

\$~

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

+ **MAC.A. 888/2011**

% *Judgment delivered on: 02nd December, 2013*

ICICI LOMBARD GENERAL INSURANCE CO.

LTD

..... Appellant

Represented by: Mr. Navneet Kumar, Adv.

Versus

DINA BHANSALI & ORS.

..... Respondents

Represented by: Ms. Meenakshi Lekhi and
Mr. Jitendra Tripathi, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned award dated 27.04.2011, whereby ld. Tribunal has granted compensation for a sum of Rs.11,26,635/-.

2. The aforesaid compensation has been apportioned between the claimants as under:

“1.	<i>Smt. Dina Bhansali</i>	:	<i>Rs.6,26,635/-</i>
2.	<i>Mr. Rishab Bhansali</i>	:	<i>Rs.5,00,000/-”</i>

3. Ld. Counsel appearing on behalf of the appellant submitted that the

case of the claimants before the Id. Tribunal was that Sh. Vinod Bhansali, resident of 25-D, Janta Flats, Ashok Vihar, Phase-III, Delhi died in a road accident on 06.09.2010. At that time he was earning Rs.25,000/- to Rs.30,000/- per month, however, the claimants failed to prove any income of the deceased. Therefore, Id. Tribunal has assessed, on a guesswork, Rs.12,000/- per month as income of the deceased. He further submitted that if the claimants failed to prove the salary of the deceased, in that eventuality, Id. Tribunal ought to have considered the salary of the deceased as per Minimum Wages Act in view of the dictum of *Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121*.

4. Ld. Counsel further submitted that it is held by the Id. Tribunal that the amount deposited in various banks does not prove the fact that the deceased was earning Rs.25,000/- to Rs.30,000/- per month. However, by considering the amount of deposits and withdrawal in the bank account of deceased, Id. Tribunal has assessed the salary as Rs.12,000/- per month, which is not justifiable in law. He further submitted that deceased was not on a permanent job. Bank accounts do not prove his earning and having a PAN Card also not a proof of income.

5. Ld. Counsel appearing on behalf of the appellant submits that DAR was filed by IO after collecting all the relevant materials / evidence on record on 04.10.2010, which was converted into the Claim Petition on the same day and case was adjourned for giving offer of compensation on behalf of the insurance company. Accordingly, the offer of compensation in writing was filed on behalf of the insurance company on 15.02.2011, which was not accepted.

6. It is not in dispute that the IO went to Bombay and collected certificate from one Jayben B. Mehta regarding payment of Rs.4,000/- per month to the deceased, another certificate from Deepak J. Mehta regarding payment of Rs.5,000/- per month to the deceased. Statements of Jayben B. Mehta and Deepak J. Mehta have also been recorded in this regard by the IO.

7. Other certificates were also collected by the IO regarding payment of Rs.4,500/- per month to the deceased by one Sh. Bhagwan Dass Shah and from Jaswantra M. Mehta for payment of Rs.5,000/- per month to the deceased for doing service of part-time caretaker to him.

8. There is another certificate issued to deceased by Shreeji Trader, where the deceased was working as part-time peon on a monthly salary of Rs.2,000/- per month and also a certificate was also issued by Manilal & Company regarding payment of Rs.2,500/- to the deceased, where he was working as a part-time peon.

9. On the other hand, Id. Counsel appearing on behalf of the respondents / claimants submitted that the statement of accounts maintained by the deceased in Dena Bank show that he had deposited Rs.68,355/- from 01.12.2008 to 26.12.2009 and had deposited Rs.34,978/- between 23.11.2009 to 25.11.2010.

10. The statement of accounts of deceased shows that in Rupee Coop. Bank Ltd. he had deposited Rs.13,167/- between 01.11.2008 to 30.11.2010. The statement of accounts of deceased with Kunbi Sehkari Bank Ltd. shows that he had deposited Rs.5,615/- between 01.06.2007 to 08.12.2010 and

Rs.1,000/- from 01.12.2010 to 14.01.2011.

11. As per statement of accounts of deceased with Bank of India, he had deposited Rs.77,372/- in his account from 24.04.2009 to 01.09.2010. The passbook of deceased with UTI Bank shows that he had deposited Rs.1,22,105/- from 11.06.2007 to 30.06.2009.

12. The statement of accounts of deceased with SBI at Delhi shows that he had deposited various amounts from 29.07.2006 to 18.11.2010.

13. Ld. Counsel for the respondents / claimants further submitted that one of the claimants Mr. Rishab Bhansali was a special child and died during the pendency of this appeal. His name has been deleted from the array of the parties vide order passed in CM. No. 20535/2012.

14. Ld. Counsel further submitted that deceased was staying with his family at the address given above at Delhi. Thereafter, he went to Bombay and started earning his livelihood by working part-time jobs with various persons. He was maintaining family at Delhi and maintaining rental house with all his expenses at Bombay. The accounts as noted above have been maintained by the deceased for 4 to 5 years before his death in the accident in question.

15. She further submitted that settled law is that if there is no proof of the income, in that case, Id. Tribunal or Court has to consider the salary as per the Minimum Wages Act. But the present case is not of that nature. The IO has collected all the evidences and filed with the DAR, which has been accepted by the Id. Tribunal. It is also not a case, where the Id. Tribunal has

accepted without reason. However, after application of mind, ld. Tribunal has assessed the income of the deceased as Rs.12,000/- per month. She submitted that though, the income considered by the ld. Tribunal is on a lower side, however the claimants have not filed any appeal challenging the same. Therefore, they are not agitating the said issue in the present appeal.

16. Ld. Counsel further submits that for just and fair compensation, the annual income has to be assessed as that has been decided in the case of **Sarla Verma (Supra)**, wherein it is held as under:

“Compensation awarded does not become ‘just compensation’ merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say deceased aged 40 years having annual income of 45,000/- leaving him surviving wife and child), one Tribunal awards Rs.10,00,000/- another awards Rs.5,00,000/-, and yet another awards Rs.1,00,000/-, all believing that the amount is just, it cannot be said that what is awarded in the first case and last case, is just compensation. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical consideration, should nevertheless be objective, justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors / inputs are the same, and the formula / legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just

compensation.”

17. I heard ld. Counsels for the parties.

18. Admittedly, ld. Tribunal has relied upon DAR filed by the IO. All the evidences collected by the IO from Bombay were placed on record with DAR. Accordingly, ld. Tribunal has scrutinized the same. It is not disputed that the claimants have not produced any witness to prove the income of the deceased. But, they have produced the bank accounts of the deceased wherein he used to deposit and withdraw the amount.

19. While assessing the income, the Tribunal and the court has to see various facts which leads to ‘just compensation’. In the present case, ld. Tribunal has not accepted statements of the claimants in toto. However, keeping in view the documents filed with DAR by the IO, ld. Tribunal has rightly assessed Rs.12,000/- per month as income of the deceased.

20. In view of above, I do not find any discrepancy in the order passed by the ld. Tribunal.

21. Thus, finding no merit in the instant appeal, same is accordingly dismissed.

22. I hereby make it clear that before the ld. Tribunal there were two claimants, however, respondent no. 2 Rishab Bhansali expired during the pendency of the instant appeal.

23. Vide order dated 29.09.2011, this court stayed the execution of the impugned award subject to deposit the entire award amount with Registrar

General of this Court.

24. Thereafter, vide order dated 01.05.2012, amount of Rs.1,00,000/- was released in favour of respondent no. 1 and Rs.50,000/- was released in favour of respondent no. 2.

25. Accordingly, Registrar General of this court is directed to release the balance compensation amount with interest accrued thereon in favour of respondent no. 1, Smt. Dina Bhansali on taking steps by her.

26. Statutory amount be released in favour of the appellant.

SURESH KAIT, J

DECEMBER 02, 2013

Jg