

(2012) 08 DEL CK 0211

Delhi High Court

Case No: MAC. APP. No. 343 of 2007, CM No. 8032 of 2007 and 11443-44 of 2007

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Chander Kanta Goel

RESPONDENT

Date of Decision: Aug. 24, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A

Hon'ble Judges: J.R. Midha, J

Bench: Single Bench

Advocate: Tarkeshwar Nath, for the Appellant; L.R. Goel and Mr. Rupesh Goel for R-1, for the Respondent

Judgement

J.R. Midha

MAC. APP. No. 343/2007, CM No. 8032/2007 & 11443-44/2007

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 24,10,000/- has been awarded to claimant/respondent No. 1. The accident dated 13th October, 2004 resulted in the death of Gaurav Goel. The deceased was survived by his mother who filed the claim petition before the Claims Tribunal.

2. The deceased was aged 25 years at the time of the accident and was working as an Assistant Manager with the Citi Bank, drawing a salary of Rs. 46,635/- per month. The Claims Tribunal held that the average net salary of the deceased after deduction of Income Tax and Provident Fund to be Rs. 29,800/- per month. The Claims Tribunal further deducted Rs. 6,000/- towards the installment for repayment of the car loan and took the income of the deceased for computation of compensation as Rs. 23,800/- per month. The Claims Tribunal added 50% towards future prospects, deducted 1/2 towards the personal expenses of the deceased and applied the multiplier of 11 according to the age of the mother of the deceased to compute the loss of dependency at Rs. 23,57,000/-. Rs. 25,000/- has been awarded towards

medical expenses, Rs. 15,000/- towards loss of love and affection and Rs. 13,000/- towards funeral expenses. The total compensation awarded is Rs. 24,10,000/-.

3. The learned counsel for the appellant has urged at the time of hearing of this appeal that there was head-on collision between the car driven by the deceased and the offending vehicle and, therefore, compensation be reduced to the extent of 50%.

4. There is no merit in the contention of the appellant in as much as the deceased was driving the car on the correct side of the road at the time of the accident and the offending vehicle came from the opposite direction on the wrong side and hit the car of the deceased. The Claims Tribunal considered the entire evidence in this regard and held that the accident occurred due to the rash and negligent driving of the offending vehicle. The findings of the Claims Tribunal in this regard are reproduced hereunder:-

PW3 has deposed that the deceased Gaurav Goel was his nephew (Bhanja i.e. sister's son). He has also deposed that on 13.10.04, he had gone to Faridabad to meet Gaurav Goel. He has then deposed that after finishing work by Gaurav Goel, they were coming to Delhi in their respective cars. He has also deposed that Gaurav was in his Indica car No. DL 3CW 2471 and he himself was in Zen car No. HR 7E 8599 and that he was following Gaurav's car. He has then deposed that when they reached a little distance ahead of Anangpur Chowk (Surajkund), Faridabad at 10.30pm, suddenly dumper bearing No. HR 38L 7247 came rushing at a very high speed, without blowing any horn, from the opposite direction and dashed against the Indica car of Gaurav Goel. He has also deposed that the said dumper was being driven by its driver, rashly, negligently and at a very high speed, without blowing any horn. He has also deposed that the Indica car No. DL 3CW 2471 was badly smashed by the said dumper. He has also deposed that the driver of the said dumper, after smashing the said Indica car, ran away with the dumper from the place of accident. He has also deposed that in the accident, Gaurav Goel sustained multiple fatal injuries and was first taken to Sarvodya Hospital, Faridabad and from there was removed to Escorts Hospital and Research Centre Ltd., Faridabad but died due to the injuries sustained in the accident, the next day. Though cross-examined, I observed that the said deposition of PW3 has gone unshaken and uncontroverted. What is deposed to by him also finds support from challan Ex. PX, that has come to be filed for the commission of the offences U/s 279/304A IPC and wherein, the accused is none else but the respondent No. 1. Though during cross, PW3 has deposed for being correct that it was a head on collision, that ipso facto is not sufficient to conclude contributory negligence on the part of the deceased. It is worthwhile to mention that during cross, PW3 has also deposed that when the accident occurred, the deceased was on the correct side of the road. When that is so, simply because the two vehicles coming from the opposite side were involved in the accident, it cannot be concluded that the drivers of both the vehicles were responsible for the occurrence of the accident. Needless to say, deposition of PW3

during cross that at the time of the occurrence, the deceased was on the correct side of the road, has not been controverted by any of the respondents, inasmuch as no evidence to that effect has come to be led. In view of the foregoing, the contention raised by the Ld. Counsel for the respondent No. 3 to the contrary merely referring to the mechanical inspection reports of the respective vehicles, which form part of challan Ex. PX is of no avail and the reliance placed upon 2006 II AD (SC) 606 titled Bijoy Kumar Dugar Vs. Vidyadhar Dutta & Others, is misplaced. In view of the foregoing, issue in hand is answered in the affirmative.

5. There is no infirmity in the findings of the Claims Tribunal with respect to the rash and negligent driving of the offending vehicle.

6. The learned counsel for claimant/respondent No. 1 has filed the cross-objections seeking enhancement of the award amount on the following grounds:-

(i) The deduction of Rs. 6,000/- towards the installment for repayment of the car loan taken by the deceased is not justified.

(ii) No compensation has been awarded towards the loss of estate.

(iii) The rate of interest be enhanced from 8% per annum to 9% per annum.

7. The deduction of Rs. 6,000/- by the Claims Tribunal out of the net income of the deceased is not justified. The deceased had taken a loan for purchasing the car and was repaying loan by means of installment of Rs. 6,000/- per month which is in the nature of an expenditure. There is no justification for deduction of the expenditure of Rs. 6,000/- from the salary of the deceased. The deduction of Rs. 6,000/- is, therefore, set aside. The income of the deceased is taken to be Rs. 29,800/- per month. 50% is added towards the future prospects of the deceased. The findings of the Claims Tribunal as to the personal expenses of the deceased and the multiplier to compute the loss of dependency of the deceased are upheld. The Claims Tribunal has not awarded any compensation for loss of estate. Rs. 10,000/- is awarded towards loss of estate.

8. The Claims Tribunal has awarded interest @ 8% per annum whereas the appropriate interest according the judgment of the Supreme Court in [Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others](#), is 9% per annum. The rate of interest is enhanced from 8% per annum to 9% per annum. Claimant/respondent No. 1 is entitled to total compensation of Rs. 30,13,200/- as per break-up given hereunder:-

Income of the deceased :	Rs.
	29,800/-
Add : 50% towards future prospects:	Rs.
	14,900/-

Less : 50% towards personal expenses of the deceased:	Rs. 22,350/-
Loss of dependency (Rs. 22,350 x 12 x 11):	Rs. 29,80,200/-
Compensation towards medical expenses:	Rs. 25,000/-
Compensation towards loss of love and affection:	Rs. 15,000/-
Compensation towards funeral expenses:	Rs. 13,000/-
Compensation towards loss of estate:	Rs. 10,000/-
Total :	Rs. 30,13,200/-

9. For the reasons as aforesaid, the appeal is dismissed and the cross-objections are allowed. The award amount is enhanced from Rs. 24,10,000/- to Rs. 30,13,200/- along with interest @9% per annum from the date of filing of the claim petition till realization. The enhanced award amount along with up to date interest be deposited by the appellant with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Chander Kanta Goel within a period of 30 days.

10. The learned counsel for claimant/respondent No. 1 submits that there is short deposit of interest to the tune of Rs. 1,38,792/- by the appellant while depositing the amount in compliance with the order dated 27th April, 2009. The learned counsel for the appellant submits that the said amount has been deducted towards TDS. It is well settled by the judgment of this Court in National Insurance Co. Ltd. v. Kanika Saboo, II (2010) ACC 29 that the Insurance Company cannot deduct TDS while depositing the amount in terms of the interim order passed by this Court. In that view of the matter, the deduction of TDS by the appellant is illegal and, therefore, of no avail. The appellant is, therefore, directed to deposit the short deposit of interest amount along with enhanced award amount.

11. Upon the aforesaid deposit being made, the UCO Bank is directed to release 10% of the said amount to respondent No. 1 by transferring the same to her Saving Bank Account. The remaining amount be kept in fixed deposit in the name of respondent No. 1 in the following manner:-

- (i) Fixed deposit in respect of 10% of the amount for a period of one year.
- (ii) Fixed deposit in respect of 10% of the amount for a period of two years.
- (iii) Fixed deposit in respect of 10% of the amount for a period of three years.

- (iv) Fixed deposit in respect of 10% of the amount for a period of four years.
- (v) Fixed deposit in respect of 10% of the amount for a period of five years.
- (vi) Fixed deposit in respect of 10% of the amount for a period of six years.
- (vii) Fixed deposit in respect of 10% of the amount for a period of seven years.
- (viii) Fixed deposit in respect of 10% of the amount for a period of eight years.
- (ix) Fixed deposit in respect of 10% of the amount for a period of nine years.

12. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No. 1.

13. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.

14. No cheque book be issued to the beneficiary without the permission of this Court.

15. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

16. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

17. Half yearly statement of account be filed by the Bank in this Court.

18. On the request of the beneficiary, Bank shall transfer the Savings Account to any other branch according to their convenience.

19. The beneficiary shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

20. List for compliance on 5th October, 2012.

21. All pending applications stand disposed of. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).