

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

MAC APP.No.145 of 2007

% Judgment reserved on: 16th July, 2008

Judgment delivered on: 22nd July, 2008

Smt.Gulab Wati

W/o Late Shri Shiv Lal Gupta

R/o C-215, Dakshinpuri,

New Delhi.

..... Appellants

Through: Mr.Purushottam Kumar, Adv.

Versus

1.Rajbir Singh, S/o Shri Kirpa Ram

R/o Village Kheri Sandh,

P.S.Sampala,

Distt. Rohtak,

Haryana, Badge No.19769

Through the Manager, Depot-I

DTC Okhla Phase-1,

New Delhi-110065.

2.Chairman

DTC, I.P.Estate

New Delhi.

....Respondents

Through: Mr.J.N.Aggarwal, Adv. for DTC.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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.

Appellant who is legal heirs of deceased Chander Bhan Gupta, has filed the present appeal against the judgment and award dated 18th November, 2006 passed by Ms. Sukhvinder Kaur, Judge, MACT seeking enhancement of the award amount.

2. Vide impugned judgment, the learned Tribunal has awarded a sum of Rs.1,65,400/- to the appellant as compensation along with interest @ 7.5% per annum from the date of the filing of the petition, that is, 21st January, 1998 till the date of its realization.

3. The brief facts of this case are that on 16th November, 1997, deceased Chander Bhan Gupta was going on M.B.Road on his two wheeler scooter No.DL-3S-K-9236 at a normal speed on his right side on the road. When he reached near Peepal Wala Chowk, all of a sudden a DTC Bus bearing No.DPB-6099 driven by one Rajbir Singh

(Respondent No.1) came at a very fast speed and in a rash and negligent manner from the side of Sangam Vihar and knocked down the scooterist with a great force. Due to forceful impact, the deceased fell down on the road and got crushed under the DTC Bus. This accident was caused entirely due to rash and negligent driving of the bus driver.

4. The appellant filed a claim petition under Section 166 and 140 of the Motor Vehicles Act, 1988 (in short as Act).

5. During the trial, learned counsel for the appellant on 6th April, 2004 had given statement before the Tribunal that the petition be converted under Section 163-A of the Act. That request was allowed and the petition was converted under Section 163A of the Act.

6. Being dissatisfied with the award passed by the Tribunal, the appellant has preferred the present appeal.

7. It is contended by learned counsel for the appellant that the Tribunal has mechanically treated the petition under Section 163A of the Act merely on the basis of the

oral request made by the counsel for the appellant whose case was without any relation, title or interest or rights qua the deceased.

7. Other contention is that the deceased as a very long tenure of effecting working at the time of the accident and the trial court has failed to assist proper dependency.

8. Moreover, the Tribunal has wrongly ignored the fact that driving licence of deceased was filed by the appellant and the same is on record of the trial court which goes on to prove that deceased was a driver by profession.

9. Another contention raised by learned counsel for the appellant is that the trial court did not consider the future income as well as the future prospect of the deceased which it ought to have considered.

10. On the other hand, it has been contended by learned counsel for the respondent/DTC that the appellant was 45 years old at time of the accident and the deceased was

unmarried and the multiplier of 13 years applied by the Tribunal, is also on the higher side.

11. Further, there is no documentary evidence placed on record by the appellant to show that deceased was working as a driver as his driving licence has not been proved nor the income of the deceased has been established. Under the circumstances, the amount awarded in this case by the Tribunal is just and proper.

12. As per record though the present petition was filed under Section 166 and 140 of the Act but on 6th April, 2004, counsel for the appellant himself has made a request before the Tribunal for converting the petition under Section 163 of the Act and that request was allowed and the petition was treated under Section 163 of the Act.

13. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule of the Act is not ordinarily permissible except in exceptional cases. [See

Arati Bezbaruah v. Dy. Director General, Geological Survey of India, 2003 ACJ 680 (SC); *United India Insurance Co. Ltd. v. Patricia Jean Mahajan*, 2002 ACJ 1441 (SC) and *U.P. State Road Trans. Corpn. v. Trilok Chandra*, 1996 ACJ 831 (SC). In this context, reference be made to recent decision of this Court in ***R.K.Malik & Ors. V. Kiram Pal & Ors. 2007 ACJ 2010.***

14. Under the circumstances, there is no force in this arguments advance by learned counsel for the appellant.

15. As far as the profession and income of deceased is concerned, the appellant deceased has appeared as PW-1 before the tribunal and stated that deceased was 27 years old and was unmarried at the time of accident. He was a driver by profession and was privately employed and keeping the salary of Rs.3000-3500/- pr month and out of the said income he used to give her Rs.1500-1800 per month.

16. As per finding of the trial court, no document has been placed on record to establish that the deceased was

driver by profession or he was earning Rs.3000-3500/- per month. Further it is stated that the appellant has not even placed on record the driving licence of the deceased. In the absence of any reliable evidence on record, the income of deceased has been assessed on the basis of minimum wages prevailing at that time.

17. With regard to the future prospect as contented by learned counsel for the appellant, it has no where impleaded about his future prospects.

18. Under the circumstances, I do not find any infirmity or illegality in the order passed by the Tribunal.

19. The appeal is, therefore, dismissed.

20. No order as to costs.

21. Trial court record be sent back.

V. B. GUPTA, J.

July, 2008
Bisht