

\$~8 & 12

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

Date of decision: 05th May, 2015

+ **MAC.APP. 181/2013**

BAJAJ ALLIANZ INSURANCE COMPANY LTD.

..... Appellant

Through Ms.Neerja Sachdeva, Advocate

versus

SUNIL KUMAR & ORS.

..... Respondents

Through Ms. Niti Jain, Advocate for Mr. Anuj Aggarwal, Advocate for Respondents no.1 & 2.
Mr. Shantanu Bhardwaj, Advocate for Respondent no.3.

+ **MAC.APP. 366/2013**

SUNIL KUMAR & ANR.

..... Appellants

Through Ms. Niti Jain, Advocate for Mr. Anuj Aggarwal, Advocate

versus

TAJ MOHMAD & ORS.

..... Respondents

Through Ms.Neerja Sachdeva, Advocate for Respondent no.3.
Mr. Shantanu Bhardwaj, Advocate for Respondent no.4.

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

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of the judgment dated 16.11.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.9,24,300/- was awarded for the death of Phoolwati who suffered fatal injuries in a motor vehicular accident which occurred on 22.05.2008.
2. For the sake of convenience, Appellant in MAC.APP.181/2013 shall be referred to as the Insurance Company, whereas the Appellants in MAC.APP. 366/2013 and Smt. Saroj, who is one of the Claimants shall be referred to as the Claimants.
3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the two-wheeler bearing registration no.DL-3S-AR-2813 by Respondent Taj Mohmad. The Claims Tribunal accepted the deceased's income to be Rs.13,993/- per month, deducted a sum of Rs.672/- received by the deceased towards Travel Allowance(TA), deducted 50% towards personal and living expenses of the deceased as his children were grown up although there was a widowed daughter-in-law. The Claims

Tribunal adopted a multiplier of 11 to compute the loss of dependency on the age of the deceased which was 53 years (as per the postmortem report) as Rs.8,79,300/-. The Claims Tribunal further awarded a sum of Rs.25,000/- towards loss of love and affection and Rs.10,000/- each towards funeral expenses and loss to estate. With regard to the liability, the Claims Tribunal found that the insured committed willful and conscious breach of the terms and conditions of the insurance policy. Consequently, while making the Insurance Company liable to pay the compensation permitted it to recover the compensation paid from the insured.

4. The finding with regard to recovery rights has not been challenged by Mohd Sagir, the insured hence, the same has attained finality.
5. The following contentions are raised on behalf of the Insurance Company:
 - (i) Since the Insurance Company proved willful and conscious breach on the part of the insured, it ought to have been exonerated of its liability to pay the compensation; and
 - (ii) The compensation awarded is on the higher side as the age of the deceased was taken 53 years, whereas the age of the

daughter-in-law of the deceased as per the Voter Identity Card was 50 years.

6. Per contra, the learned counsel for the Claimants urges that the compensation awarded towards non-pecuniary damages is on the lower side.
7. The learned counsel for the Claimant Smt. Saroj, who was awarded large portion of the compensation, submits that the Claimant was not averse to equal distribution of the compensation awarded, however, Claimant Sunil Kumar being nominee of the deceased has withdrawn the entire gratuity and group insurance from the Municipal Corporation of Delhi(MCD) and therefore, Claimant Smt. Saroj is entitled to greater share in the amount awarded.
8. It is not in dispute that deceased Phoolwati was employed as a Sweeper in MCD. Her age of superannuation on the date of accident was 60 years. Of course, the age of Smt. Saroj who is the daughter-in-law of deceased Phoolwati as per the Voter Identity Card issued by Election Commission of India would come to 50 years, however, the learned counsel for the Claimant Smt. Saroj states that as per the information received by him Saroj's age was disclosed by her Late

husband at the time of issuance of the Voter Identity Card and there may be possibility of the same being recorded wrongly. In any case, as already stated above, deceased Phoolwati was in Government Service. Even considering the age of superannuation to be 60 years, the multiplier taken will be 9. So, in the absence of any evidence with regard to the same being produced by the parties, I am inclined to accept the age of the deceased to be 53 years as per the postmortem examination. The Claims Tribunal had made a deduction of 50% towards personal and living expenses of the deceased as her legal representatives were major. Although, no evidence was led to prove that the grand-children of deceased Phoolwati *i.e.* children of predeceased son Mam Chand were dependant but while apportioning the compensation amongst the legal heirs of the deceased, the Claims Tribunal awarded larger part of the compensation to Smt. Saroj, the widowed daughter-in-law primarily on the ground that the deceased had the responsibility of her grand children. The learned counsel for the Claimant Smt. Saroj fairly concedes that no evidence was led in this regard. The fact, however, remains that the deceased was survived by the children of her predeceased son Mam Chand. Normally, when there is no financial dependency of the legal

representatives, only 1/3rd of the deceased's income is to be awarded towards loss to estate. (See *Keith Rowe v. Prashant Sagar & Ors.*, MAC APP. No.601/2007 decided on 15.01.2001 and the judgment of Karnataka High Court in *A. Manavalagan v. A. Krishnamurthy & Ors.*, 2005 ACJ 1992). In the facts of this case, the Claims Tribunal rightly took half of the deceased's income towards loss of dependency. The loss of dependency was rightly taken as Rs.8,79,300/- by the Claims Tribunal.

9. As far as award of compensation towards non-pecuniary damages is concerned, the husband of Phoolwati had predeceased her. In view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the legal representatives of the deceased will be entitled to a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.
10. The compensation is therefore, enhanced by Rs.90,000/- which shall carry interest @ 7.5% per annum from the date of filing the claim petition till its payment.
11. The Insurance Company is directed to deposit the enhanced compensation with UCO Bank, Delhi High Court Branch, New Delhi

within six weeks.

12. As stated earlier, the Claims Tribunal granted recovery rights to the Insurance Company. That finding has attained finality as far as insured is concerned. It goes without saying that the Insurance Company will be entitled to recover the compensation paid from the insured in execution of this very judgment without having recourse to independent recovery proceedings.

APPORTIONMENT:

13. As far as apportionment of the compensation award is concerned, the Claims Tribunal awarded major part of the compensation to Claimant Smt. Saroj on the ground that the deceased was survived by major sons, a widowed daughter-in-law and the children of the predeceased son. No evidence was led to prove that the children of the predeceased son (grand-children) were solely dependent on the deceased. At the same time, I have observed earlier that the deceased was survived by minor grand-children.
14. In view of this, 50% of the awarded compensation along with proportionate interest shall be payable to Claimant Smt. Saroj, which shall be used by her for herself and for the benefit of her children *i.e.*

grand-children of deceased Phoolwati. 25% of the compensation each shall be payable to Claimants Sunil Kumar and Surinder Singh.

15. Both the appeals are disposed of in above terms.
16. Pending applications, if any, also stand disposed of.
17. Statutory amount, if any, deposited shall be refunded to the Insurance Company on deposit of the enhanced compensation and filing a certificate in this regard.

(G.P. MITTAL)
JUDGE

MAY 05, 2015
pst