

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

Date of Decision: 6th November, 2012

+ **MAC APP. 513/2012**

THE ORIENTAL INSURANCE CO.LTD. Appellant.

Through: Mr.A.K.Soni, Advocates

versus

SMT. KRISHNA & ORS. Respondents

Through: Mr.Uday Raj Singh, Advocate for R-1 to R-3.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹ 9,54,500/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No.1 to 3 for the death of Kajod Singh, who died on 26.09.2007 in a motor vehicle accident, which occurred on 05/06.04.2005.
2. The finding on negligence is not challenged by the Appellant Insurance Company. Thus, the same has attained finality.
3. During inquiry before the Claims Tribunal, it was claimed that deceased Kajod Singh was working as a driver with Dr.K.C. Narang, C-304 Sheikh Sarai, New Delhi and was getting a salary of ₹ 4,800/- per month. The deceased Kajod Singh before succumbing to the injuries remained in comma for a period of two years.

4. The First Respondent filed an affidavit testifying to the averments made in the Claim Petition. She deposed that the deceased Kajod Singh was an employee of Dr.K.C.Narang and was getting a salary of ₹ 4,800/- per month.
5. In the absence of any documentary evidence with regard to the deceased's income, the Claims Tribunal declined to believe that the deceased Kajod Singh was earning ₹ 4,800/- per month.
6. Thus, the Claims Tribunal took the minimum wages of a skilled worker, that is, ₹ 3940/- per month as fixed by the Govt. of NCT of Delhi under the Minimum Wages Act, at the time of accident; added 50% towards future prospects to compute the loss of dependency.
7. The Claims Tribunal awarded an overall compensation of ₹ 9,54,500/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenses	₹ 53,000/-
2.	Pain & Suffering & Conveyance	₹ 40,000/-
3.	Loss of Dependency	₹ 7,56,500/-
4.	Loss of Love & Affection	₹ 75,000/-
5.	Funeral Expenses	₹ 10,000/-
6.	Loss to Estate	₹ 10,000/-
7.	Loss of Consortium	₹ 10,000/-
	Total	₹ 9,54,500/-

8. The following contentions are raised on behalf of the Appellant Insurance Company:-
- (i) There was no evidence with regard to the deceased's future prospects; addition of 50% in the income to compute the loss of dependency was not justified.
 - (ii) The compensation of ₹ 75,000/- awarded towards loss of love and affection is on the higher side.
9. On the other hand, the learned counsel for the Respondents (Claimants) urges that the compensation awarded is just and reasonable.
10. I have before me the Trial Court record; PW-1's testimony and affidavit.

LOSS OF DEPENDENCY

11. In her affidavit Ex. PW-1/A, Respondent No.1 testified that her husband Kajod Singh was working as a driver with Dr.K.C.Narang, C-304 Sheikh Sarai-I (SFS), New Delhi-110017 and was getting a salary of ₹ 4,800/- per month. In the cross-examination only a suggestion was given to the First Respondent that she had not filed any documentary evidence in support of deceased Kajod Singh's earning. No suggestion was given that the deceased Kajod Singh was not working as a driver with Dr.K.C.Narang. It was not suggested to PW-1 that her husband (the deceased) was not getting a salary of 4,800/- per month.
12. In the circumstances, the Claims Tribunal erred in computing the compensation only on the basis of the Minimum Wages. The deceased

Kajod Singh's income was sufficiently established as ₹ 4,800/- per month.

13. The First Respondent was completely silent about the deceased's future prospects. The addition of 50% towards future prospects was not justified.
14. On the other hand, the Respondents (Claimants) were entitled to an addition of 30% towards inflation on the basis of the Report in the case of *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*).
15. The loss of dependency thus comes to ₹ 7,98,720/- $(4,800/- + 30\% \times 2/3 \times 12 \times 16)$ as against the compensation of ₹ 7,56,500/- awarded by the Claims Tribunal.
16. The other grievance is that the compensation of ₹ 75,000/- awarded towards loss of love and affection is excessive and exorbitant. Loss of love and affection can never be measured in terms of money, normally a nominal sum is awarded under the head of loss of love and affection. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh (2011) 11 SCC 425* and in *Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627* granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection.
17. In the instant case, the loss of dependency as computed by me is approximately ₹ 42,220/- more than whatsoever was granted by the Claims Tribunal. So even if it is assumed that only ₹ 25,000/- is awarded towards loss of love and affection. The overall compensation thus almost

comes to ₹ 9,46,720/- as whatsoever was awarded by the Claims Tribunal.

18. Thus, the Appeal is devoid of any merit; the same is accordingly dismissed.
19. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
20. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 06, 2012

v