,552/- inclusive of Rs.2320/as Transport Allowance and Rs. 500- /as washing allowance which amount is required to be deducted for calculating the loss of estate. In the form of nomination she has nominated Ms. Reba Barik, PW1 as nominee. As per the MLC the deceased was 52 years of age. In this case the identity card of the deceased has also been filed wherein her date of birth has been shows as 01.07.1958. Thus, as on the date of accident she was 52 years of age. PW1 has stated that the deceased was unmarried and her parents had predeceased her. She had two brothers and two sisters. Her eldest brother is not alive and survived by his wife and five children. She stated that the deceased used to provide financial help to them and they were dependent on her earnings.

*10. Although the petitioners are not the Class I legal heirs of the deceased but they are her brother, sisters and LRs of predeceased brother. It was held in the case of **Manjuri Bera Vs. Oriental Insurance Co. Ltd. 2007 ACJ 1279** that even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation. In view of the case law supra, I am of the view that the petitioners being*

legal representatives are entitled to inherit the Estate of the deceased.

*11. For calculating the loss of Estate, the saving of the deceased in the present case is taken as 1/3rd of her income. Thus, for the calculation of Loss of Estate, the income of the deceased would be taken as Rs. 14,732/-. Taking a multiplier of "11" as per **Sarla Verma Vs. DTC 2009 (6) Scale 129**, the Loss of Estate is calculated as $14,732 \times 12 \times \frac{1}{3} \times 11 = \text{Rs. } 6,48,208/-$ which is rounded off to Rs. 6,48,300/.*

*12. I therefore, award a sum of **Rs. 6,48,300/-** to the petitioners towards "Loss of Estate"*

6. It is important to note that although PW-1 deposed about the financial assistance being rendered by the deceased to her and other family members, but the extent of that help was not stated. It is, however, proved that Saraswati Barik one of the sisters of the deceased lived with the deceased in Delhi. It is also established that the deceased was unmarried and was getting a salary of about ₹18,000/- per month.
7. In the absence of any evidence being produced by the Respondents with regard to the extent of financial assistance being rendered by the deceased, it can be assumed that she would be helping her brothers and sisters only out of her surplus income. As stated earlier, the deceased was getting a gross salary of ₹17,552/-, the Claims Tribunal deducted a sum of ₹2,320/- and ₹500/- which were being paid to the deceased towards Transport Allowance and washing allowance, and awarded one third of the deceased income towards loss to estate. The deceased was employed only as a Court Attendant in Delhi High Court, she had no liability and thus, it can be assumed that she must have been saving at least one third of her income and rendering the assistance of the said amount to her brothers and sisters particularly her unmarried sister Saraswati Barik.

Thus, the award of compensation to the extent, that is, one third of deceased's income as loss to estate cannot be faulted.

8. The Appeal, therefore, has to fail; the same is accordingly dismissed.
9. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
10. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 24, 2013

v