

\$~R-26 & R-27 (*common order*)

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

Decided on: 1st August, 2017

+ MAC.APP. 400/2009
M/S. NEW INDIA INSURANCE CO LTD Appellant
Through: Mr. D.K.Sharma, Advocate

versus

BAL KISHAN TOKAS Respondent
Through: Mr. O.P.Mannie, Advocate

+ MAC.APP. 323/2017
BAL KISHAN TOKAS & ANR. Appellants
Through: Mr. O.P.Mannie, Advocate

versus

NEW INDIA INSURANCE CO LTD & ORS. Respondents
Through: Mr. D.K.Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Pradeep Tokas, 21 years old, a bachelor, son of the appellants in MAC APP.323/2017 (hereinafter, the claimants) died in a motor vehicular accident that occurred on 11.05.2004 due to negligent driving of truck bearing registration no.HR-51-GA-0525, admittedly insured against third party risk with the New India Insurance Company Limited (the insurer), appellant in MAC APP.404/2009.

2. The claimants instituted accident claim case (Suit No.1180/2007) on 18.11.2004 seeking compensation impleading the driver and insurer of the truck as parties. The tribunal, after inquiry, by judgment dated 25.05.2009, awarded compensation in the sum of Rs.14,87,140/- with interest @ 7% per annum directing the insurer to pay. The insurer filed appeal questioning computation of compensation.

3. During the pendency of the above said appeal, the claimants came with cross objections (CM APPL.14161/2009) which have since been registered as independent appeal (MAC APP.323/2017) whereby they seek enhancement.

4. The tribunal assessed the compensation thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Towards loss of dependency	14,62,140/-
2.	Towards loss to estate and consortium	10,000/- 10,000/-
3.	Towards funeral & other expenses	5,000/-
	Total	14,87,140/-

5. In computing the loss of dependency, it accepted the evidence of the claimants based primarily on the income tax returns (ITRs) of the claimant mother for the period 2004-2006 for arriving at the notional income of Rs.10,831/- per month. It, however, added the component of future prospects of increase to the extent of 50% so as

to assume the income at Rs.16,246/- and after deduction of 50%, invoked the multiplier of 15 for awarding compensation keeping in view the age of the claimant mother.

6. The contention of the insurer is that the income of the mother could not have been treated as the bench mark and that there was no justification for the element of future prospects of increase to be added.

7. *Per contra*, the contention of the claimants in their cross appeal is that the multiplier should have been chosen according to the age of the deceased (21 years) and not according to the age of the parents. It is also the submission of the claimants that awards under the non-pecuniary heads of damages and the rate of interest are inadequate.

8. It is noted that the claimant mother while deposing in the inquiry as PW-1 on the strength of her affidavit (Ex.PW-1/A), though having affirmed, in chief-examination that the deceased was gainfully engaged in running a swimming pool and gym, conceded during cross-examination that the swimming pool and gym at Air Force Station (Central School), Sector 14, Gurgaon, Haryana in the name and style of Baba Gang Nath Swimming/Gym Centre is run by her, it being insured in her name. She also admitted that the deceased was still a student and had no source of income of his own. At the same time, however, it cannot be ignored that the claimants had also proved, through certificates (Ex.PW-1/2 to Ex.PW1/10), that the deceased was a trained swimmer and had been participating in swimming competitions and winning prizes at the State level events. The

material on record confirms that he had studied upto 12th standard. Against this backdrop, while it must be conceded that the deceased had potential to be an earning hand in future, his income for the purposes of computing compensation cannot be based on the income generated by the mother from the business of swimming pool and gym.

9. But, cue can be taken from the evidence of Jitender Tokas (PW-3) who was employed in Delhi Public School, R.K.Puram since 2006. The said witness proved that he was earning Rs.15,000/- per month by working as a swimming coach. Noticeably, PW-3 is a graduate and had a diploma in swimming from National Institute of Sports and has been certified as lifeguard by YMCA, New Delhi. By this reckoning, the income of the deceased is notionally assessed at Rs.7,500/- per month.

10. It is not correct to contend that the multiplier for calculating the loss of dependency is to be calculated in the case of death of a bachelor on the basis of age of the deceased. The law on the subject was clearly declared by Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.*, (1994) 2 SCC 176, *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362. This court in *National Insurance Company Limited vs. Mohammed Siddique & Ors.*, MAC APP.431/2016, decided on 18th July, 2017, has held as under:

“16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon’ble Judges is prior in time

in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher.”

11. It is the age of the deceased or that of the claimants, whichever is higher, which is to regulate the choice of the multiplier. In these circumstances, the approach of the tribunal cannot be faulted.

12. There cannot be addition on account of future prospects of increase as the deceased was admittedly not working for gain, his income having been notionally assessed. After deducting 50% of the notional income towards personal and living expenses, the loss of dependency is worked out as $(7500/- \times 50/100 \times 12 \times 15)$ Rs.6,75,000/-.

13. Following the ruling in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala vs. Gangalakshamma* (2015) 9 SCC 150, non-pecuniary heads of damages, however, are increased and Rs.1,00,000/- each is added towards loss of love and affection and Rs.25,000/- each towards loss to estate and funeral expenses. Thus, the total compensation payable is computed as $(6,75,000/- + 1,00,000/- + 1,00,000/- + 25,000/- + 25,000/-)$ Rs.9,25,000/-.

14. The award is modified accordingly.

15. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

16. In terms of order dated 24.08.2009 passed in MAC APP.400/2009 the insurance company had deposited the entire awarded amount with UCO Bank, Delhi High Court Branch, and out of the said deposited amount, Rs.1 lac each was released to the two claimants, the balance kept in fixed deposit receipt with liberty to draw monthly interest. The registry shall calculate the amount payable in terms of the modified award as above and release the balance from out of the remaining amount kept in fixed deposit, refunding the excess amount to the insurance company along with statutory amount

17. Both the appeals are disposed of in above terms.

18. The statutory amount shall be refunded to the insurance company.

R.K.GAUBA, J.

AUGUST 01, 2017

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