

\$-9

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

Decided on: 11th March, 2015

+ **MAC.APP. 923/2012**

RELIANCE GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.A.K. Soni, Advocate

versus

TILAK RAJ NAYYAR & ORS. Respondents

Through: Mr. Sunil Kumar Verma,
Advocate for Respondents no.1
& 2.

Ms. Meena Kohli, Advocate for
Respondents no.3 & 4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 07.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.15,03,399/- was awarded for the death of Sunil Nayyar, who suffered fatal injuries in a motor vehicular accident which occurred on

12.07.2008.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Maruti Car bearing no.DL-4CF-1641. The Claims Tribunal accepted the income of the deceased as Rs.1,10,700/- per annum. Considering four dependants *i.e.* parents, widow and one minor daughter, it deducted $\frac{1}{4}^{\text{th}}$ towards personal and living expenses and applied the multiplier of 15 as per the age of the deceased to compute the loss of dependency at Rs.12,45,35/-.
3. The following contentions are raised on behalf of the Appellant:
 - (i) Father of the deceased was not dependent on the deceased, deduction towards personal and living expenses ought to have been $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{4}^{\text{th}}$;
 - (ii) As per the report of the Investigator, it was proved that the licence held by Deepak Kumar Dutta, driver of the Maruti Car was fake. The Insurance Company ought to have been granted recovery rights; and

(iii) The counsel's fee of Rs.22,000/- awarded to the counsel is not in accordance with the Delhi High Court Rules and under the provision of Motor Vehicles Act, 1988.

4. The appeal is resisted separately on behalf of Respondents no.1 and 2 (parents of the deceased) and Respondents no.3 and 4 (widow and minor daughter of the deceased).
5. The learned counsel for Respondents no.1 and 2 submits that the compensation awarded is just and reasonable. It is stated that however, since there was matrimonial dispute between the deceased and his wife (Respondent no.3), the share of compensation awarded to the parents ought to have been more than what has been awarded by the Claims Tribunal.
6. On the other hand, the learned counsel for Respondents no.3 and 4 submits that considering that the deceased had the responsibility of the widow and a minor daughter, the compensation awarded is too meager and small. It is urged that the deceased had a well settled business of toys and was earning Rs.35,000/- per month. He was maintaining a Santro car and a

motorcycle and that is why, maintenance @ Rs.7,000/- per month was awarded under Section 24 of the Hindu Marriage Act to Respondent no.3 and 4 in the matrimonial proceedings ongoing between the deceased and Respondent no.3. It is contended that since the father of the deceased was not dependent upon the deceased, he was not entitled to any share in the compensation awarded.

QUANTUM OF COMPENSATION:

7. During the inquiry before the Claims Tribunal, it was proved that the deceased was dealing in toys. Only one Income Tax Return (ITR) for the Assessment Year (A.Y.) 2007-08 was filed by the deceased on 31.03.2008 just a few months before his death. It is admitted by the learned counsel for the Respondents that no other ITR was filed. In view of this, I am not inclined to accept the income of the deceased to be more than Rs.1,10,700/- per annum.
8. Further, though the father of the deceased was living separately, in fact, initially the claim petition was filed by the parents of the

deceased wherein the widow and the daughter were also impleaded. However, Tilak Raj Nayyar, father of the deceased nowhere claimed that he was financially dependent upon the deceased. The number of dependants therefore, will be three instead of four. Consequently, deduction towards personal and living expenses will be $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{4}^{\text{th}}$ as made by the Claims Tribunal. Since the deceased was aged 40 years and 04 months on the date of accident, the appropriate multiplier will be 15 as taken by the Claims Tribunal. On making a deduction of Rs.380/- towards Income Tax, loss of dependency will be Rs.11,03,200/- (Rs.1,10,700/- -Rs.380 (Income Tax) $\times \frac{2}{3} \times 15$).

9. In addition, the claimants will be entitled to a sum of Rs.1,37,400/- towards the treatment of the deceased and Rs.75,624/- towards cost of medicine as was granted by the Claims Tribunal.
10. Initially, the trend was to award nominal compensation under non-pecuniary heads. However, in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, a three Judge Bench decision of

the Supreme Court, laid down that compensation of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate has to be awarded. I award these sums accordingly.

11. The overall compensation is hence, recomputed as under:

Sl. No.	Compensation under various Heads	Awarded by the Claims Tribunal (in Rs.)	Awarded by this Court (in Rs.)
1.	Loss of Dependency	12,45,375/-	11,03,200/-
2.	Loss of Love and Affection	25,000/-	1,00,000/-
3.	Loss of Consortium	10,000/-	1,00,000/-
4.	Funeral Expenses	5,000/-	25,000/-
5.	Loss to Estate	10,000/-	10,000/-
6.	Cost of Treatment	1,37,400/-	1,37,400/-
7.	Cost of Medicine	75,624/-	75,624/-
	TOTAL	15,03,399/-	15,51,224/-

12. The overall compensation hence, comes to Rs.15,51,224/-.

13. The compensation of Rs.15,03,399/- awarded by the Claims

Tribunal therefore, cannot be said to be excessive or exorbitant, the same is just and reasonable.

COUNSEL FEE:

14. As far as award of sum of Rs.22,000/- towards counsel's fee is concerned, this Court in *ICICI Lombard General Insurance Co. Ltd v. Kanti Devi & Ors.*, MAC.APP.645/2012 decided on 30.07.2012 had held that counsel's fee only in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the High Court Rules and Orders can be awarded by the Claims Tribunal. It was further held that counsel's fee cannot be paid directly to the counsel. The conclusion in *Kanti Devi(supra)*, as given in para 32 is extracted hereunder:

“32. To sum up, it is directed :-

- (i) *The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.*
- (ii) *The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.*
- (iii) *In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the*

settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.

- (iv) *If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.*
- (v) *The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied."*

15. In view of this, award of counsel's fee of Rs.11,000/- to each counsel is set aside. However, it will be deemed that the claim petition has been decreed with costs and Respondents no.1 to 4 shall be entitled to counsel's fee in accordance with para 32 of *Kanti Devi(supra)* extracted above.

LIABILITY:

16. It is urged by the learned counsel for the Appellant that the driving licence of the driver of Maruti Car, on investigation from the Licensing Authority, Mathura was found to be fake. Admittedly, no notice was issued to the owner of the car to produce the driving licence of the driver. In the absence

thereof, it is difficult to say whether the licence which was allegedly got verified by the Appellant Insurance Company was seen by the owner at the time of entrusting the vehicle to the driver. It is well settled that it is not the responsibility of the owner of the vehicle to visit the Licensing Authority for verification of the driving licence produced. The initial onus is on the insurer to prove that there is willful and conscious breach of the terms and conditions of the insurance policy by the insured. In the absence of any notice to the owner to produce the driving licence which was allegedly seen by him, it can be said that the insurance company has failed to discharge the initial onus placed upon it to prove that there was a willful and conscious breach of the terms and conditions of the insurance policy. The Appellant is therefore, not entitled to recovery rights against the owner.

SHARES IN COMPENSATION:

17. As far as sharing of the compensation is concerned, it is stated that the entire amount of treatment was spent by the father of the deceased. However, it is urged by the learned counsel for

Respondents no.3 and 4 that the amount was paid from the account of deceased Sunil Nayyar himself. The learned counsel referred to the statement of accounts placed on the Trial Court record from the Bank of Baroda, Janakpuri Branch. No withdrawal was made after the death of the deceased from his account except the amount of Rs.15,000/- which was paid to the deceased's widow through clearance of the cheque and another sum of Rs.1,500/-. It is therefore, clear that the amount of Rs.2,13,024/- was paid by Respondent no.1, father of the deceased. Therefore, even if the father is not entitled to any compensation for loss of dependency, he will get a share in the compensation awarded towards loss of love and affection. Instead of sum of Rs.2,03,399/- with proportionate interest, I award a sum of Rs.2,50,000/- to the father along with proportionate interest. The compensation awarded to Respondent no.2 is much less than awarded to Respondents no.3 and 4, *i.e.* the widow and the child, I will maintain the same. Since the father has not been awarded any compensation towards loss of dependency, Respondent no.3 *i.e.* the widow

will be entitled to compensation of Rs.4,53,399/- along with proportionate interest. Respondents no.2 and 4 shall be entitled to compensation of Rs.3,00,000/- and Rs.5,00,000/- respectively with proportionate interest as awarded by the Claims Tribunal.

18. The amount awarded to the father (Respondent no.1) shall be released immediately. Rest of the amount payable to the Respondents (claimants) shall be released/held in Fixed Deposit as directed by the Claims Tribunal.
19. The appeal is disposed of in above terms.
20. Pending applications also stand disposed of.
21. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MARCH 11, 2015
pst