

Delhi High Court

J.R. Midha, J.

MAC.APP.No.176/2009

Yashpal Luthra v. United India Insurance Co. Ltd.

17 December, 2009

Motor Vehicles Act, 1988 S. 166, - Comprehensive policy - Pillion rider on two wheeler - Passenger in car - All the Insurance Companies admitted their liability in respect of a pillion rider on a two wheeler and occupants in a private car under the package/comprehensive policy - IRDA has also issued a circular dated 3rd December, 2009 to all the Insurance Companies to implement the circular dated 16th November, 2009 within a fixed time frame.

THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,53,300/- has been awarded to the appellants against respondent No.2 only. The appellants seek enhancement of the award amount against both the respondents.
2. The accident dated 24th February, 2006 resulted in the death of Vinod Luthra. The deceased was survived by his widow and parents who filed the claim petition before the learned Tribunal.
3. On 24th February, 2006 at about 9.30 pm, the deceased was returning home on motorcycle bearing No.DL-7SAU-2074 being driven by his friend. The deceased was sitting on the pillion of the said motorcycle. At Ahuja Park red light near Lodhi Road Complex, the aforesaid motorcycle was hit by an unknown vehicle, due to which the deceased fell down and suffered fatal injuries.
4. The deceased was aged about 24 years at the time of the accident. In the absence of any documentary proof of income, the learned Tribunal took the minimum wages of Rs.3,300/- for unskilled worker, deducted 1/3rd towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency at Rs.4,48,800/-. The learned Tribunal has awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The learned Tribunal has awarded total compensation of Rs.4,53,300/- to the appellants.
5. Respondent No.1 contested the claim petition before the learned Tribunal on the ground that respondent No.1 has not covered the risk of a pillion rider on the two-wheeler. The learned Tribunal accepted the plea of respondent No.1 and exonerated respondent No.1 from the liability. The learned Tribunal passed the award of Rs.4,53,300/- against

respondent No.2 only.

6. The appellants have urged the following grounds at the time of the hearing of this appeal:-

(i) The motorcycle in question was insured by respondent No.1 under a comprehensive/package policy which covers the risk of a pillion rider and, therefore, respondent No.1 is liable to pay the award amount to the appellants.

(ii) The multiplier be enhanced from 17 to 18.

(iii) The compensation be awarded for loss of love and affection and loss of consortium.

7. With respect to the liability of respondent No.1 under the policy, the General Manager of respondent No.1 was examined by this Court under Section 165 of the Indian Evidence Act on 5th November, 2009 when he admitted the liability of respondent No.1 in respect of the deceased and undertook to deposit the entire award amount along with interest as per the award of the learned Tribunal within 30 days. This Court also examined the officers of Insurance Regulatory and Development Authority (IRDA) and Tariff Advisory Committee (TAC) on 26th October, 2009. The IRDA issued circular dated 16th November, 2009 and convened a meeting of all the Insurance Companies on 26th October, 2009 when all the Insurance Companies admitted their liability in respect of a pillion rider on a two wheeler and occupants in a private car under the package/comprehensive policy. IRDA has also issued a circular dated 3rd December, 2009 to all the Insurance Companies to implement the circular dated 16th November, 2009 within a fixed time frame. The detailed judgment in this regard has been passed by this Court on 9th December, 2009.

8. The contrary finding of the learned Tribunal exonerating respondent No.1 is set aside.

9. The deceased was aged 24 years at the time of the accident and the appropriate multiplier according to the recent judgment in the case of Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129 is 18. The multiplier is, therefore, enhanced from 17 to 18.

10. The learned Tribunal has not awarded amount towards loss of love and affection and loss of consortium. Rs.10,000/- is awarded towards loss of love and affection and Rs.5,000/- is awarded towards loss of consortium.

11. Taking the income of the deceased to be Rs.3,300/-, deducting 1/3rd towards personal expenses and applying the multiplier of 18, the loss of dependency is computed to be Rs.4,75,200/-. Adding Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards loss of consortium and Rs.2,000/- towards loss of estate and Rs.2,500/- towards funeral expenses, the total compensation is computed at Rs.4,94,700/-.

RELIEF

12. The appeal is allowed and the award amount is enhanced from Rs.4,53,300/- to Rs.4,94,700/-. The learned Tribunal has awarded interest @ 9% per annum which is not

disturbed on the original award amount of Rs.4,53,300/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

13. Respondent No.1 has deposited Rs.5,71,399/- with UCO Bank in terms of the order dated 5th November, 2009.

14. The UCO Bank is directed to release Rs.75,000/- to appellant No.1, Rs.75,000/- to appellant No.2 and Rs.71,399/- to respondent No.3. The remaining amount of Rs.3,50,000/- be kept in three fixed deposits in the following manner:-

- (i) Fixed deposit of Rs.1,20,000/- in the name of appellant No.1 for a period of two years.
- (ii) Fixed deposit of Rs.1,20,000/- in the name of appellant No.2 for a period of three years.
- (iii) Fixed deposit of Rs.1,10,000/- in the name of respondent No.3 for a period of one year.

15. The enhanced award amount be deposited by respondent No.1 with UCO Bank within a period of 30 days by means of a cheque drawn in the name of UCO Bank A/c Yashpal Luthra through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

16. Upon the enhanced award amount being deposited, UCO Bank is directed to release the same to respondent No.3 only by transferring the said amount to her Saving Bank Account.