

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC APP. No. 130/2008**

Judgment delivered on: March 03, 2008

Smt. Manjeet Kaur And Anr. .... Appellants

Through: Mr. O.P. Mannie, Adv.

versus

Sh. Suman Rajak And Ors. .... Respondents

Through: Mr. A.K. Soni, Adv. for R-3

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR,**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 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 |

**KAILASH GAMBHIR, J. Oral:**

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By way of present appeal, the appellants seeks modification of the impugned award dated 02.08.2007 so as to claim enhancement in the compensation amount over and above the amount of Rs.3,18,000/- awarded by the Tribunal.

Brief summary of facts of the case to deal with the contentions of parties are as under:-

On 24.01.2005 at about 09:05 p.m., the deceased Miss Navneet Kaur was crushed by a Bus bearing Registration No. DL-1PB-5720. A criminal case U/s 279/304-A IPC vide FIR No. 32/2005 with P.S. Moti Nagar, Delhi was registered against Sh. Suman Rajak.

On advance notice, Mr. A.K. Soni appears for respondent No.3, insurance company. Respondent Nos. 1 and 2 are the owner and driver of the offending vehicle. The claim petition was mainly contested by respondent No.3 and respondent No.3 insurance company alone has been given directions to satisfy the award amount. Since in

the present appeal, the appellants have claimed enhancement in the compensation amount and the respondent No.3 insurance company is duly represented by its counsel Mr. A.K. Soni, therefore, I do not consider any necessity of directing notice on respondent Nos. 1 and 2. Service of notice on respondent Nos. 1 and 2 will unnecessarily cause delay in disposal of the present appeal. I, therefore, dispense with the service of notice on respondent Nos. 1 and 2.

Mr. Mannie, counsel appearing for the appellants has confined his arguments with regard to non-consideration of the gross salary of the deceased which is duly proved on record as Ex. PW3/2.

The contention of learned counsel for the appellants is that the gross salary of the deceased was Rs.9,716/- and the Tribunal has wrongly deducted various allowances as were admissible to the appellant comprising transport/conveyance allowance, medical allowance, special allowance, etc.

Grievance of the counsel for the appellant is that once, the Tribunal has deducted 2/3<sup>rd</sup> of the income towards personal expenses of the deceased, there was no justification for the Tribunal to have deducted all the allowances from the gross salary of the deceased.

Counsel for the appellant claims that either deduction from personal income should not have exceeded 1/3<sup>rd</sup> as per the settled legal position or at least the gross salary of the deceased should have been taken into consideration.

Another grievance raised by the counsel for the appellants is that the Tribunal has granted an amount of Rs.25,000/- towards compensation for loss of love and affection. Counsel for the appellants has placed reliance on the Judgment of Apex Court reported in 2008(1)SCALE 630 entitled **Ramesh Singh & Anr. Vs Satbir Singh & Anr.**, wherein Rs.50,000/- was awarded by the Apex court towards loss of love and affection.

Per contra, Mr. A.K. Soni, counsel for respondent submits that there is no illegality in the impugned award as the Tribunal has granted very fair, just and reasonable compensation in favour of the appellants.

Counsel also submits that the deceased in the present case was a female of the age of 26 years old, and therefore, the Tribunal has rightly allowed deduction of 2/3<sup>rd</sup> of income towards personal expenses of the deceased. Counsel for the respondent also submits that no fault can be found with the findings of the Tribunal in deducting transport/conveyance, medical, mobile and special allowances from the gross salary of the deceased as these benefits were personal to the deceased and could not have been taken as loss to the family of the deceased. Even an amount of Rs.25,000/- towards loss of love and affection as awarded by the Tribunal, is just, fair and reasonable as per the contention of learned counsel for the respondent.

I have heard learned counsel for the parties and have perused the record.

In a recent decision of the Apex Court reported in 2007 (14) SCALE 461 entitled **National Insurance Co. Ltd. Vs Indira Srivastava**, the Hon'ble Court observed as under:

“8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income

on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.”

The deceased in the present case was working as Collection Executive in ICICI Home Finance and as per the salary certificate proved on record, her salary was Rs.9,716/- per month. The Tribunal has correctly deducted the allowances which were being paid to the deceased towards conveyance, medical and mobile expenses as these benefits were personal to the deceased and they could not have been considered as loss to the family of the deceased. I, therefore, do not find any infirmity in the finding of the tribunal in taking monthly income of the deceased at Rs. 6500/- after deducting the said allowances.

As regards, the contention of the learned counsel for the appellant that after deducting the said allowances, the tribunal has further deducted 2/3<sup>rd</sup> of the income of deceased towards her personal expenses, this court is of the view that there is no absolute rule that 1/3<sup>rd</sup> deduction in the case of married person and 2/3<sup>rd</sup> deduction in the

case of unmarried person towards personal expenses of the deceased are to be uniformly allowed. In the present case, a female of marriageable age has died in the unfortunate accident. Keeping in view the peculiarity of the facts that the deceased was not having any brother as the family of the appellant comprised of three daughters, one of which had already expired, I feel inclined to interfere with this aspect of the award.

Counsel for the appellant has invited my attention to the cross-examination of appellant no.2 wherein the fact regarding the family members as left behind by the deceased has been revealed. Mr. A.K. Soni, counsel appearing for respondent has tried to justify the said deduction on the ground that age between 26 years to 28 years is of marriageable age, therefore, the tribunal has rightly deducted 2/3<sup>rd</sup> of the income of the deceased towards personal expenses. It is a settled legal position that in accident claim cases arising out of the Motor Vehicles Act, compensation amount cannot be awarded

with any arithmetical precision, and therefore, sometimes guess work is applied to determine award of compensation. Section 168 of the Motor Vehicles Act mentions grant of just, fair and reasonable compensation.

Keeping in view the broad principles and peculiarity of facts of the present case, this court feels that the end of justice will be best served if for half of the multiplier, the deduction of 1/3<sup>rd</sup> from the personal income of the deceased is allowed and for rest of the half, 2/3<sup>rd</sup> deduction is considered.

It is also on account of the fact that there are no male members in the family as the deceased is survived by two sisters and the parents. Normally, marriage of daughters who have their own independent source of income, gets delayed not only because they give financial support to the family but also due to the fact that such women are generally career oriented and possibility of late marriage of such women cannot be ruled out.

I, therefore, direct deduction of 1/3<sup>rd</sup> expenses for half of the multiplier from the personal income of the deceased and for rest half multiplier deductions of 2/3<sup>rd</sup> of income towards personal expenses would remain.

With regard to other grievance raised by the counsel for the appellant that a meager amount of Rs.25,000/- has been granted towards loss of love and affection, I am not inclined to interfere.

The judgment relied upon by the counsel for the appellant reported in **Ramesh Singh & Anr. Vs Satbir Singh & Anr.** 2008(1) Scale 630, may not be of any help to the appellant as in the said case, Rs.50,000/- was awarded after taking into account possibility of increase in the minimum wages, loss of love and affection of the child and pain and sufferings which the appellants would live with all their life.

The contention of learned counsel for the appellant that the Apex Court has upheld the said award of

Rs.50,000/- towards loss of love and affection appears to be misconceived.

With these directions, the present appeal is disposed of. The differential amount shall be paid by respondent No.3 with up to date interest at the rate of 7.5% per annum.

March 03, 2008  
'raj'

**KAILASH GAMBHIR, J**