

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd November, 2009

MAC.APP.No.135/2008

NEW INDIA ASSURANCE CO. LTD. Appellant
Through : Mr. Pankaj Seth, Adv.

versus

GANGA DEVI & ORS. Respondents
Through : Mr. Navneet Goyal, Adv.
for R-1 and 2.

MAC.APP. 359/2008

GANGA DEVI & ORS. Appellants
Through : Mr. Navneet Goyal, Adv.

versus

NEW INDIA ASSURANCE CO.LTD. &ORS. Respondents
Through : Mr. Pankaj Seth, Adv.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. New India Assurance Co. Ltd. (hereinafter referred to as 'Insurance Company') and Smt. Ganga Devi and Radhey Lal Meena (hereinafter referred to as 'claimants') have challenged the award of the learned Tribunal whereby compensation of Rs.9,60,352/- has been awarded to the claimants.

2. MAC.APP.No.135/2008 is the appeal by the Insurance Company

1. The accident dated 12th August, 2003 resulted in the death of Dr. Brij Mohan. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.
2. The deceased was driving motorcycle bearing No.DL-3S-AE-2673 while going from Mehrauli side to Safdarjung Hospital. When the deceased reached Aurobindo Market near Yusuf Sarai Market, he was hit by blue line bus bearing No.DL-1PB-5261 due to which the deceased fell down and suffered fatal injuries. The driver of the bus parked the bus at the nearby bus stand and ran away from the spot.
3. The deceased was 24 years old at the time of the accident. The deceased had completed his MBBS and was doing one year internship with Guru Teg Bahadur Medical College, Shahadara and was getting stipend of Rs.5,000/- per month. The deceased had also cleared the UPSC examination for the post of medical officer and was scheduled to be appointed as medical officer after completing the internship.
4. The claimants produced four witnesses before the learned Tribunal. PW-1 - Head Constable, Atar Singh produced the record of FIR No.383/03 dated 12th August, 2003 and proved the copy of the FIR as Ex.PW1/A.
5. PW-2 - J.P. Rathi, Senior Assistant, University College of Medical Science, GTB Hospital proved that the deceased took admission in MBBS course in 1997. The witness produced the complete record of the deceased which was proved as Ex.PW2/A. PW-2 further deposed that the deceased was doing internship at the time of the accident after

being absorbed as Junior Resident Doctors at a salary of Rs.18,000/- to Rs.20,000/- per month. The deceased was getting a stipend of Rs.5,000/- per month at the time of the accident.

6. The father of the deceased appeared as PW-3 and deposed about the educational and professional qualifications of the deceased. PW-3 also tendered the certified copies of the chargesheet, FIR, site plan, recovery memo, application for mechanical inspection and inspection reports of the bus as well as motorcycle, registration certificate of the bus and post-mortem report as Ex.P2 to Ex.P11. The copies of the degrees, marksheets and certificates in respect of educational and professional qualifications were proved as P-12 to P-19.

7. Bhagwat Singh Verma, eye-witness of the accident appeared as PW-4 and deposed that the deceased was riding on his motorcycle while going from Mehrauli to Safdarjung when the offending bus hit the motorcycle of the deceased from left side due to which the motorcyclist fell down on the road. PW-4 further deposed that the bus driver parked the bus on the nearby bus stand and ran away from there. The deceased was wearing helmet at the time of the accident and he became unconscious. PW-4 put the deceased in the TSR with the help of passerby and sent him to the hospital. PW-4 was called by the police where his statement was recorded. In cross-examination, PW-4 deposed that he saw the accident from a distance of about 20 to 25 paces and at that time, the motorcycle was at a speed of 30 to 35 kms/hr. whereas the bus was at a speed of about 50 kms/hr. PW-4 further stated that

hearing of this appeal is that the negligence of the driver of the offending bus has not been proved before the learned Tribunal.

9. There is sufficient evidence on record to prove the rash and negligence of the driver of the offending bus. From the statement of the eye-witness - PW-4 and the site plan - Ex.P-4, it has been established that the motorcyclist was driving at a speed of 30 to 35 kms/hr. and the bus came from behind at the speed of 50 kms/hr. and hit the deceased from behind. The FIR - Ex.P-3 has been registered against the driver of the bus and after investigation, the police chargesheeted the driver vide chargesheet - Ex.P-2. Though the learned Tribunal has given the finding of rash and negligence of driver but the learned Tribunal has not rightly appreciated the evidence on record which as stated above, is sufficient to arrive at the finding of rash and negligence of the driver of the offending bus.

10. There is no merit in the contention of learned counsel for the Insurance Company that the rash and negligence of the driver of the bus has not been sufficiently proved. Though the Insurance Company has not taken over the defence of the driver and owner of the offending vehicle under Section 170 of the Motor Vehicles Act and is not entitled to contest the case on merits, notwithstanding the bar of Section 170, the contention of the Insurance Company has been examined on merits.

11. For all the aforesaid reasons, MAC.APP.No.135/2008 is dismissed.

MAC.APP.No.359/2008

1. The claimants have filed MAC.APP.No.359/2008 for enhancement

was getting the stipend of Rs.5,000/- per month and was supposed to join the Hospital at a salary of Rs.18,000 to Rs.20,000/- per month. However, the learned Tribunal held the evidence to insufficient to prove the income and took the minimum wages of a graduate worker as Rs.3,543/- per month, added 50% towards inflation and rise in price index, deducted 1/3rd towards personal expenses and applied the multiplier of 11 to compute the loss of dependency at Rs.9,35,352/-. Rs.15,000/- has been awarded towards loss of consortium and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.9,60,352/-.

3. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal-

- (i) The income of the deceased be taken to be Rs.20,000/- per month.
- (ii) The multiplier be enhanced from 11 to 13 considering the age of the mother of the deceased to be 47 years.
- (iii) The compensation be awarded for loss of love and affection and loss of estate.
- (iv) The interest be enhanced from 7% per annum to 7.5% per annum.

4. The learned counsel for Insurance Company submits that the deceased was unmarried and, therefore, the personal expenses of the deceased be reduced from 1/3rd to 1/2. The learned counsel for Insurance Company further submits that the deceased was unmarried

5. The income of the deceased has been sufficiently proved by the evidence of PW-2 who deposed that the deceased was getting a stipend of Rs.5,000/- per month and was supposed to join as Junior Resident Doctor with the hospital at a salary of Rs.18,000 to Rs.20,000/- per month. The complete record of the deceased was exhibited by PW-2 as Ex.PW2/A. PW-3 also proved the degrees, marksheet and certificates of the deceased as Ex.PW-12 to Ex.PW-19 and deposed that the deceased was getting a stipend of Rs.5,000/- per month and was scheduled to join as a doctor at a salary of at least Rs.16,000/- per month which was to be revised as Rs.25,000/- per month.

6. The finding of the learned Tribunal that the income of the deceased has not been sufficiently proved, is not based on evidence on record and is, therefore, set aside. The income of the deceased at the time of the accident is taken to be Rs.18,000/- per month. The deceased was aged 24 years and, therefore, 50% is added towards future prospects of the deceased following the judgment of Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**. The deceased was unmarried and, therefore, the deduction towards personal expenses is reduced from $1/3^{\text{rd}}$ to $1/2$. The parents of the deceased were aged 47 years and 50 years at the time of the accident. The appropriate multiplier according to the age of the mother as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (supra)** is 13. The multiplier is, therefore, enhanced from 11 to 13.

awarded by the learned Tribunal towards loss of consortium is set aside. The learned Tribunal has not awarded any compensation for loss of love and affection and loss of estate. Rs.10,000/- is awarded towards loss of love and affection and Rs.10,000/- towards loss of estate.

8. The learned Tribunal has awarded interest @7% per annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 7% per annum to 7.5% per annum.

9. Taking the income of the deceased to be Rs.18,000/- per month, adding 50% towards future prospects, deducting 50% towards personal expenses, applying the multiplier of 13, adding Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses, the total compensation is computed to be Rs.21,36,000/- $[(Rs.18,000 + 50\% \text{ of } Rs.18,000) \times 1/2 \times 12 \times 13] + Rs.10,000 + Rs.10,000 + Rs.10,000$].

10. The appeal is allowed and the award amount is enhanced from Rs.9,60,352/- to Rs.21,36,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

11. The enhanced award amount along with interest be deposited by Insurance Company with UCO Bank A/c Ganga Devi through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

12. The order with respect to disbursement of the award amount shall

13. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

NOVEMBER 23, 2009

J.R. MIDHA, J