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HIGH COURT OF DELHI : NEW DELHI

MAC App. No.697 of 2006

% Judgment reserved on: 16th July, 2008

Judgment delivered on: 28th July, 2008

Smt. Meghawati
W/o. Late Sh. Member Singh
R/o. Opposite Shiv Mandir,
Gali Shani Bazar Wali,
Village & Post Johri Pur,
Delhi

... Appellant.

Through: Mr. Bhopal Singh, Adv.

Vs.

1. Raja Ram Yadav
S/o. Sh. Ram Bali Yadav
R/o. 14-B/46, Dev Nagar,
Karol Bagh, Delhi
2. Harpreet Walia
S/o. Sh. Suderson Singh
R/o 14-B/46, Dev Nagar,
Karo, Bagh, Delhi
3. National Insurance Company
Division Office No.22,
5/67, Pal Mohan House,
Padam Singh Road,
Karol Bagh, Delhi.

4. Ajay Kaushik,
S/o. Late Sh. Member Singh

5. Pritam Kaushik,
S/o. Late Sh. Member singh

Both R/o. Opposite Shiv Mandir,
Gali Shani Bazar Wali,
Village & Post Johri Pur,
Delhi

6. Mrs. Sangeeta Rani Sharma
W/o. Sh. Dinesh Kumar Sharma,
D/o. Late Sh. Member Singh
R/o. A-33 (65) Gali No.7,
Phase-10, Shiv Vihar, Delhi ... Respondents

Through: Ms. Nanita Sharma, Adv.
for respondents No.3.

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.

The present appeal under Section 173 of the
Motor Vehicle Act, 1988 (for short as 'Act') has been

filed by the appellant seeking enhancement of the compensation amount.

2. By the impugned judgment dated 18th May, 2006, passed by Sh. A.S. Yadav, Judge MACT, New Delhi, an award in the sum of Rs.1,32,200/- along with 6% interest from the date of filing of the petition till realization was passed in favour of the appellant.

3. Being dissatisfied with the award, the appellant has filed the present appeal.

4. The brief facts of this case are that on 1st August, 2002 at about 10.00 p.m., the deceased Member Singh was coming on foot from VSNL office at NIC Building, Parliament Street, New Delhi to the nearest Bus Stop for taking the bus. While he was near Shahanshah Restaurant, W.C. Road, he was hit by a Water Tanker bearing No.DL 1G-0804 which was being driven by respondent No.1, Raja Ram Yadav in a rash and negligent manner. The deceased succumbed to the

injuries on the same day. Respondent No.2, Harpreet Walia, is the owner of the tanker and offending vehicle was insured with respondent No.3/Insurance Company.

5. The deceased was aged 54 years at the time of the accident and was getting a monthly pension of Rs.1,275/-. It has been further stated in the petition that apart from the pension, deceased was already getting Rs.4,000/- p.m. while working as a Supervisor with M/s. Megh Engineering Works of which his son is the proprietor.

6. It has been contended by learned counsel for the appellant that Sh.Ajay Kaushik, son of the deceased, who has appeared as PW 2, has categorically proved on record that his father was employed in his firm and he used to pay salary of Rs.4,000/- p.m. PW 1 Smt. Meghawati, the appellant has also supported the statement of PW2. Under these circumstances, the

Tribunal erred in assessing the net income of the deceased as Rs.1275/-.

7. It is also contended that the deceased was able bodied man at the time of the accident and was working and even assuming that no documentary evidence has been placed on record with regard to the salary of the deceased which he was getting from his son, since he being an able bodied person, he could have easily earned minimum wages prescribed under the law. The last drawn salary of the deceased in the month of January, 2001 was about more than Rs.8,000/- and the Tribunal has also not taken this fact into consideration.

8. On the other hand, it has been contended by learned counsel for the Insurance Company that there is no ground for enhancement since, there is no evidence on record that the deceased was getting a salary of Rs.4,000/- by working in his son's firm, as no

account books or income tax returns of his son's firm has been placed or proved on record. The Tribunal has rightly assessed the income of the deceased as Rs.1275/- per month which he was getting as pension and besides this, there is no other income of the deceased.

9. The Apex Court in plethora of cases has held that while assessing the income of the deceased in motor accident cases, the tribunals should bear in mind that the same should be assessed on the basis of the cogent and the reliable evidence produced and duly proved on record.

10. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident, then the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be taken into consideration.

11. It is true that appellant has not placed or proved on record any documentary evidence to prove this fact that deceased was getting a monthly salary of Rs.4,000/- p.m. while working in the firm of his son. Nevertheless, the fact remains that deceased was aged about 54 years at the time of the accident and he was able bodied person and as such he could have earned at least minimum wages as prescribed under the law.

12. The deceased was working as a head peon with the Telecom (DOT) since 10.07.73 and took premature retirement with all pensionary benefits on 01.01.90. The deceased again rejoined the service with the VSNL as an Attendant HR (Grade NE-3) till 09.02.01, when he was removed from his service as a measure of disciplinary proceedings.

13. Thus, in the facts of the case, it can be safely taken into consideration the minimum wages as applicable for an unskilled worker.

14. The minimum wages as on the relevant date of accident i.e. 01.08.02 for an unskilled worker were Rs. 2679.70/- say Rs.2680/-.

15. As per the Second Schedule of the Act, the appropriate multiplier of 11 has been applied in the present case.

16. Now, the question which arises as to whether payment of benefit such as pension is required to be correspondingly reduced from the amount of total compensation payable or not?

17. In ***Mrs.Helen C.Rebello and others v. Maharashtra State Road Transport Corpn. and another, AIR 1998 SC 3191***, about pensionary benefits, the Apex Court in para 16 referred to the case of the Grand Trunk Railway of Canada v. Jennings, (1888) 13 AC 800 and held as under:-

"At the Common Law, pecuniary benefits from insurance policies, whatever the source, and pension schemes whether

contributory or non-contributory, were deducted. The various English Courts' decisions reveal the unsettled state of adjudication regarding the deductions from the compensation payable under the Fatal Accidents Act, 1846. Various divergent opinions were expressed, some favourable to the claimant to exclude any sum payable on life insurance or pensions from deduction out of the compensation payable to the claimant and other not to deduct till, as aforesaid, the matter was set at rest by various legislations culminating into the Fatal Accidents Act, 1959. Till before this, within the limitation of the restrictive language of the Act and in the absence of any motivating and guiding words under the statute the general principles under the common law was applied to ascertain the pecuniary loss and gain. Thus, the 'pecuniary advantage' from whatever source comes to the claimant by reason of the death, was interpreted giving its widest meaning. This amplitude of large sphere has been the cause of concern of the Courts, Legislative and the Jurists and reference to the insurance, pension, gratuity etc. whether it is a pecuniary gain deductible, if it is, whether one's conscience, equity and fairness are eroded, specially if it is applied with reference to the provisions of Motor Vehicles Act? To salvage from this onslaught, some decisions declined to interpret for deduction and some other, even after holding deductible, expressed

their conscience in favour of the sufferer. This we find both in the English decisions and the Indian decisions."

The Apex Court further in para 36 has pointed out about the family pension as under;

"Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two."

18. This Court in ***Delhi Transport Corporation v. Meena Chaturvedi and others, 2006 ACJ 406***, held that deductions on account of life insurance, provident fund, pension, etc. are not admissible in view of the decision of the Apex Court in ***Helen C.Rebello (supra)***.

19. In case of ***N.Sivammal and others v. The Managing Director, Pandian Roadways Corpn. and another, AIR 1985 106***, the Apex Court pointed

out that the reduction of monetary benefit of pension from the amount of compensation is without justification.

20. In ***Savitri Devi & Ors. v. Pala Ram & Ors., II (2000) ACC 152 (DB)***, the Punjab and Haryana High Court has taken the view that the pension/family pension payable to the widow could not be taken into consideration for reducing the dependency of the claimants.

21. In view of the aforesaid principles laid down by the various Courts, the question is no more *res integra* and the Tribunal exercising jurisdiction under the Motor Vehicles Act is required to consider the payment of damages/compensation to the person concerned on the basis of income and the loss that others would suffer irrespective of benefits, such as, insurance, provident fund, pension, etc.

22. 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.”

23. In the instant case, as far as the numbers of dependents on the deceased are concerned, there is no dispute that he had only one dependent i.e. his widow. There is no other legal heirs of the deceased. Thus, keeping in view of this fact, one half, is deducted of the annual income, towards personal expenses.

24. Applying all these principles, taking the monthly income of deceased at Rs.2,680/- (per month) x 12=Rs.32,160/ per annum and the monetary benefit of pension as Rs.1,275/- x 12, i.e., Rs.15,300/- per annum, the total of both, comes to Rs.47,460/- per annum.

25. Thus, after deducting one half, amount for personal expenses and applying the multiplier of 11, the total compensation come out as Rs.2,61,030/- (Rs.47,460/- x 11 x $\frac{1}{2}$) rounded off as Rs.2,62,000/-.

26. In view of the above discussion, net effect is that compensation stands enhanced by a sum of Rs.1,30,000/-.

27. The appeal stands disposed of by enhancing the compensation by a further sum of Rs.1,30,000/-.

28. The enhanced compensation shall be paid together with interest at the rate of 6% per annum from date of claim petition till date of realization.

29. I direct that the enhanced compensation be kept in a fixed deposit with a nationalised bank or a post office scheme whichever secures maximum interest for a period of 5 years.

30. No order as to costs.

31. Trial court record be sent back.

V. B. GUPTA, J.

July 28, 2008
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