
Cholamandalam Ms General INS. Co. Ltd. Vs Austin B Masih and Others

MAC. APP. No. 1045 of 2011

Court: Delhi High Court

Date of Decision: May 7, 2012

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: Suman Bagga, for the Appellant; Sanjay Rathi, Advocate for the Respondent No.1 to 4, for the Respondent

Final Decision: Allowed

Judgement

G. P. Mittal, J.

The Appeal is for reduction of compensation of Rs. 11,96,600/- awarded by the Motor Accident Claims Tribunal (the

Claims Tribunal) for the death of Smt. Sitara A. Masih in an accident which occurred on 05.07.2009. The deceased was aged 68 years on the

date of the accident and had retired from the govt. service. She was getting a pension of Rs. 10,742/-. She was working as a Nurse in Mount

Carmel School and was getting a salary of Rs. 10,000/- per month.

2. The Claims Tribunal took the deceased's income to be Rs. 20,742/-, deducted one-third towards the personal and living expenses and applied

the multiplier of "7" to compute the loss of dependency as Rs. 11,61,600/-.

3. After making a provision for compensation under conventional heads, the overall compensation of Rs. 11,96,600/- was granted.

4. Following contentions are raised on behalf of the Appellant

Insurance Company:-

(i) At the age of 68 years, the appropriate multiplier was "5" instead of "7" adopted by the Claims Tribunal.

(ii) There should have been deduction of 50% towards the personal and living expenses as the deceased's children have grown up and perhaps

married.

5. While dealing with the deduction towards personal and living expenses and the fact that the deceased was working as a Nurse even at the age

of 68 years, the Claims Tribunal held as under:-

13. It was argued by Ld. counsel for Insurance Company that the petitioners were not financially dependent on the deceased so they are not

entitled to any compensation towards loss of dependency. I do not agree with the contentions of Ld. counsel as it is seen from the evidence that

the deceased even after retirement had been working. This itself suggests that her family required certain augmentation of financial resources. This

constraint/requirement of the family would have forced the deceased to join the profession even after retirement.

6. The reasoning of the Claims Tribunal that the deceased required augmentation of financial resources and that is why she was working at the age

of 68 years was logical. I would not like to interfere with the finding that in the circumstance, the deduction towards the personal and living

expenses should have been 1/3rd only.

7. The deceased's age is not disputed by the learned counsel for the Respondents (Claimants). The appropriate multiplier on the age of 68 years

would be "5" instead of "7".

8. The loss of dependency thus comes to Rs. 8,29,680/- $(20,742/- \times 2/3 \times 12 \times 5)$.

9. After adding a sum of Rs. 10,000/- towards funeral expenses and Rs. 25,000/- towards loss of love and affection, the overall compensation

comes to Rs. 8,64,680/-.

10. The overall compensation thus stands reduced from Rs. 11,96,600/- to Rs. 8,64,680/-.

11. It is urged that the award of interest @ 9% was excessive. I would not agree. The bank rate of interest on long term deposits since the year

2010 is about 9%. In the facts and circumstances, it cannot be said that the interest awarded is excessive.

12. As far as apportionment is concerned, the Respondents No.2 to 4 shall get a compensation of Rs. 1.5 lacs each along with proportionate

interest. Rest of the amount along with proportionate interest shall be the share of the First Respondent, the deceased's husband.

13. The excess amount of Rs. 3,31,920/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall

be refunded to the Appellant Insurance Company.

14. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The Appeal is allowed in above terms.