

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

+ **FAO No.419/2000**

% Date of reserve: 5th February, 2009
Date of decision: 31st March, 2009

SMT. PARVATI DEVI MEHTA & ORS. Appellants
Through: Mr. O.P. Mainee, Adv.
versus

SURESH KUMAR & ORS. Respondents
Through: Mr. Kamal Deep, Adv. for R-2.

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

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

JUDGMENT

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.2,64,000/- has been awarded to the appellants. The appellants are seeking enhancement of the award amount.

2. On 12th August, 1988, the deceased Nathu Singh was walking on Shantipath when he was hit by TCR bearing No.DBR-3923 driven rashly and negligently by its driver. The deceased suffered fatal injuries resulting in his death.

3. The deceased was survived by his wife, three daughters and three sons who filed the claim petition before the learned Tribunal.

4. The deceased was aged 54 years at the time of the accident and was holding the post of ACIO-II in Intelligence Bureau, Ministry of Home Affairs, Government of India, drawing a salary of Rs.2937/- per month.

5. The learned Tribunal has awarded compensation of Rs.2,64,000/- by taking monthly income of the deceased at Rs.3,000/-. 1/3 of the income has been deducted towards personal expenses of the deceased and the dependency of the appellants has been taken at Rs.2,000/- on which multiplier of 11 has been applied to compute the total compensation at Rs.2,64,000/-.

6. The appellants have urged the following grounds to challenge the impugned award:-

- (i) The future prospects have not been taken into consideration while computing the income of the deceased.
- (ii) The personal expenses of the deceased be deducted at 1/8 instead of 1/3 of the income considering that the deceased left behind seven legal representatives.
- (iii) The compensation be awarded for loss of consortium, love, affection and funeral expenses.

7. The learned counsel for the appellants submit that the future prospects be considered by taking the average of the income and its double as per the principle laid down by the Apex

Court in the case of **Sarla Dixit Vs. Balwant Yadav – 1996 SC 1274**. The deceased was aged 54 years at the time of the accident. Considering the age of the deceased, the income of the deceased could not have doubled during the remaining service of the deceased. However, the income of the deceased would have increased from Rs.2,937/- to Rs.4,500/- due to regular increments. It is, therefore, appropriate to take the average of Rs.2,937/- and Rs.4,500/- which comes to Rs.3,718.50 per month (rounded off as Rs.3,720/-).

8. With respect to the personal expenses of the deceased, the learned Tribunal has deducted 1/3 from the income of the deceased. The deduction of 1/3 towards personal expenses of the deceased is not a thumb rule. The deduction depends upon the number of legal representatives. In **Surinder Kaur Vs. Inder Kapoor, II (2004) ACC 866**, this Court has allowed the deduction of personal expenses of the deceased at 2/11 considering that the deceased left behind his widow, three children and parents. In the present case, the deceased left behind seven legal representatives namely his wife, three sons and three daughters. One daughter was married at the time of the accident and two daughters were minor. Two sons were minor whereas one son was above 18 years of age at the time of the accident. Therefore, the deduction of 1/5 of the income towards the personal expenses of the deceased is appropriate in the present case. The annual dependency of the legal representatives of the deceased comes to Rs.35,712/- (3,720/- x

4/5th x 12). The multiplier of 11 applied by learned Tribunal is upheld. The total loss of dependency of the appellants is computed at Rs.3,92,832/- (Rs.35,712/- x 11).

9. The learned Tribunal has not awarded any amount towards non-pecuniary damages. In the case of **Mohinder Kaur Vs. Hiranand Sindhi, 2007 ACJ 2123**, the Apex Court upheld the interest of 9% on award of Rs.50,000/- for loss of consortium in relation to an accident of 1982. In the case of **United India Insurance Co. Ltd. Vs. Sulochana – III (2007) ACC 50 (DB)**, the Madras High Court has awarded Rs.50,000/- towards loss of consortium and Rs.50,000/- towards love and affection. In the case of **New India Assurance Co. Ltd. Vs. Amresh Kumar – 2005 ACJ 538**, this Court awarded Rs.50,000/- towards loss of consortium. Following the above judgments, I hereby award Rs.50,000/- towards loss of consortium and Rs.7,500/- to each of the appellant towards loss of love and affection and loss of estate.

10. The total compensation is computed at Rs.4,95,332/- (Rs.3,92,832/- + Rs.50,000/- + Rs.7,500/- x 7).

11. The learned Tribunal has awarded interest @ 10% per annum for the period from 20th May, 1993 upto the date of the award which is not being interfered. However, for period after the date of award upto the payment, the rate of interest shall be 7.5% in terms of the judgment of the Apex Court in case of **Dharampal Vs. U.P. State Road Transport Corporation, III**

2008 ACC 1 SCC. No interest has been awarded by the learned Tribunal from the date of filing of the petition till 20th May, 1993 on the ground that serious efforts were not made by the appellants to serve the respondents but it cannot be lost sight of that the compensation to the appellants became payable immediately on the death of the deceased and the Insurance Company continued to retain the money. No steps were taken by the Insurance Company to come forward and offer the compensation. Considering the facts and circumstances of this case, interest at the rate of 5% per annum w.e.f. the filing of the petition i.e. 1st February, 1989 upto 20th May, 1993 would serve the interest of Justice.

12. The appeal is allowed and the award amount is enhanced from Rs.2,64,000/- to Rs.4,95,332/- along with interest @ 5% per annum from the date of filing of the petition upto 20th May, 1993, interest at the rate of 10% per annum w.e.f. 20th May, 1993 upto the date of award of the learned Tribunal and at the rate of 7.5% from the date of award till realization.

13. The share of the appellants in the enhanced amount and interest thereon shall be as under:-

Appellant No.1.	-	70%
Appellants No.2 to 7	-	5% each

14. The enhanced amount along with interest be deposited by the respondent with the learned Tribunal within 30 days. The learned Tribunal is directed to release 30% of the share of

appellant No.1 to her and remaining 70% of the amount be kept in a fixed deposit for a period of ten years on which no loan, advance or withdrawal be permitted without the prior permission of the learned Tribunal but the periodical interest be permitted be released to appellant No.1. With respect to shares of appellants No.2 to 7, 50% of their share be released to them and remaining 50% of their share be kept in fixed deposit for a period of five years with restriction on withdrawal, loan and advance as above in the case of appellant No.1. The learned Tribunal shall first release the cheques towards the amount has to be kept in fixed deposits and the remaining amount be released only after the original fixed deposit receipts with proper endorsements are shown to the learned Tribunal and the copies of FDRs duly attested by the Bank are placed on record of the learned Tribunal.

J.R. MIDHA, J

March 31, 2009
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