

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

+ MAC.APP. 901/2011

% *Judgment reserved on: 11th April, 2013*
Judgment delivered on: 29th April, 2013

NATIONAL INSURANCE CO. Appellant
Through: Mr. D.K. Sharma, Advocate.

Versus

HEM LATA DEVI & ORS Respondents
Through: Mr. Sudhir Mehndiratta, Advocate
for Respondent Nos. 1 to 4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is filed while challenging the judgment dated 25.07.2011, whereby the learned Tribunal has granted the total compensation of Rs.10,10,000/- along with 7.5% interest *per annum* in favour of the respondents/claimants and against the appellant/Insurance Company.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has mainly argued on the ground that the accident took place on 29.11.2000, claim petition filed by the respondents in 2001 and final award was passed in the year 2011. He submitted that the learned Tribunal took

ten years to decide the claim petition for the reasons that most of the time either the witnesses were not produced, or the claimants or their counsel did not appear before the Trial Court.

3. He submitted that vide order dated 08.12.2010, the claim petition was dismissed in default by the learned Tribunal. However, on an application seeking restoration of the petition, the same was restored vide order dated 03.03.2011. Thereafter, the learned Tribunal has imposed cost upon the respondents/claimants for not taking steps to examine their witnesses. Despite that, the learned Tribunal has granted interest @ 7.5% *per annum* from the date of filing of the petition till its realization.

4. Learned counsel for the appellant/Insurance Company submitted that when there was no fault on the part of the appellant for causing delay, then the appellant is not liable to pay interest for the delayed period.

5. To strengthen his arguments, learned counsel has drawn the attention of this Court to the orders from 28.01.2006 onwards till 02.06.2011, during which either the claimants or their counsel did not appear or their witnesses were not examined on the dates fixed. This fact has been recorded repeatedly by the learned Tribunal that despite number of last opportunities being granted, the respondents failed to examine their witnesses.

6. Second issue argued by the learned counsel is that at the time of the accident, the deceased was 53 years old and his retirement was at the age of 57 years, as has been proved by PW4 Sh. C.P.Chamola, Junior Warrant Officer, who clarified that as per their record, date of birth of the appellant

was 18.3.1947 and the age of retirement is 57 years or 37 years of service, whichever is earlier.

7. In view of the above, learned counsel submitted that as the remaining service period of the deceased was only four years, therefore, considering the salary and thereafter the pension amount applicable for remaining seven years as per his entitlement, the learned Tribunal should have granted compensation only for four years.

8. On the other hand, learned counsel appearing on behalf of the respondents/claimants has submitted that Mr.Sandeep Ghai, Sub-Inspector was the only alive eye witness of the accident as the others had died. Though the claimants continued to serve him dasti as well, despite that he did not appear before the Court on the ground either he was out of station or busy with his work or not well. Therefore, there was no fault on the part of the claimants.

9. Lastly, when the claimants even after filing the process fee regularly could not secure the attendance of the above named witness, the learned Tribunal vide its order dated 07.08.2009 issued bailable warrants against him. However, despite that he did not appear. Finally, vide order dated 25.07.2011, the learned Tribunal summoned the record of the criminal case being prosecuted against the driver of the offending vehicle and while relying on the said record came to the conclusion that trial court charge sheet revealed that prosecution examined in all 11 witnesses wherein PW-10 was the eye witness of this accident and PW-11 was the investigating officer. PW-10 eye witness has supported the prosecution charge by deposing that victim scooterist by driving his scooter UP25D5935 came

from Naya Marg entered Kautilya Marg on the Naya Marg Kautilya Marg Crossing, T point and then the bus coming on Kautilya Marg had proceeded towards direction in which victim scooterist had come on the road. The said bus was being driven in a very high speed and in a very negligent manner. Investigating officer proved site plan as Ex.PW11/D in the criminal trial which shows that the bus before hitting the victim scooterist had left behind skid marks around 30 feet long. It implied that bus was in a high speed that driver had to apply strong brakes resulting in wheel of the bus leaving skid marks before bus struck scooterist. Therefore, bus could not stop at a distance of around 30 feet from the place it caused impact against the victim scooterist.

10. Regarding the salary, Id. Tribunal has recorded that deceased was getting Rs.30,000/- per month as a Warrant Officer employed with Indian Airforce. Salary Certificate proved by official of the Department where deceased was employed as Ex.PW3/A proved gross salary of victim deceased at Rs.9,306/-. Claimant Vijay PW-1 deposed in evidence that deceased was drawing a salary of Rs.30,000/- per month but then exact salary could be computed as per the salary certificate and this witness had also referred to that salary certificate mark A which tallies with the salary certificate. Accordingly, Id. Tribunal has taken earnings of the victim deceased at Rs.9,306/- per month.

11. Id. Counsel for the respondent has relied upon a case of ***Lal Dei & Ors. v. Himachal Road Transport, (2007) 8 Supreme Court Cases 319,***

wherein it is held as under:

“1. The wife and children of the deceased Narain Singh filed the claim petition before the Motor Accidents Claims Tribunal for his death in a bus accident. The Motor Accidents Claims Tribunal was pleased to allow the petition of the petitioners and awarded Rs. 7,96,280 with interest at the rate of 9% per annum from the date of filing of the petition to the claimants. While awarding the compensation, the Motor Accidents Claims Tribunal has taken into consideration the family pension given to the family while calculating the amount of compensation. The Motor Accidents Claims Tribunal has deducted the family pension amount from the dependency of the claimants. Both the parties have preferred an appeal and the cross-objection in the High Court. The award made by the Motor Accidents Claims Tribunal with interest was upheld by the High Court and cross-objection was dismissed. Against the said order of the High Court, the present special leave petition was filed.

*4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In *Helen C. Rebello v. Maharashtra SRTC* this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the*

appellants would be entitled for an amount of Rs. 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.”

12. After hearing ld. counsel for the parties, it is emerged that accident took place on 29.11.2000, claim petition filed by the respondents/claimants in the year 2001 and the final Award was passed in the year 2011. Thus, the Tribunal took 10 years to decide the claim petition for the reasons that only PW-10 Shri Sandeep Ghai, Sub-Inspector was the only alive eye witness who did not appear before the Tribunal despite repeated service on him and dasti as well. At last, the ld. Tribunal summoned the record of the criminal case and relied on the said record while proving the negligence of the driver of the offending vehicle. I am of the considered opinion that there was no fault on the part of the respondents/claimants because they served PW-10 a number of times dasti as well, however, he did not appear for the reasons that either he was busy with his work or not well or was out of station. Thus, the ld. Tribunal rightly granted interest @ 7.5 % per annum from the date of filing of the petition till its realization.

13. Regarding the second issue as argued by the counsel for the appellant, the deceased was 53 years old at the time of accident and his retirement was at the age of 57 years. Thus, the learned Tribunal should have granted compensation only for 4 years.

14. The law has been well settled in the case of ***Lal Dei & Ors.(supra)*** that the Motor Accidents Claims Tribunal as well as the

High Court cannot deduct the amount of family pension given to the family while calculating the dependency of the claimants. The family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death, therefore, there is no co-relation between the two. Accordingly, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.

15. In view of the above discussion and the legal position, I do not find any discrepancy in the impugned Award passed by the learned Tribunal, therefore, I am not inclined to interfere therewith. The instant appeal is accordingly dismissed with no order as to costs.

16. Consequently, the statutory amount of Rs.25,000/- be released in favour of the appellant/insurance company. Registrar General of this Court is directed to release the compensation amount in favour of the respondents/claimants in terms of the order dated 25.07.2011 passed by the learned Tribunal.

CM No. 18765/2011 (for stay)

In view of the order passed in the main appeal, the instant application has become infructuous and is dismissed as such.

SURESH KAIT, J

APRIL 29, 2013
Sb/RS