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

Date of decision: 20th February, 2015

\+ **MAC.APP. 1121/2012 and CM No. 17976/2012**

ICICI LOMBARD GENERAL INS. CO. LTD. ..... Appellant
Through Ms. Neerja Sachdeva, Advocate

versus

PRAMILA & ORS ..... Respondents
Through Mr. Rohan Sharma, Advocate

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

G. P. MITTAL, J. *(ORAL)*

1. The present appeal relates to reduction of compensation awarded for the death of Kramveer Singh. It is brought to the notice of the Court that Respondent no. 7 has expired. This Death Certificate has been produced. Respondent no. 7 was the mother of the deceased. The other Claimants are the widow and the children of the deceased. In view of the death of Respondent no. 7, the name of Ram Devi/Respondent no. 7 is deleted from the array of parties.

2. The appeal is filed for reduction of compensation of Rs. 35,99,347/- granted to the Respondents for the death of Kramveer Singh, who had died in a motor vehicular accident which occurred on 30th May, 2009.

3. During enquiry before the Claims Tribunal, it was found that deceased Kramveer Singh was employed as an Inspector in the Municipal Corporation of Delhi. He was aged 45 years at the time of his death. Salary of deceased

Kramveer Singh was proved to be Rs. 17,510/-. The Claims Tribunal added 30% towards future prospects, deducted 1/5th towards personal and living expenses and applied the multiplier of 14 to compute the loss of dependency. The overall compensation awarded is tabulated as under:-

Sl. No.	**Compensation under various heads**	**Awarded by the Claims Tribunal**
1.	Loss of dependency	₹ 30,59,347/-
2.	Loss of consortium	₹ 50,000/-
3.	Funeral charges	₹ 15,000/-
4.	Loss of estate	₹ 1,75,000/-
5.	Loss of loss of company, love and affection etc.	₹ 2,00,000/-
6.	Loss of care, attention and expenses to be born for the performance of gratutous services	₹ 1,00,000/-
	Total	**Rs.35,99,347/-**

4. It is contended by the learned counsel for the Appellant that three sons of the deceased were major and two daughters were already married. Hence, deduction towards personal and living expenses should have been higher. It is further contended that compensation awarded towards non-pecuniary damages is on the higher side. Also, award of Rs. 36,000/- towards counsel's fee and out of pocket expenses is not in consonance with the terms of the Delhi High Court's legal orders. Interest awarded @ 12% per annum is also excessive and exorbitant.

5. Per contra, the learned counsel for Respondents no. 1 to 6 submits that

the compensation awarded is just and reasonable.

6. I have the Trial Court record before me. It is true that two daughters of deceased Kramveer Singh were aged 24 years and 27 years on the date of the accident. They were already married. However, three major sons of the deceased who were aged 18, 19 and 21 years were not yet settled in their lives. So even if they were major, they would have been fully dependent upon the deceased. The number of dependents being 5, deduction towards personal and living expenses ought to have been 1/4th instead of 1/5th as made by the Claims Tribunal.

8. The Claims Tribunal deducted the amount of HRA and Washing Allowance being paid to the deceased from his income for calculating the loss of dependency. The same is liable to be added, as deduction towards personal and living expenses has already been made and these allowances were for the benefit of the deceased as well as his family members.

9. Loss of dependency thus, comes to Rs. 28,30,128/- [Rs.17510/- -1856 x 12 – 2785 (income tax) + 30% x 3/4 x 14].

10. As regards award of non-pecuniary damages, the latest trend is to award a sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate. (See *Rajesh & Ors. v. Rajbir Singh & Ors., 2013 (6) SCALE 563*). I award the sums accordingly.

11. The overall compensation hence, comes to Rs. 30,71,743/-.

12. The question of grant of counsel's fee was gone into by this Court in MAC Appeal No. 645/2012 titled *ICICI Lombard General Insurance Co. Ltd. vs. Kanti Devi & Ors.,* decided on 30th July, 2012, wherein in paras 8 to 20, this Court held as under:-

"8. It is true that Section 172 of the Act empowers a Claims Tribunal to award compensatory costs only in the eventualities as mentioned in Clause (a) and (b) of Section 172 sub-Section (1). Section 35 (A) of the Code contains similar provisions regarding award of compensatory costs in respect of false or vexatious claims or defences.

9. A Claim Petition filed under Section 166 of the Act has to be inquired into and compensation must be awarded as provided under Section 168 of the Act. Section 169 (2) of the Act also lays down the procedure and powers of the Claims Tribunal. It is extracted hereunder:-

> ***"169. Procedure and powers of Claims Tribunals.***
>
> *(1) x x x x*
>
> *(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*
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> *x x x x x"*

10. A bare reading of Section 169 (2) of the Act would show that the powers of Civil Courts have been conferred on a Claims Tribunal only for specific purposes as mentioned therein which certainly does not include the power to impose costs. However, Section 176 of the Act empowers the State Govt. to frame Rules for the purpose of carrying into effect the provisions given in Sections 165 to 174 of the Act and, in particular, as regard to the procedure to be followed by the Claims Tribunal and also with regard to the powers which are vested in a Civil Court which may be exercised by a Claims Tribunal.

11. Govt. of NCT of Delhi in exercise of its power under Section 176 and under other Sections of the Act framed Delhi Motor Vehicle Rules, 1993. Chapter IX of the Delhi Motor Vehicle Rules deals with the provisions in relation to the Claims Tribunal. Rule 118 of the Delhi Motor Vehicle Rules lays down the procedure to be adopted by the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules further makes applicable certain other provisions of the First Schedule of the Code to the proceedings before the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules reads as under:-

> ***"119.Power vested in the Civil Court which may be exercised by Claims Tribunal**.- The following provisions of the first schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunal, namely:-*
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> *(a) Order V, (Issue and Service of Summons) Rules 9 to 13 and 15 to 39;*
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> *(b) Order IX (Appearance of Parties and Consequence of Non-appearance);*
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> *(c) Order XIII (Production, Impounding and Return of Documents),Rules 3 to 10;*
>
> *(d) Order XVI (Summoning and Attendance of Witnesses), Rules 2 to 21;*
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> *(e) Order XVII (Adjournments) and;*
>
> *(f) Order XXIII (Withdrawal and Adjustment of Suits), Rules 1 to 3."*

12. Rule 119, therefore, also does not confer any power upon the Claims Tribunal with respect to the imposition of costs. The Govt. of NCT of Delhi framed another set of Rules, namely, the Delhi Motor Accident Claims Tribunal Rules, 2008 (the Claims Tribunal Rules, 2008) in exercise of its power under Section 176 of the Act. The said Rules, however, superseded the *provisions of the Delhi Motor Vehicle Rules, 1993 insofar as the provisions relating to the Claims Tribunal in Chapter IX are concerned.*

13. The preamble to the Claims Tribunal Rules, 2008 reads as under:-

"In exercise of the powers conferred by section 176 read with clause (41) of section 2 and sub-section (1) of section 212 of Motor Vehicles Act, 1988 (59 of 1988), and in partial supersession of Chapter IX of the Delhi Motor Vehicles Rules, 1993 relating to Claims Tribunals, made vide this Government's Notification No. F 2(1)/93-Law dated the 21st June, 1993, the Lieutenant Governor of the National Capital Territory of Delhi is pleased to make the following rules, namely…"

14. Rule 32 of the Claims Tribunal Rules, 2008 vests the Claims Tribunal with all the powers of a Civil Court in discharging its function as laid down in the Code. The same is extracted hereunder:-

> *"32. **Vesting of powers of Civil Court in the Claims Tribunal** – Without prejudice to the provisions of Section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908)."*

15. Thus, by virtue of Rule 32 of the Claims Tribunal Rules, 2008, the Claims Tribunal can exercise all the powers of a Civil Court and in doing so it has to follow the procedure laid down in the Code. It can be seen that the scope of power exercisable by the Claims Tribunal has thus been completely widened by virtue of the Claims Tribunal Rules, 2008, which means that the Claims Tribunal can exercise the powers of a Civil Court as laid down in the Code. Therefore, it would not be correct to say that the Claims Tribunal is empowered only to order payment of compensatory costs in cases of vexatious claims and defences and not otherwise. In other words, the Claims

Tribunal would be competent to award costs like any other Civil Court under Section 35 read with Order XXA of the Code and subject to the Rules framed by the Delhi High Court in this regard.

QUESTION No.2:-

16. Coming to the second question; it is urged by the learned counsels for the Appellant Insurance Companies that the Delhi High Court has framed Rules with regard to the payment of costs including the Counsel's fee. Part B of Chapter 16 Volume 1 of the Delhi High Court Rules (the Rules) governs the payment of the Counsel's fee in addition to the costs incurred by a Claimant in pursuing the proceedings before a Civil Court.

17. Section 35 & Order XXA of the Code which deal with the payment of costs and Rule 1; Rule 1A; Rule 2; Rule 8; Rule 9; Rule 12 and Rule 16 of Chapter 16 Volume 1 Part B of the Delhi High Court Rules (for short the Rules), which deals with the Counsel's fee are extracted hereunder:-

> ***"35. Costs.***
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> *(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.*
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> *(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing."*
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> ***"ORDER XXA. COSTS***
>
> ***Rule 1.*** *Provisions relating to certain items:-*

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of -

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court, and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal."

***2. Costs to be awarded in accordance with the rules made by High Court-** The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.*

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***"Rule 1. Suit for recovery of property, breach of contract or damages**—In suits for the recovery of money or of specific property or a share of specific property, whether immoveable or moveable, or for the breach of any contract or for damages:—*

(a) If the amount or value of property, debt or damages decreed shall not exceed Rs. 25,000/- at 10 per cent on the amount or value decreed.

(b) If the amount of value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/-, on Rs. 25,000/- at 10 per cent and on the remainder at 8 per cent.

(c) If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs. 50,000/- as above and on the remainder at 4 per cent.

(d) If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 per cent.

(e) If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one per cent subject, however, that in no case the amount of fee shall exceed Rs. 20,000/-."

"Rule 1A. *In the case of:*

(i) Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or instalment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or

recording of any evidence, except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(viii) Any formal party to a suit or appeal, e.g., a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs.

(ix) A suit or appeal which has abated.

(x) A Plaint returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (l) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/-"

Rule 2. Others Suits—*In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court under Section 9 of the Suits Valuation Act, 1887 for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall not exceed Rs. 5,000/-.*

Rule 8. Miscellaneous proceedings*—In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall not exceed:*

(i) rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs. 1,000.

Rule 9. Undefended suits*—If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.*

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***Rule 12. Appeals**—In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly as may be.*

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***Rule 16. Certificate as to fees to be filled by counsel in the Court of District Judges**—Not withstanding anything contained in the rules and not withstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared."*

18. A perusal of Section 35 read with Order XXA of the Code would show that normally the costs shall follow the event and in case the Court directs otherwise, it is required to state reasons in writing. It is further revealed that expenditure in serving any notice required by law or even otherwise; expenditure incurred on typing, writing and printing of pleadings; charges paid by party for inspection of the Court's record; expenditure incurred by a party for producing witnesses; and in case of Appeal the charges incurred by a party for obtaining copy of the judgment and decree; are broadly payable without limiting the scope of the costs.

19. It is urged on behalf of the Appellant Insurance Companies that the proceedings in a Petition under Section 166 of the Act or for that matter under Section 163-A of the Act are miscellaneous proceedings covered under Rule 8 of the Rules and the Counsel's fee shall be payable on the scale as mentioned in Rule 8. Rule 8 extracted earlier apply to misc. proceedings or for any matter other than that of appearing, pleading etc. in a suit prior to the decree.

20. On the other hand, Rule 1 of Chapter 16 Volume 1 Part B of the Rules is very widely worded and also includes Suit for damages. A Claim Petition under Section 166/163-A is in respect of damages for the injuries caused to the Claimant payable by the driver, the owner and the Insurer. Thus, in my view Rule 1 is the appropriate Rule which would apply to the Claim Petition under the Act. In the circumstances, apart from the award of costs under other heads, as mentioned under Order XXA, the Counsel's fee shall be payable on the scale as given in Rule 1."

13. In view of this, the Claims Tribunal was not entitled to quantify the counsel's fee and out of pocket expenses to the extent of Rs. 36,000/-. The Claims Tribunal, at the most, could have decreed the claim petition with costs.

14. As far as award of interest @12% per annum is concerned, the same appears to be on the higher side. Rate of interest on long term deposits has been between 7% to 8.5% since the year 2009. Thus, I am inclined to award interest @8% per annum.

15. In view of the above discussion, the overall compensation of Rs. 30,71,743/- is awarded in favour of the Respondents, the details of which are as follows:-

HEADS	AMOUNT (in Rs.)
Loss of dependency	28,30,128/-
Loss of love and affection	1,00,000/-
Loss of consortium	1,00,000/-
Funeral expenses	25,000/-
Loss to estate	10,000/-
TOTAL	**30,65,128/-**

16. By an order dated 16th October, 2012, 80% of the awarded amount was directed to be deposited in the UCO Bank, Delhi High Court Branch. By adjusting the interest @8% per annum, the shortfall, if any, shall be made up by the Appellant/Insurance Company within a period of six weeks from today.

17. The appeal is allowed in the above terms. The statutory amount shall be refunded after the balance amount of compensation is deposited.

18. The amount awarded in favour of Respondent No. 7 shall go to Respondent no. 1 who is the widow of the deceased, as father of the deceased Kramveer Singh has already expired.

19. The awarded amount shall be kept in fixed deposit and shall be released only in terms of the orders passed by the Claims Tribunal. If pre-mature release of the amount is needed, Respondents no.1 to 6 shall be entitled to approach the Claims Tribunal.

20. The Claimants would also be entitled to the costs of the claim petition. In other words, the claim petition shall be deemed to be allowed with costs.

21. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.

22. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 20, 2015
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