

(2011) 04 DEL CK 0271

Delhi High Court

Case No: Mac. App. 292 of 2011

Reliance General Insurance Co.
Ltd.

APPELLANT

Vs

Indra Khanna and Others

RESPONDENT

Date of Decision: April 4, 2011

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: Sameer Nandwani, for the Appellant; Navneet Goyal, for Respondent Nos.1 to 6, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Reva Khetrapal, J.

CM No. 6691/2011

Exemption granted subject to all just exceptions.

The application stands disposed of.

MAC.APP. 292/2011 and CM Nos. 6690/2011 (stay)

1. By way of this appeal, the Appellant has challenged the impugned judgment and award dated 04.02.2011 passed by the learned Motor Accident Claims Tribunal, Delhi in case No. 916/09, whereby the Appellant was held liable to pay to the Respondent Nos. 1 to 6 compensation of Rs. 4,24,624/- alongwith interest, if any, at the rate of 7.5% per annum from the date of filing of the petition till the date of its realisation.

2. Issue notice to the Respondents No. 1 to 6 to show cause as to why the appeal be not admitted. Mr. Navneet Goyal, Advocate accepts notice on behalf of the Respondents No. 1 to 6.

3. With the consent of the parties, the matter is taken up for final hearing.

4. The facts leading to the present appeal, in a nutshell, are as follows:

One Shri Om Lal Khanna (hereinafter referred to as "the deceased"), aged around 70 years, died in a motor vehicular accident on 29.10.2009, while he was crossing the road on foot. The deceased was survived by his widow, five children (all of whom were major on the date of the accident), who filed the claim petition before the learned Tribunal claiming a sum of Rs. 8,00,000/-. The Ld. Tribunal vide its award dated 04.02.2011, awarded a total compensation of Rs. 4,24,624/- in favour of the claimants and against the Respondents. Aggrieved by the said award the Appellant-insurance company has filed the present appeal.

5 It is apparent from the record that the deceased was stated to be earning Rs. 10,000/- per month from business, however no proof regarding the same was filed before the learned Tribunal. Accordingly, the learned Tribunal proceeded to calculate the amount of compensation on the basis of minimum wages for unskilled labourer which were in the sum of Rs. 3,953/- at the time of the accident. The learned Tribunal deducted therefrom 1/3rd of the amount towards personal expenses of the deceased. Thus, the amount considered for the purpose of calculating loss of dependency came out to be Rs. 2,635.40 per month or Rs. 31624.80 per annum. Thereafter, the learned Tribunal capitalized the aforesaid amount of annual loss of dependency with number of years purchase taking the multiplier to be 9 and calculated the total loss of dependency to be in the sum of Rs. 2,84,623.30, rounded off to Rs. 2,84,624. In addition to this, the Ld. Tribunal also awarded a sum of Rs. 25,000/- towards funeral charges, Rs. 1,00,000/- towards loss of love and affection, Rs. 10,000/- towards loss of consortium and Rs. 5,000/- towards loss of estate. The total compensation awarded by the learned Tribunal thus worked out to be Rs. 4,24,624/-.

6. The only ground pressed by Mr. Sameer Nandwani, the learned Counsel for the Appellant, is that the learned Tribunal erred in applying the multiplier of 9 in place of multiplier of 5 as the deceased was above the age of 70 years. The said contention was not disputed by Mr. Navneet Goyal, the learned Counsel for Respondents No. 1 to 6.

7. I find force in the aforesaid contention of Mr. Nandwani. The deceased was admittedly aged 70 years at the time of the accident and accordingly, the multiplier applicable in terms of the Second Schedule of the Motor Vehicles Act, 1988 as well as in terms of the judgment of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), is the multiplier of 5. It is pertinent to note here that the learned Tribunal has itself noted in para 12 of the impugned award that the relevant multiplier is the multiplier of 5, in the following terms:

12. In the petition, the age of the deceased is stated to be as 70 years for which the relevant multiplier is 5 in terms of the judgment of the Hon"ble Supreme Court of

India in Sarla Verma v. DTC decided on 15.04.2009 in C.A. No. 3483/08.

8. Accordingly, the award is modified to the extent that to the multiplicand constituting the annual loss of dependency, i.e., Rs. 31,624.80, the multiplier of 5 is being applied. Thus calculated, the figure of the total loss of dependency of the Respondents No. 1 to 6 works out to Rs. 1,58,124/- and after adding the non-pecuniary damages of Rs. 1,40,000/- as awarded by the learned Tribunal, the claimants are held entitled to the total compensation of Rs. 2,98,124/- on account of the death of the deceased in the said accident with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of its realisation.

9. MAC.APP. 292/2011 and CM No. 6690/2011 stand disposed of accordingly.