

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

MAC APPEAL No.130 of 2004

% Judgment reserved on: 21st May, 2008

Judgment delivered on: 27th May, 2008

1. Smt. Ram Rati
W/o. Late Sh. Hukum Chand
2. Sh. Vinod Kumar
S/o. Late SH. Hukum Chand
3. Sh. Ashok Kumar
S/o. Late Sh. Hukum Chand
4. Sh. Rakesh Vijay
S/o. Late Sh. Hukum Chand
5. Ms. Asha
D/o. Late Sh. Hukum Chand

All R/o. Village-Ghummanhera, Delhi Appellants

Through: Mr. J.S. Kanwar, Adv.

Versus

1. Sh. Ram Kumar
S/o. Sh. Lakhan Lal
R/o. Village-Murkhapur,
District-Sitapur, U.P.
2. Mohd. Ayub, S/o. Sh. Putan,
R/o. Village-Biswa,
District-Sitapur, U.P.
3. United Insurance Company Ltd.
United India House,

24, White Road, Chennai

.....Respondents

Through: Mr. S.S. Panwar, 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.

The present appeal under section 173 of the Motor Vehicles act, 1988 (for short as the "Act") has been filed against the award dated 3.11.03 passed by Sh. Girish Kathpalia, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal"), Delhi for seeking the enhancement of the compensation.

2. The brief facts leading to the dispute are that on 26.10.96, Sh. Hukum Chand, deceased was returning from Dehradun in a bus. When the bus reached near police Post, Siyani Gate, Ghaziabad (U.P.), a truck no. RSF 1692 which was being driven by Respondent no. 2, came from the

opposite direction and after jumping the divider, the offending truck came on wrong side of the road and hit the bus head on, causing injuries to the deceased who died on the spot. The offending truck is owned by Respondent no.1 and it is insured with Respondent no.3.

3. Vide impugned judgment, the Tribunal awarded the amount of compensation as Rs.3,07,664/- along with the interest @ 12% per annum from the date of petition till 31.03.01 and thereafter @ 9% per annum till the date of actual payment.

4. It has been contended by Ld. Counsel for the Appellant that the deceased was 50 years old at the time of accident, which is evident from the statement of the Appellant no.1 and corroborated by the salary certificate, which was duly proved. The Tribunal has erred in relying on the post mortem report for assessing the age of the deceased in the light of other evidence and thus, applied the multiplier of 11 instead of 15. It is further submitted that the Tribunal fell in patent illegality in deducting Dearness Allowance from the consolidated salary of the deceased. Thus, the Tribunal ought to have considered

entire monthly salary without any deduction and making all calculations on the basis of monthly salary of the deceased as Rs.4,444/- per month at the relevant time.

5. PW 1, the wife of the deceased deposed that at the time of death, the deceased was about 50 years of age and was working as a Lab Assistant in a Government School, but she did not know his salary. Further, in cross examination she stated that she did not have any documentary evidence as regards the age of the deceased.

6. On the other hand, it has been contended by learned counsel for the respondent that Dearness Allowance has been rightly deducted by the Tribunal and the total monthly salary was rightly computed at Rs.2,202/- per month. Further, there is no proof of age and the Tribunal has rightly taken the age of deceased as 54 years as per post-mortem report.

7. In the claim petition, the age of deceased is mentioned as 50 years. PW-1 in her statement, stated that the age of her husband was 50 years but in cross-examination she has stated that she does not have any

document to prove age of her husband. However, PW-3, clerk from the Government Girls Secondary School where the deceased was employed as a Lab Assistant, has brought the service book and has proved the certificate as EXPW-3/1 issued by Vice Principal of the school. As per this certificate, the deceased, Hukum Chand was to retire on 31st October, 2006 on attaining the age of Superannuation.

8. In the present case, the accident has taken place on 26th October, 1996. Government servant employed in Delhi Government, retires at the age of 60 years. So, in view of the certificate EXPW-3/1, deceased was 50 years in October, 1996 i.e. at the time of the accident in question. Thus, I hold that the age of the deceased was 50 years at the time of the accident.

9. Now, the question to be seen is as what multiplier should be adopted in this case, since the age of the deceased at the relevant time was 50 years. As per structured formula of the Second Schedule of the Act, the appropriate multiplier for the age of above 50 years but not exceeding 55 years is 11. Thus, the multiplier of 11

adopted by the Tribunal is as per the Schedule and is fully justified.

10. As regards the contention that Tribunal has not taken into consideration arrears of D.A. to compute the loss of earnings, PW 3, Sh. R.P. Khurana, UDC proved on record the salary certificate of deceased as Ex. PW 3/1, according to which the deceased was drawing a monthly salary of Rs.4,444/- in Oct.,1996. The salary certificate shows that it includes a sum of Rs.2,242/- towards Additional Dearness Allowance.

11. In ***State of Punjab v. Harbhajan Lal Kochhar, 1980 Acc. C.J.437***, the Himachal Pradesh high Court has observed as under;

“One of the questions raised in the present appeal is whether the dearness allowance, additional dearness allowance and the interim relief, which were being paid to the deceased, should be taken into consideration while determining the earnings of the deceased. It has been argued that all these allowances are not only subject to variation from time to time but could also be completely taken away. Dearness allowances have been granted to the employees in order to compensate them for the increase in the prices. It is common knowledge that dearness allowance depends on the price index. Technically it is possible that if the price index goes down there is a chance of the dearness allowance

and the additional dearness allowance becoming zero. However, we cannot lose sight of the fact that ever since the dearness allowance was first granted it has continuously been paid and the chances of its going down are extremely remote. The accident took place in 1975 and in the last five years this allowance has, instead of going down, been increased. Keeping in view the history of the dearness allowance and the trend of rise in prices we can take judicial notice of the fact that there is no likelihood of the dearness allowance coming down in the foreseeable future. In this view of the matter we are of the opinion that this allowance should be taken into consideration.”

12. Andhra Pradesh High Court in ***S.Narayanamma and Ors. v. Secretary to Government of India and Ors. [II (2002) ACC 582]***, following ***Helen C. Rebello (Mrs.) and others v. Maharashtra State Road transport Corporation and another, II (1998) ACC 512***, held that;

“The contributions made by the deceased-employee towards Employees' Provident Fund, Life Insurance (LIC), Group Insurance and the deductions shown in the salary certificate of the deceased-employee towards the vehicle loan instalment, benefit fund, and also the amounts received by the deceased-employee towards interim Relief, Special Pay, Dearness Allowance, House Rent Allowance, need not be deducted from the gross salary of the deceased for ascertaining the income, because the contributions/deductions made towards, E.P.F., L.I.C., Group Insurance and Benefit Fund would be beneficial to the family of the deceased-employee and it would be the estate of the deceased.”

13. In the light of the above decisions, it is to be seen as to whether the Tribunal rightly made the deductions of additional dearness allowance from the salary of the deceased. The Tribunal has not taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. The deductions made by the tribunal from the salary such as dearness allowance to the benefit of the estate of the deceased, cannot be deducted while computing the net monthly earnings of the deceased.

14. In view of the principles laid down in above cases, it is clear that there cannot be any deductions of amount received towards dearness allowance. Thus, I do not find myself in agreement with the Tribunal in this regard and the award of the Tribunal is modified to that extent. Taking monthly income of deceased at Rs. 2,202 as net income, is unsustainable, as the deductions made towards additional dearness allowance are also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the

judgment in *Divisional Controller, KSRTC v. Mahadeva Shetty*, AIR 2003 SC 4172 where the Apex Court has observed as under;

“It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just. (See Helen C. Rebello v. Maharashtra

State Road Transport Corporation & another, II (1998)
ACC 512.)”

15. Thus, taking the monthly salary of deceased at Rs.4,444/- per month and after deducting 1/3 amount for personal expenses, the net salary comes to Rs.2,963/- which is rounded off as Rs.3,000/- per month. Thus, applying the multiplier of 11, the total dependency comes to $\text{Rs.}3,000 \times 12 \times 11 = 3,96,000/-$. Adding to it Rs.7,000/- on account of funeral expenses and Rs.10,000/- towards loss of consortium, as awarded by the Tribunal the total sum comes to be Rs.4,13,000/-.

16. Accordingly, the award passed by the learned Tribunal is modified to the extent that appellants are entitled to Rs.4,13,000/- as compensation, which is just and fair. Appellants are also entitled to interest @ 9% per annum from the date of filing of the appeal till realization, on the additional amount of compensation.

17. Insurance Company/respondent No.3 is directed to pay the additional compensation, within one month from today.

18. Accordingly, the appeal stands allowed to the above extent.

19. No orders as to costs.

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

**27th May, 2008
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