

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.86/2008**

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Date of decision: 24th November, 2009

MEENU & ORS

..... Appellants

Through : Ms. Manjusha Wadhwa, Adv.

versus

HARKESH & ORS

..... Respondents

Through : Mr. O.P. Wadhwa and

Mr. Amrik Singh, Advs. for R-2.

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 the compensation of Rs.5,80,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 12th February, 2003 resulted in the death of Prabhu Singh. The deceased was survived by his widow and two minor children who filed the claim petition before the learned Tribunal.

3. The deceased was aged 37 years at the time of the accident and was working as a Supervisor with M/s Sound Products (India), Delhi since 1992. The income of the deceased was claimed by

the appellants to be Rs.8,000/- per month. The learned Tribunal held the evidence of occupation and income of the deceased to be insufficient and, therefore, minimum wages of Rs.2,783/- per month were taken into consideration to compute the loss of dependency at Rs.5,35,000/-. Rs.40,000/- has been awarded towards loss of love and affection and consortium and Rs.5,000/- towards funeral expenses. The total compensation awarded is Rs.5,80,000/-.

4. The only ground urged by learned counsel for the appellants at the time of hearing of this appeal is that the income of the deceased was Rs.8,000/- per month and the learned Tribunal erred in not taking the income of the deceased to be Rs.8,000/- per month and the future prospects thereon.

5. Appellant No.1 appeared before the learned Tribunal as PW-1 and deposed that her husband was working as Production Manager/Supervisor since 1992 with M/s Sound Products (India) which is a proprietorship concern of Baldev Singh at a salary of Rs.8,000/- per month.

6. Baldev Singh, the proprietor of M/s Sound Products (India) appeared before the learned Tribunal as PW-2 and deposed that the deceased was under his employment since 1992. PW-2 deposed that the service of the deceased was confirmed vide letter – Ex.PW2/B. Ex.PW2/B records that the job of the deceased was of collecting the job work and to execute the same. The deceased joined the job on 2nd February, 1992 at a monthly salary of Rs.1,500/- per month. The salary was agreed to be

increased at the rate of Rs.500/- per year. PW-2 further deposed that the deceased was working as a Supervisor and he used to procure the job works and execute the same and at the time of the death, the deceased was getting a salary of Rs.8,000/- per month. PW-2 deposed that the deceased was having good experience of general engineering work. The two vouchers signed by the deceased while taking the payment from PW-2 were exhibited as Ex.PW2/C and Ex.PW2/D. Ex.PW2/C is the receipt dated 6th September, 1997 in the handwriting of the deceased stating that he has received Rs.14,000/- towards arrears of salary and the salary has been increased to Rs.4,000/- per month. Ex.PW2/D is the receipt dated 9th September, 2001 in the handwriting of the deceased stating that the deceased has received the arrears of salary of Rs.11,000/- and there was no old outstanding and henceforth, the salary of the deceased would be Rs.7,000/- per month. PW-2 was cross-examined at length by learned counsel for respondent No.2. In cross-examination, it was suggested to PW-2 by counsel for respondent No.2 that the salary of the deceased in September, 2001 was Rs.5,400/- which PW-2 admitted to be correct. PW-2 admitted that the payment of Rs.11,000/- vide Ex.PW2/D pertains to the salary of two months and the deceased left his employment. However, PW-2 clarified that the deceased left his employment on one or two occasions but was brought back by PW-2 on enhanced salary. On Court question, PW-2 further clarified that the deceased continued the employment in September, 2001. It is pertinent to mention that

respondent No.2 did not cross-examine PW-2 with respect to the appointment letter – Ex.PW2/B and the receipt – Ex.PW2/C.

7. In cross-examination, PW-2 was asked to produce the attendance registers which were produced and exhibited as Ex.PW2/R1 and Ex.PW2/R2. The learned Tribunal held that the attendance registers – Ex.PW2/R1 and Ex.PW2/R2 appear to be fabricated as they were apparently new and, therefore, no reliance can be placed on the same. The learned Tribunal further held that FIR was registered by Narendra, the brother of the deceased who stated in the FIR that he was running a Transport Office along with the deceased in the name of Jaipur Delhi Carrier. The learned Tribunal held that there was contradiction between the statement of Narendra who registered the FIR and PW-2 and the deceased was carrying on the business along with Narendra and no evidence of the income of the business has been placed on record and, therefore, the income of the deceased be taken as per minimum wages of Rs.2,783/- per month.

8. Upon reappreciation of the entire evidence on record, this Court is of the view that the findings of the learned Tribunal with respect to the occupation and income of the deceased are misconceived and are, therefore, set aside.

9. The learned Tribunal was exercising the jurisdiction under Section 168 of the Motor Vehicles Act which provides that the learned Tribunal shall conduct an inquiry. Section 168 of the Motor Vehicles Act nowhere provides that there shall be a civil

trial. Section 168 of the Motor Vehicles Act provides that the inquiry shall be summary in entire and the learned Tribunal shall formulate such procedure for conducting the inquiry as it thinks fit.

10. It is held that the occupation and income of the deceased has been proved by sufficient evidence. It has been proved by PW-1 that the deceased was working as Supervisor with M/s Sound Products (India) since 1992 and by PW-2, the employer of the deceased, that the deceased was under his employment since 1992. The appointment letter of deceased was duly proved as Ex.PW2/B which provides that the deceased would be paid a salary of Rs.1,500/- per month with annual increment of Rs.500/- and the deceased would be responsible for collection and execution of the job work. As per Ex.PW2/C, the salary of the deceased in September, 1997 has been proved as Rs.4,000/- per month. As per Ex.PW2/D, the salary of the deceased in September, 2001 has been proved as Rs.7,000/- per month. As per attendance register – Ex.PW2/R1, the salary of the deceased in September, 2001 was Rs.5,400/- per month and as per attendance register – Ex.PW2/R2, the salary of the deceased at the time of the accident was RS.8,000/- per month. There is no challenge to the appointment letter – Ex.PW2/B and the receipt – Ex.PW2/C. Ex.PW2/C and Ex.PW2/D are in handwriting of the deceased himself. Ex.PW2/B, Ex.PW2/C and Ex.PW2/D are original documents and there is no doubt about their genuinty. The attendance registers – Ex.PW2/R1 and Ex.PW2/R2 are new

registers and do not appear to be reliable. The occupation and income of the deceased is, therefore, considered on the basis of the statement of PW1 and PW2, Ex.PW2/B, Ex.PW2/C and Ex.PW2/D from which it is clear that the deceased was working as a Supervisor at a salary of Rs.7,000/- per month in September, 2001. There is a contradictory statement of Narendra in FIR but Narendra has not appeared in the witness box before the learned Tribunal and, therefore, the statement of Narendra is not an evidence.

11. The income of the deceased at the time of the accident is taken to be Rs.7,000/- per month. The deceased was aged 37 years at the time of the accident and according to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, 50% is added towards future prospects and the income of the deceased after adding the future prospects is taken to be Rs.10,500/- (Rs.7,000 + 50%). $\frac{1}{3}^{\text{rd}}$ is deducted towards personal expenses of the deceased and the multiplier of 16 is applied to compute the loss of dependency at Rs.13,44,000/- (Rs.10,500 x 12 x $\frac{2}{3}$ x 16). The learned Tribunal has awarded Rs.40,000/- towards loss of love and affection and consortium and Rs.5,000/- towards funeral expenses which are upheld. The appellants are entitled to total compensation of Rs.13,89,000/-.

12. The learned counsel for respondent No.2 submits that the amount awarded by this Court is more than the claim made by the appellants. It is well settled by the judgment of this Court in

the case of **Virender Singh vs. Anand Prakash, 2008 ACJ 2519** that just compensation has to be awarded to the appellants arising out of the accident and the amount awarded can be more than the amount claimed.

13. The appeal is allowed and the award amount is enhanced from Rs.5,80,000/- to Rs.13,89,000/- along with interest @7.5% from the date of filing of the petition till realization.

14. The enhanced award amount along with interest be deposited by respondents No.1 and 2 with the learned Tribunal within 30 days. The share of the appellants in the award amount shall be in the same proportion as per the award of the learned Tribunal. The shares of the appellants No.2 and 3 shall be kept in fixed deposit till they attain majority whereas with respect to the share of appellant No.1, the learned Tribunal shall release 20% award to her and the remaining 80% be kept in fixed deposit for a period of five years.

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

J.R. MIDHA, J

NOVEMBER 24, 2009

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