

PUSHPA LATA SHARMA Appellant
Through : Mr. Navneet Goyal, Adv.

versus

NATIONAL INSURANCE CO.LTD.& ORS. Respondents
Through : Ms. Neerja Sachdeva, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.1,32,000/- has been awarded to the appellant.

2. The accident dated 9th November, 1991 resulted in the death of Manoj Sharma. The deceased was survived by his mother who filed the claim petition before the learned Tribunal.

3. The deceased was aged 24 years at the time of the accident. The deceased was unmarried. The father of the deceased had pre-deceased him. The deceased was working

as a captain with Hotel Dawat, Delhi and was earning Rs.3,100/- per month. However, the learned Tribunal took the minimum wages into consideration and after taking into consideration the future prospects and deducting 1/3rd towards personal expenses, the dependency of the appellant was taken to be Rs.1,000/- per month. The learned Tribunal applied the multiplier of 11 to compute the loss of dependency at Rs.1,32,000/-. No compensation was awarded towards loss of love and affection, loss of estate and funeral expenses.

4. The appellant has challenged the impugned award on the following grounds:-

- (i) The income of the deceased be taken to be Rs.3,100/- per month for computation of compensation.
- (ii) The multiplier be enhanced from 11 to 14.
- (iii) The compensation be awarded for loss of love and affection, loss of estate and funeral expenses.

5. The appellant appeared before the learned Tribunal in witness box as PW2 and deposed that the deceased was 24 years old at the time of the accident. She further deposed that the deceased had done training in Hotel Marina and was working in Hotel Dawat, Delhi earning Rs.3,100/- per month as salary besides tips which used to be to the tune of Rs.2,000/- to Rs.2,500/- per month. PW2 further deposed that the deceased joined the service in the year 1991 and had served for about 6 – 7 months. PW2 also proved the

certificate of the deceased regarding his educational qualifications – Ex.PW2/B to Ex.PW2/E. In the cross-examination, PW2 was asked as to how much amount he was paying to the appellant to which PW2 deposed that the deceased was paying her Rs.3,100/- per month. PW2 further deposed in cross-examination that the deceased was maintaining a scooter which he had purchased himself and he used to bear the expenses of the scooter himself and was spending about Rs.500/- to Rs.1,000/- on himself.

6. The witness from Hotel Marina appeared as PW4 and proved the certificates – Ex.PW4/1 and Ex.PW4/2 issued by Hotel Marina. PW4 further deposed that the deceased joined Hotel Marina on 16th February, 1999. Ex.PW2/B is the certificate issued by Central Board of Secondary Education regarding the secondary school examination cleared by the deceased in the year 1985. Ex.PW2/C is the senior secondary school certificate issued by Central Board of Secondary Education to the deceased in 1987. Ex.PW2/D is the mark-sheet issued by Central Board of Secondary Education to the deceased in the year 1985. Ex.PW2/F is the certificate issued by Friends Sports Club, Delhi certifying that the deceased participated in All India Indira Gandhi Cross Country Race. Ex.PW2/G and Ex.PW2/H are the certificates issued by the school regarding the awards won by the deceased in the games at school level. Ex.PW2/I is the certificate issued by NCC to the deceased. Ex.PW2/J is the

certificate issued to the deceased for completing marathon race in December, 1986. Ex.PW2/K is again the certificate issued by NCC to the deceased. Ex.PW2/L is the certificate issued to the deceased for participating in Delhi Marathon, 1988. Ex.PW4/1 is the certificate issued by Hotel Marina calling the deceased for interview on 5th June, 1991 for the pose of waiter. Ex.PW4/2 is the certificate issued by Hotel Marina certifying that he completed the apprenticeship training of one and a half year on 3rd February, 1991.

7. Mark-PX and Mark-PY are the certificates issued by Dawat Restaurant certifying that the deceased was working as a captain with Dawat Restaurant and was drawing a basic salary of Rs.1,500/- per month in addition to tips to the tune of Rs.1,600/- per month and the gross salary of the deceased was Rs.3,100/- per month.

8. The learned Tribunal has not considered the aforesaid documents and has taken the minimum wages into consideration for computing the income of the deceased. The aforesaid documents clearly show that the deceased was a well educated person and had completed his training with Hotel Marina and was working with Dawat Restaurant and was earning Rs.3,100/- per month. There being sufficient evidence on record, the learned Tribunal clearly erred in comparing the deceased with an unemployed labourer sitting on the road in search of work. The findings of the learned Tribunal in this regard are, therefore, erroneous. The learned

Tribunal also erred in conducting an enquiry as contemplated under Sections 168 and 169 of the Motor Vehicles Act, 1988. Be that as it may, the income of the deceased is taken to be Rs.3,100/- per month as the salary being drawn from Hotel Marina where the deceased was employed as the captain. The deceased was aged 24 years at the time of the accident and, therefore, 50% is added towards the future prospects and the income of the deceased for computation of compensation is taken to be Rs.4,650/- (Rs.3,100/- + Rs.1,550). 50% is deducted as personal expenses of the deceased on himself and the loss of dependency of the appellant is taken to be Rs.2,325/-(Rs.4,650/2). The age of the appellant at the time of the accident was 43 years and, therefore, the appropriate multiplier according to the age of the appellant is 14. Applying the multiplier of 14, the loss of dependency of the appellant is computed to be Rs.3,90,600/- (Rs.2,325 X 12 X 14). The learned Tribunal erred in not awarding any compensation for loss of love and affection, loss of estates and funeral expenses. Rs.10,000/- is awarded towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.2,500/- towards funeral expenses. The total compensation is computed to be Rs.4,13,100/- (Rs.3,90,000+ Rs.10,000 + Rs.10,000 + Rs.2,500).

9. The appeal is allowed and the award amount is enhanced from Rs.1,32,000/- to Rs.4,13,100/-. The learned Tribunal has awarded interest @9% per annum which is not

disturbed on the original award amount of Rs.1,32,000/-. However, on the enhanced amount, respondent No.1 shall be liable to pay interest @7.5% from the date of filing of the petition till realization.

10. The order with respect to the disbursement of the award amount shall be passed on 4th September, 2009. The appellant is directed to remain present in the Court on the next date of hearing.

11. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

J.R. MIDHA, J

JULY 28, 2009

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