
New India Assurance Co. Ltd. Vs Gurmeet Kaur and Others

MAC. APP. No. 257 of 2012 and CM No. 4495 of 2012

Court: Delhi High Court

Date of Decision: July 19, 2013

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: L.K. Tyagi, for the Appellant; S.N. Parashar, for the Respondent

Final Decision: Disposed Off

Judgement

Suresh Kait, J.

MAC. APP. No. 257/2012

1. Vide the instant appeal, the appellant/Insurance Company has challenged the impugned award dated 09.12.2011, whereby the learned Tribunal

has granted the compensation amount in favour of the respondents/claimants as under:-

Learned counsel appearing on behalf of the appellant/Insurance Company has argued on two grounds. Firstly, the learned Tribunal has wrongly

deducted 1/4th towards personal expenses of the deceased. He submitted that the total number of dependents were five, i.e., wife, two children

and parents of the deceased. However, the learned Tribunal has not considered the father as dependent upon the deceased and considering only

four dependents deducted 1/4th towards personal expenses. Whereas as per the well accepted principle, the learned Tribunal ought to have

deducted 1/3rd towards personal expenses.

2. The second ground argued by him is that at the time of the accident, age of the deceased was 38 years. While calculating the compensation, the

learned Tribunal has assessed the income of the deceased on the basis of the Minimum Wages Act applicable to a skilled worker as Rs. 6,500/-

per month and granted 50% towards future prospects, though it should have been granted 30% towards the future prospects.

3. On the issue of deduction of personal expenses, learned counsel appearing on behalf of the respondents has relied upon Smt. Sarla Verma and

Others Vs. Delhi Transport Corporation and Another, and submitted that the Apex Court in para 30 has held as under:-

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok

Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the

view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd)

where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-

fifth (1/5th) where the number of dependant family members exceed six.

He submitted that in view of the observations made above, considering the number of dependents, the learned Tribunal has rightly deducted 1/4th

towards personal expenses.

4. On the issue of future prospects, learned counsel appearing on behalf of the respondent No. 1/claimant has relied upon the case of Rajesh and

Others Vs. Rajbir Singh and Others, , wherein the Apex Court has held that:-

11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's

case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those

groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in

case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future

prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was

in the age group of 40 to 50 years.

He submitted that the age of the deceased at the time of accident was 38 years. Keeping in view the age of the deceased, learned Tribunal has

rightly granted 50% towards future prospects.

5. I have heard the learned counsel for the parties.

6. On the issue of deduction towards the personal expenses, the Tribunals and Courts have to see the facts and circumstances of each case.

7. In the present case, the deceased left his wife, two minor children and the parents behind him. Though, the learned Tribunal has held that father

is not dependent upon the deceased, however, keeping in view the fact that two minor children are the greatest liability on the wife and mother of

the deceased.

8. In view of the dictum of Sarla Verma (supra), I do not find any discrepancy in deducting 1/4th towards personal expenses by the learned

Tribunal.

9. As regards the 50% future prospects granted by the learned Tribunal is concerned, keeping in view the dictum of Rajesh & Ors. Vs. Rajbir

Singh (supra), I do not find any discrepancy in the order of the learned Tribunal.

10. In view of the law discussed above, both issues are covered; therefore, I do not find any merit in the instant appeal. Hence, the same is

dismissed.

11. No order as to costs.

12. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company. Vide order

dated 30.07.2012, 60% of the awarded amount has already been released in favour of the claimants. The Registrar General of this Court is

directed to release the balance compensation amount with upto date interest in favour of the respondents/claimants in terms of the award dated

09.12.2011.

CM No. 4495/2012 (for stay)

With the dismissal of the appeal itself, the instant application has become infructuous. The same is disposed of accordingly.