

\$~17

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

Date of decision: 5th February, 2015

+ **MAC.APP.1070/2012**

TATA AIG GENERAL INSURANCE CO. LTD Appellant

Through: Mr. K.L. Nandwani, Adv.

versus

SHAHEENA & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. This appeal is for reduction of compensation of Rs.7,12,504/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of six Respondents/Claimants, who are the daughters of deceased Iqram Ahmed, who died in a motor vehicular accident which occurred on 29.05.2008.
2. During inquiry before the Claims Tribunal, it was claimed that deceased Iqram Ahmed was dealing in building material and was earning Rs.10,000/- per month. A pass book was also produced to prove withdrawal of Rs.30,000/-, yet no evidence was produced to show that the deceased was doing the business of building material.

The Claims Tribunal therefore, took the minimum wages of a semi-skilled worker, deducted 1/5th towards personal and living expenses, relying on *Santosh Devi v. National Insurance Company Limited & Ors.*, Civil Appeal No.3723/2012, decided on 23.04.2012 added 30% towards future prospects and awarded a sum of Rs.40,000/- towards non-pecuniary damages to compute the overall compensation of Rs.7,12,504/-.

3. Following contentions are raised by the learned counsel for the Appellant Insurance Company:-

- (i) Two of the six Respondents/Claimants were married and therefore, actual number of dependents were four. There should have been deduction of 1/4th towards personal and living expenses;
- (ii) Addition of 30% towards future prospects was not justified. Reliance is placed on the judgment of the Supreme Court in *Reshma Kumari & Ors. V. Madan Mohan & Anr.*, (2013) 9 SCC 65 and a judgment of this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015; and

- (iii) In the absence of any proof of business, the minimum wages of an unskilled worker ought to have been taken to compute the loss of dependency.
4. In order to prove the employment of deceased, Shaheena swore Affidavit Ex.PW-1/A and entered the witness box as PW-1. As stated earlier, the Respondents claimed that their father deceased Iqram Ahmed was dealing in building material and was earning Rs.10,000/- per month. There is no documentary evidence with regard to proof of income. The Appellant Insurance Company went to the extent of disputing the Ration Card placed on record by the Respondents and gave a suggestion that the ration card was forged and fabricated. But no evidence was produced by the Insurance Company that the Ration Card was forged. Although, no documentary evidence was produced with regard to business and the income, but no suggestion was given that the deceased was not dealing in building material.
5. In view of this, in my view, the Claims Tribunal ought to have made some assessment to determine the income of the deceased as a supplier of building material and atleast ought to have taken the minimum wages of a skilled worker instead of a semi-skilled worker.

6. It is true that two of the daughters, namely, PW-1 Shaheena and Soni were married, yet PW-1 Shaheena has stated that she was all along staying with her siblings. She denied the suggestion that she was living with her husband. With regard to Soni, she admitted that sometimes she lives with her husband at Modi Nagar and sometimes with her parents at Delhi.
7. The contention with regard to deduction towards personal and living expenses was raised before the Claims Tribunal and the Claims Tribunal consciously deducted 1/5th towards personal and living expenses on the ground that the other siblings were very young (minor daughters), one of the married sister was regularly staying with the siblings and the other was staying with them off and on. The Claims Tribunal reasoned as under:-

“9 The petitioners, most of whom are minors, cannot be faulted for the above as the mother has already pre-deceased and consequent to the demise of the deceased as is reported on record, the old aged grand-father has also died. In the circumstances above, dependency of all the petitioners is to be presumed as despite the fact that the elder two daughters though have admittedly married, are left with no option but to stay with their younger siblings who are as young as 8-10 years when deceased Ikramudin passed away.”

8. The Claims Tribunal opined that since the mother of the Respondents had pre-deceased and the aged grandfather had died subsequent to the death of deceased Iqram Ahmed, deduction towards personal and living expenses should be $1/5^{\text{th}}$.
9. I will appreciate the view taken by the Claims Tribunal for determining loss of dependency, deduction towards personal and living expenses was rightly taken as $1/5^{\text{th}}$.
10. Since the deceased was not in any settled employment or business addition of 30% towards future prospects was not justified in view of the judgment of the Supreme Court in *Reshma Kumari & Ors. V. Madan Mohan & Anr.*, (2013) 9 SCC 65 and a judgment of this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015.
11. The loss of dependency therefore, comes to Rs.5,45,260/- ($4057/- \times 12 \times 4/5 \times 14$).
12. On addition of 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, the overall compensation comes to Rs.6,80,260/-.

13. Thus, the compensation of Rs.7,12,504/- awarded by the Claims Tribunal in the peculiar facts and circumstances of the case cannot be said to be exorbitant and excessive. The appeal therefore, fails; the same is accordingly dismissed.
14. Pending application also stands disposed of.
15. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 05, 2015

vk