

Oriental Insurance Co Ltd Vs. Kanta Devi and Anr

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Court : Delhi

Decided On : Jul-17-2015

Judge : Jayant Nath

Appellant : Oriental Insurance Co Ltd

Respondent : Kanta Devi and Anr

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

17. 07.2015 + MAC.APP. 338/2011 ORIENTAL INSURANCE CO LTD
Appellant Through Mr.Vijay Singh and Mr.Abhishek Kumar, Advocates versus
KANTA DEVI & ANR Respondent Through Mr.T.N.Tyagi, Advocate for R-1
and R-2 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. The present appeal is filed by the appellant/insurance company seeking to impugn the Award dated 3.2.2011.

2. The deceased Sanjeev Kumar alongwith his brother Kapil Kumar was returning home on the motorcycle on 11.9.2005. The deceased was driving the motorcycle. When they reached Dhaula Kuan, the motorcycle was hit from the back side by a truck said to be driven by respondent No.3. The deceased Sanjeev Kumar died on the spot. Kapil his brother received minor injuries. Based on the evidence on record the Tribunal concluded that the accident took place due to the rash and negligent driving of respondent No.3.

3. On compensation the Tribunal noted that the deceased Sanjeev Kumar was 26 years of age on the date of the accident. He was a commerce graduate from Delhi University and had done number of Certificate courses. He was running a coaching institute in his locality and was said to be earning Rs.10,000/- per month. The Tribunal also noted that the deceased had done a Certificate course of computing from IGNOU, Certificate course of Master Computer Development, certificate course in Quality Management Programme from NIIT etc. and was pursuing MCA from IGNOU. The Tribunal noted receipts of the coaching institute for the months of May 2005 to August 2005 and computed the average receipt as Rs.5,850/- per month. The Tribunal thereafter held that the deceased given the nature of qualifications after completion of his various professional courses would have earned Rs.10,000/- per month easily. Accordingly, the Tribunal took the income of the deceased as $10,000 + 5,850 = 15,850/-$. The Tribunal also increased it by 50% on account of future prospects. The deceased was a bachelor and a multiplier of 14 was taken based on the age of the mother which was taken as

42. 50% was deducted on account of personal expenses. A total compensation for loss of income of Rs.19,97,184/- was awarded. Total compensation was awarded as follows:1. Loss of income Rs.19,97,184/-

2. Loss of love and affection Rs.40,000/-

3. Last rites expenses Rs.20,000/- Total

4. Rs.20,57,184/- Learned counsel appearing for the appellant has strongly challenged the computation of income assessed by the Tribunal for the purpose of computing loss of dependency. It is urged that the assessment of income of Rs.10,000/- per month is entirely erroneous. To enhance the available income in this manner was totally uncalled for. Challenge is also made to the enhancement of the assessed income by 50% on account of future prospects.

5. In my opinion, there is no merit in the contentions of the appellant. This Court has repeatedly in various judgments including in MAC App. No.779/2014 titled Oriental Insurance Company Limited vs. Nazrin Begum relying upon judgments of

the Supreme Court in *M. Mansoor vs. United India Insurance Co. Ltd.*, MANU/SC/1042/2013 and *Amrit Bhanu Shali and Ors. vs. National Insurance Co. Ltd. and Ors.* MANU/SC/0537/2012 has held that the multiplier has to be based on the age of the deceased and not on the basis of age of the dependents. Though the claimants have not filed any cross appeal, the Supreme Court in the case of *Ranjana Prakash vs. Divisional Manager 2011 ACJ2418* has held that in the circumstances where no cross-appeal is filed the respondent can defend the compensation awarded by the Tribunal before the High Court on grounds which could have been urged in cross-appeal, so that, the compensation amount may not be reduced. Relevant portion of the said judgment reads as follows:

6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs. 23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the Appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

6. As the multiplier has been wrongly taken to compute the loss of dependency, there is no merits in the submission of the appellant.

7. Even otherwise, in my opinion, no error can be found in the approach of the Tribunal in assessing the income of the deceased at Rs.10,000/- per month. Reference in this context may be had to the case of V.Mekala vs. M.Malathi & Anr., 2014 ACJ1441 where the Supreme Court in the case of a student who was studying in Class XI aged 16 years had assessed the income at Rs.10,000/- per month.

8. There is no merit in the present appeal. Same is dismissed accordingly. All interim orders stand vacated. In case any amount is lying deposited in fixed deposit same may be released to the claimants. Statutory amount, if any, deposited by the appellant/insurance company may be released to the appellant. (JAYANT NATH, J.) JUDGE JULY17 2015 n

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