

\$~11 to 14

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

Date of Decision: January 24, 2017

- (i) + MAC.APP. 251/2014
- (ii) + MAC.APP. 252/2014
- (iii) + MAC.APP. 253/2014
- (iv) + MAC.APP. 254/2014

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

- (i) & (ii) **KHAYALI RAM CHATURVEDI & ORS**
- (iii) **OM WATI & ORS**
- (iv) **KAMLESH DEVI & ORS**

..... Respondents

Through: Mr. Anshuman Bal, Advocate for
respondents-claimants (except in
MAC. APP.254/2014)

Ms. Jyoti Rajouriam, Advocate for
respondents-claimants (in MAC.
APP.254/2014)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

Impugned Award of 10th December, 2013 grants compensation
of ₹11,37,600/- with interest @ 9% *per annum* to *Khayali Ram* on

account of death of his wife-*Gayatri Chaturvedi* aged 50 years and compensation of ₹68,205/- with interest on account of injuries suffered by him in a road accident on 10th May, 2010. Compensation of ₹6,72,040/- with interest has been also granted to *Omwati* on account of death of her husband-*Rajinder Prasad* aged 59 years and compensation of ₹13,75,048/- with interest has been granted to *Kamlesh* on account of death of her husband-*Ranveer* aged 35 years in the road accident in question. The above-captioned four appeals are directed against common impugned Award and so, with the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being disposed of by this common judgment.

The factual background of this case already stands noted in detail in impugned Award and so, needs no reproduction. Suffice to note that the accident in question is result of a head-on collision between a bus in which the deceased/injured were travelling and a truck, which was coming from the wrong side from opposite direction. The issue of negligence stands decided by learned Tribunal in impugned Award while relying upon the evidence of *Khayali Ram (PW-3)* and *Shyam Sunder (PW-4)* and it has been held by learned Tribunal that the negligence was on the part of truck driver, who was driving it at 100 KMs per hour.

In the above-captioned four appeals, it is evident from order of 31st July, 2014 that respondents No.1 to 6 and 8 were duly represented and none had appeared on behalf of respondent No.7 despite service. As per order of 31st July, 2014, service is complete in the above-captioned four appeals. While relying upon the evidence of injured and legal heirs of

deceased, learned Tribunal has rendered the impugned Award. It is pertinent to note that appellant-insurer had not led any evidence before learned Tribunal.

Learned counsel for appellant-insurer assails impugned Award on the ground that instant case is of contributory negligence. To submit so, attention of this Court is drawn to evidence of *Khayali Ram (PW-3)* to point out that the speed of bus in question was around 80 KMs per hour and so, it cannot be said that the negligence was of the truck driver. According to learned counsel for appellant-insurer, the bus driver had an opportunity to avert the accident and so, the contributory negligence was in the ratio of 50:50. Reliance is placed upon Supreme Court's decision in *Bijoy Kumar Dugar v. Bidya Dhar Dutta and Others*, (2006) 3 SCC 242 wherein the vehicle was driven in a zigzag manner and so, it was held to be a case of contributory negligence.

On the quantum of compensation awarded, it is submitted by learned counsel for appellant-insurer that *Gayatri (since deceased)* was a housewife and there was no financial loss suffered by her legal heirs on account of her death because her daughters-in-law are doing household chores. It is submitted by learned counsel for appellant-insurer that Supreme Court in *Arun Kumar Aggarwal and Another v. National Insurance Company Ltd. and Others*, (2010) 9 SCC 218, while dealing with a case of a housewife, has on the basis of income of husband of deceased, assessed the income of housewife (deceased) by taking it to be 1/3rd of her husband's income. It is pointed out that *Khayali Ram*-husband of deceased was earning ₹10,000/- per month and while relying

upon the ratio of *Arun Kumar (supra)*, the income of housewife, who had unfortunately died in this accident, ought to be assessed at ₹3,000/- per month. To submit so, reliance is placed upon Supreme Court's decision in *Lata Wadhwa and Others v. State of Bihar and Others*, (2001) 8 SCC 197. Further, it is submitted that in view of Supreme Court's decision in *Jitendra Khimshankar Trivedi and Others v. Kasam Daud Kumbhar and Others*, (2015) 4 SCC 237, 1/3rd has to be deducted towards personal expenses and so, the compensation granted to legal heirs of housewife-*Gayatri* deserves to be suitably reduced.

Grant of future prospects to legal heirs of deceased-*Rajinder Prasad* and *Ranveer* is assailed by learned counsel for appellant-insurer on the ground that their income has been assessed on minimum wages and so, they are not entitled to grant of any compensation under the head of "*loss of future prospects*". To submit so, reliance is placed upon Supreme Court's decision in *Reshma Kumari and Others v. Madan Mohan and Anr.*, 2013 (5) SCALE 160.

On the contrary, learned counsel for respondents-claimants support the impugned Award and submit that the decision in *Arun Kumar (supra)* has been considered by Supreme Court in a later decision in *Jitender (supra)* wherein the income of husband has not been made the basis to assess the income of housewife and so, adoption of minimum wages in the instant case is justified. Regarding the deduction of 1/3rd towards personal expenses, it is submitted by learned counsel for respondents-claimants that Supreme Court in *Lata Wadhwa (supra)* has not deducted 1/3rd towards personal expenses and rightly so, and thus, there is no

justification to so do in the instant case. It is submitted by learned counsel for respondents-claimants that learned Tribunal has rightly relied upon a later decision of Supreme Court in *Rajesh and Others v. Rajbir Singh and Others*, (2013) 9 SCC 54 wherein 50% addition has been made towards future prospects and so, impugned Award does not deserve to be interfered with. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, the decisions cited and the evidence on record, I find that on the aspect of contributory negligence, evidence of *Khayali Ram (PW-3)* is not of much avail because he has disclosed in his evidence that he woke up after the accident in question. However, there is evidence of *Shyam Sunder (PW-4)*, who had categorically deposed that the negligence was entirely on the part of the truck driver as he was driving it at 100 KMs per hour. The decision in *Bijoy Kumar Dugar (supra)* is distinguishable on facts as in the instant case, even if it is taken that the bus was moving at 80 KMs per hour, still no contributory negligence can be attributed to the bus driver for the reason that the truck in question was coming from the wrong side. In the aforesaid view, I find that there is no contributory negligence on the part of bus driver.

On the quantum of compensation, I find that *Gayatri (since deceased)* was a housewife aged 50 years and that *Khayali Ram (PW-3)* has hardly said anything about the financial loss suffered on account of death of his wife, who was doing household work, and that it has come in the evidence of this witness (PW-3) that he was earning ₹10,000/- per month. Although it has come in the cross-examination of this witness

(PW-3) that after the death of his wife, his daughters-in-laws are doing household works but it does not mean that she was not doing any household work. Supreme Court in *Jitendra (supra)* has considered its earlier decision in *Arun Kumar (supra)*, but has not proceeded to assess the income of housewife by taking it to be 1/3rd of husband's income. So, in this background, adoption of minimum wages to assess the income of *Gayatri*, a housewife, who has unfortunately died in this accident, appears to be just and proper. However, in view of Supreme Court's decision in *Jitender (supra)*, 1/3rd towards personal expenses has to be deducted.

The minimum wages taken by Tribunal is of a non-matriculate worker. In the considered opinion of this Court, a housewife ought to be considered as a skilled worker as she is cooking the meals and is doing household chores round the clock. The minimum wages for a skilled worker in the year 2013 were ₹6448/-. After deducting the 1/3rd towards personal expenses, the notional income of the housewife-*Gayatri (since deceased)* is taken to be ₹4298.66/-, which is rounded off to ₹4300/-. Since the age of deceased (*Gayatri*) was 50 years as per her Election Identity Card, therefore, adoption of multiplier of 13 is also just and proper. The compensation granted to legal heirs of deceased (*Gayatri*) is reassessed as ₹6,70,800/-. The grant of non-pecuniary damages to legal heirs of deceased (*Gayatri*) appears to be reasonable and just and is accordingly maintained. Thus, compensation granted to legal heirs of deceased-*Gayatri* is reduced from ₹11,37,600/- to ₹6,70,800/-.

So far as addition of 50% towards future prospects in the case of

claimant-*Kamlesh* and 15% in the case of claimant-*Omwati* is concerned, I find that the dependency has been worked out by adopting the minimum wages as they were not in permanent employment and so, addition of 50% and 15% towards future prospects in case of claimants-*Kamlesh* and *Omwati* respectively is unjustified in view of Supreme Court's decision in *Reshma Kumari (supra)*. No doubt, Supreme Court in its later decision in *Rajesh (supra)* has granted 50% towards future prospects in a case of self-employed persons or person engaged on fixed wages but in view of Supreme Court's decision in *Union of India and Others v. S.K. Kapoor*, (2011) 4 SCC 589, the earlier decision of Supreme Court of the same strength prevails. Learned Tribunal has erred in relying upon a later decision of Supreme Court in *Rajesh (supra)* perhaps for the reason that the earlier decision of Supreme Court in *Reshma Kumari (supra)* of same strength was not brought to its notice.

Be that as it may. The dictum of Supreme Court in *Reshma Kumari (supra)* prevails and in view thereof, any addition made towards future prospects in the instant case is unjustified. While disallowing the grant of future prospects of 50% in the case of *Kamlesh Devi*, the compensation awarded is reduced from ₹13,75,048/- to ₹9,85,100/-.

In case of claimant-*Omwati*, after deducting 15% addition towards future prospects, the notional income is taken to be ₹63,336/- and after deducting 1/3rd towards personal expenses, the income of *Rajinder Prasad* (since deceased) is re-assessed as ₹42,224/- and by adopting multiplier of 9, the total dependency is reassessed as ₹3,80,016/-, which rounded off to ₹3,80,100/-. After adding ₹2,35,000/- under the head of

non-pecuniary damages, the compensation payable to claimant-*Omwati* is reassessed as ₹6,15,100/-. Accordingly, the compensation awarded is reduced from ₹6,72,040/- to ₹6,15,100/-.

In the light of the aforesaid, impugned Award is accordingly modified while maintaining the compensation granted to claimant-*Khayali Ram* on account of injuries suffered by him. During the pendency of these appeals, vide order of 21st March, 2014, it was directed that 60% of the awarded compensation be released to respondents-claimants as per the impugned Award. Learned counsel for respondents-claimants submits that the aforesaid order has been complied with. In view thereof, the excess compensation amount deposited by appellant with the Registrar General of this Court be remitted back to appellant. In terms of this judgment, the balance amount of deposited compensation, if any, be released to respondents-claimants directly into their bank accounts. The statutory deposit, if any, made by appellant-insurer be refunded as per Rules.

With aforesaid directions, the above-captioned four appeals are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 24, 2017

s