

(2012) 04 DEL CK 0465

Delhi High Court

Case No: MAC. APP. 114 of 2012

Raj Kaur and Others

APPELLANT

Vs

Pankaj Kumar and Others

RESPONDENT

Date of Decision: April 26, 2012

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

Bench: Single Bench

Advocate: Vikas Sharma, for the Appellant; K.L. Nandwani, Advocate for R-3, for the Respondent

Final Decision: Allowed

Judgement

G.P. Mittal, J.

The Appeal is for enhancement of compensation of Rs. 7,63,700/- awarded for the death of Jai Singh, who died in a motor accident which occurred on 07.09.2009. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was established that the deceased was working as a Security Guard and was getting a salary of Rs. 6300/- per month. It was proved by examining PW-1 that the deceased was getting a pension of Rs. 5941/-.

2. The Appellants' grievance is that although the Claims Tribunal dealt with the question on non-deduction of the family pension from the total income of the deceased, yet it did not add the amount of pension earned by the deceased which was to be taken into consideration to calculate the loss of dependency.

3. On the other hand, it is urged by Mr. K.L. Nandwani, learned counsel for the Insurance Company that the compensation awarded is just and proper.

4. It is stated that infact there were just three dependents upon the deceased and the Claims Tribunal erred in making the deduction of one-fourth towards personal and living expenses instead of one-third.

5. It is urged that the compensation of Rs. 1,00,000/- awarded towards Loss of Love and Affection is exorbitant and excessive.
6. The pension of Rs. 5941/- per month received by the deceased was the income in the deceased's hand. Even if, it is assumed that some family pension might have been paid to the widow, the same was not to be deducted in view of the Full Bench decision in [Delhi Transport Corporation Vs. Mrs. Meena Chaturvedi and Others](#),). Although, no Cross Objection or Cross Appeal has been filed by the Respondent Insurance Company but the Respondent can support the judgment without filing any Cross-Objections in view of the provision under Order XLV Rule 22 CPC [Shri Ravinder Kumar Sharma Vs. The State of Assam and Others](#),
7. The number of dependents were just three; the Appellants No. 4 and 5 being the deceased's married daughters. Thus, deduction towards personal and living expenses ought to have been one-third instead of one-fourth. [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#),
8. The loss of dependency thus comes to Rs. 10,77,207/- (6300/- + 5941/- x 2/3 x 12 x 11).
9. The Claims Tribunal awarded a sum of Rs. 1,00,000/- towards Loss of Love and Affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in [Sunil Sharma and Others Vs. Bachitar Singh and Others](#), and in [Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others](#), granted only Rs. 25,000/- (in total to all the claimants) under the head of Loss of Love and Affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.
10. On adding notional sum of Rs. 25,000/- towards Loss of Love and Affection, Rs. 10,000/- each towards Loss to Estate, Loss of Consortium and Funeral Expenses, the overall compensation thus comes to Rs. 11,32,207/-
11. The overall compensation is thus enhanced from Rs. 7,63,700/- to Rs. 11,32,207/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of deposit.
12. The enhanced compensation of Rs. 3,68,507/- along with the interest shall enure for the benefit of the Appellant No. 1, the deceased's widow.
13. The Respondent No. 3 The United India Insurance Company Limited is directed to deposit the enhanced amount along with the proportionate interest in the name of the First Appellant in UCO Bank, Delhi High Court Branch, New Delhi.
14. 60% of the enhanced amount along with proportionate interest shall be held in fixed deposit for a period of five years. Rest of the amount along with proportionate interest shall be released to her forthwith. The Appeal is allowed in above terms.