

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.731 of 2002

% Judgment reserved on: 15th May, 2008

Judgment delivered on: 20th May, 2008

1. Smt. Mariamma Joseph,
W/o. Late Sh. T.M. Joseph,
2. Master Jitto Joseph
S/o. Late T.M. Joseph
3. Mis. Jilita Joseph,
D/o. Late T.M. Joseph
(Appellants No.2 and 3 being minors
through their mother, natural guardinn
and next friend Petitioner No.1
Smt. Mariamma Joseph).

All R/o. 185 D, Pocket A-3, Mayur Vihar,
Phase III, Delhi Appellants

Through: Mrs. S. Janani with Mr. Deepak
Goel, Adv.

Versus

1. S. Vinay Tiwari,
S/o. Sh. G. Tiwari
R/o. 1/1073 A Mehrauli, Delhi
2. Sh. Pramod Kr,
S/o. Sh. Lakmi Singh,
R/o. Vill. & Tehsil Bichhma
Distt. Etawah (UP)
3. The Oriental Insurance Company Ltd.
Divisional Office No.25,
G-8 Hauz Khas, New Delhi

4. Smt. Thersiamma Mathew,
W/o. Late Sh. K.M. Mathew
R/o. Thundiyil House, Post: North Veliyanadu
Distt: Alleppey (Kerela) Respondents

Through: Mr. P.K. Seth, Adv. for R-3.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Appellants have filed the present appeal seeking enhancement of the compensation as awarded in this case by the learned Tribunal.

2. Vide the judgment dated 3rd August, 2002 passed by Sh. Ajit Bharioke, Judge, MACT, Shahdara, Delhi, a sum of Rs.17,45,000/- together with 9% interest thereon from the date of filing of the petition i.e. 18th September, 2002 till the realization of the amount, was

passed in favour of the appellants and respondent No.4 and against respondents No.1 to 3.

3. Brief facts of this case are that on 15th July, 2000, after his night duty, the deceased T.M. Joseph was returning home on his two wheeler scooter No.DL-7SJ-9877. The deceased was driving the scooter and his colleague K. Joy was sitting as a pillion rider. They left Mother Dairy after 6 a.m. On reaching, Ghaziabad Red Light Crossing on Delhi-Ghaziabad Highway, the deceased stopped his scooter and was waiting for the green signal. In the meanwhile, a Truck No.DL 1GA 3014 which was being driven by its driver/respondent No.2 came at a very high speed from behind in a rash and negligent manner and hit the scooter. Due to the impact, the scooter along with its driver and pillion rider were dragged to a distance of about 10 metres. The pillion rider fell on the right side while deceased came under the truck. Consequently, the deceased suffered several head injuries and also severe damage

on the left side. A PCR van came on the spot and took the deceased to Lal Bahadur Shastri Hospital, Delhi, where he was declared dead. The offending truck was registered in the name of respondent No.1 and was insured with respondent No.3.

4. Being dissatisfied with the compensation amount, the appellant have filed the present appeal.

5. There is no challenge to the factum and the manner in which the accident took place.

6. The age of the deceased and his monthly income and the multiplier adopted in this case by learned Tribunal has not been disputed.

7. The grouse of appellants as per the grounds of appeal are that the learned Tribunal wrongly deducted the canteen allowance of Rs.681/- p.m. from the monthly gross salary of the deceased.

8. It has been contended by learned counsel for respondent that this canteen facility was given by office and it was for the use of the deceased for his personal use and with the death of the deceased, this allowance has come to an end and the Tribunal has rightly deducted the canteen allowance from the monthly gross salary of the deceased.

9. The canteen allowance which was paid to the deceased was specifically for the deceased himself and it was meant for consumption of the deceased only and the same has been rightly excluded from the gross salary of the deceased while computing the loss of earning and consequent loss of dependency caused to the appellants.

10. The second contention of learned counsel for the appellants is that only 1/3rd amount has been deducted by way of personal expenses, in fact the Tribunal ought to have deducted only 1/4th amount towards personal

expenses keeping in view the number of family members of the deceased.

11. I do not find any force in the contention of learned counsel for the appellants that the Tribunal has wrongly deducted 1/3rd of the income of the deceased towards personal expenses and the same should have been 1/4th keeping in view the number of family members of the deceased. In the present case, deceased left behind widow, two children and widow mother.

12. In a plethora of cases, the Apex Court and various High Courts have held that 1/3rd amount of the income should be deducted towards self-expenses of the deceased.

13. In ***New India Assurance Co. Ltd. V. Charlie and another, AIR 2005 Supreme Court 2157***, the Apex Court has observed as under;

“What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.”

14. Another contention of learned counsel for the appellants is that the Tribunal has refused to pay the cost of embalming, the cost of special coffin and the cost of air lifting of the body of the deceased to Kerala and flight charges of the appellants and the escort accompanying the body to Kerala.

15. In this regard, the findings of learned Tribunal are relevant and the same are given below:

“While entertaining a claim in fatal accident case and computing the compensation for funeral expenses, the Tribunal, in my view, is required to award reasonable expenses for funeral to the claimants. In this case, Shri. T.M. Joseph who was residing and working for gains at Delhi, therefore, the claimants could easily have

undertaken his funeral at Delhi also. If they had indulged in luxury of taking the dead body to Kerala by air for the purpose of funeral, the burden for those expenses cannot be placed upon the respondents. Similarly, if the claimants have indulged in elaborate and expensive funeral that burden is not supposed to be borne by the respondents. More so, because of the fact that in any case if it had been a natural death, then also the claimants would have incurred the expenses on funeral. Considering said circumstances, I allow a compensation of Rs.5,000/- only to the petitioners on account of funeral expenses.”

16. The second Schedule of the Act lays down certain specific amount payable against general damages in the case of death and for funeral expenses and the amount laid down is Rs.2,000/-.

17. Since the deceased was residing and working for gains at Delhi, and even till date, the appellants are residing in Delhi, which is clear from their residential address as mentioned in the memo of parties, therefore, the appellant could easily have undertaken

his funeral at Delhi. However, if they have chosen to air lift the body of the deceased to Kerela and bury at their native place, for these expense, the respondent cannot be burdened with.

18. Keeping in view, the second schedule of the Act, I find that the amount of Rs.5,000/- awarded by the learned Tribunal towards funeral expenses is just and fair and requires no enhancement.

19. The judgment cited by learned counsel for the appellant in support of its contentions namely ***Smt. Sarla Dixit and Anr. vs. Balwant Yadav and Ors. [1996] 3 S.C.R. 30 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors. (1996) 4 SCC 362***, are not applicable to the facts of the present case.

20. The Tribunal in this case has awarded just and fair compensation to the Legal Heir's of the deceased and have taken all the aspects into consideration while

awarding compensation and no infirmity can be found with the impugned order and no ground is made out for enhancement of compensation awarded in this case.

21. Hence, the present appeal under these circumstances is not maintainable and the same is hereby dismissed.

22. Trial court record be sent back forthwith.

**V. B. GUPTA
(JUDGE)**

20th May, 2008
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