

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ FAO. No.484/2000**

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Date of decision: 21st May, 2009

UOI &ORS.

..... Appellants

Through : Ms. Geeta Sharma,
Ms. Preeti Dalal and
Ms. Maneesha Dhir, Advs.

versus

M.K.GHUMAN & ORS.

..... Respondents

Through : Mr. O.P. Goyal and
Mr. Navneet Goyal, Advs.**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 appellants have challenged the award of the learned Tribunal whereby compensation of Rs.10,00,000/- with interest @6% per annum has been awarded to claimants/respondents No.1 to 5.

2. The accident dated 27th January, 1986 resulted in the death of Major Surenderjit Singh Ghuman. On 27th January, 1986 at about 6:45 pm, the deceased was driving his two wheeler scooter bearing No.CHH-8818 near Army Headquarters, Delhi Cantt when he was hit by Army Matador No.DEP 7980 resulting in grievous

injuries. The deceased was removed to the Army Hospital, Delhi Cantt and was admitted in ICU where he expired on 5th February, 1986.

3. The deceased was survived by his widow, two minor children and parents who filed the claim petition before the learned Tribunal.

4. The deceased was 38 years old at the time of the accident. He had completed NDA and thereafter IMA (Indian Military Academy), Dehradun and was commissioned on 21st December, 1969. The deceased was earning Rs.4,000/- per month apart from having facilities of free ration, medical facilities, free education for children and canteen facilities at the time of the accident. Considering the future prospects of the deceased, the learned Tribunal took the income of the deceased as Rs.8,000/- per month. 1/3rd was deducted towards the personal expenses of the deceased and the multiplier of 16 was applied to compute the loss of dependency at Rs.10,24,000/-. Rs.10,000/- has been awarded towards loss of estate, loss of consortium and funeral expenses and the total compensation computed is Rs.10,34,000/- The amount was reduced by Rs.34,000/- as the deceased had claimed only Rs.10,00,000/-. The learned Tribunal awarded interest @6% per annum on the award amount.

5. The appellant has challenged the impugned award on the ground that the accident occurred due to the negligence of the deceased who was under the influence of the liquor at the time of

the accident and, therefore, the appellant is not liable to pay any compensation whatsoever.

6. The claimants produced the eye-witness, PW-6, Narender Kumar before the learned Tribunal who deposed that the accident occurred due to the rash and negligent driving of the Army Matador. PW-6 deposed that the scooter was on the left side of the road and the matador came in the centre of the road and hit the scooter and the speed of the scooter at that time was 30 – 35 kms per hour whereas the speed of the matador was about 70 kms per hour.

7. The appellants produced three witnesses, RW-1, RW-2 and RW-3. RW-3 is the driver of the Army vehicle who deposed that he saw a cow crossing the road due to which he slowed down the vehicle and allowed the cow to cross when the scooter came from the opposite side and dashed into the Army vehicle. RW-3 also deposed that the deceased was smelling of alcohol and was negligently driving. RW-1 was sitting in the Army vehicle along with the driver and he also deposed to the same effect. The appellants also produced the doctor, RW-2 who examined the deceased in the Army Hospital and deposed that the deceased was smelling of alcohol. However, RW-2 admitted that he did not conduct any test to determine the presence of alcohol and the smell could have been on account of alcoholic medicines at the Base Hospital.

8. The departmental enquiry was conducted by the Military authorities where RW-1 and RW-3 appeared but did not make any

statement that the deceased was under the influence of liquor. The army authorities recorded a finding in the enquiry report that the deceased was neither under the influence of the liquor nor mentally disturbed at the time of the accident.

9. The learned Tribunal has considered the entire evidence of the parties in detail in the impugned award to arrive at the finding that the accident occurred due to the rash and negligent driving of the Army vehicle. There is no infirmity in the finding of the learned Tribunal with respect to the rash and negligent driving of the Army vehicle which is proved by the testimony of the independent eye-witness, PW-6 who deposed that the deceased was driving on the left side of the road and the matador came on the centre of the road to hit the scooter of the deceased. Even RW-1 and RW-3 have also admitted the accident but the explanation that a cow came on the road was not proved. The finding of the rash and negligent driving of the Army vehicle is, therefore, upheld.

10. The claimants/respondents have filed the cross-objections to claim the enhancement of the award amount. The learned counsel for the claimants seek enhancement on the following grounds:-

(i) The deceased has left behind five legal representatives, namely widow, two minor children and parents who were dependent upon him and, therefore, the personal expenses of the deceased should be deducted as 1/5th instead of 1/3rd.

(ii) No compensation has been awarded for loss of love and affection.

(iii) Compensation for loss of estate and loss of consortium be enhanced.

(iv) The deduction of Rs.34,000/- from the amount computed by the learned Tribunal on the ground that the claimants have claimed only Rs.10,00,000/- is unjustified.

(v) The rate of interest @6% per annum be enhanced.

11. With respect to the deduction of personal expenses, it has been settled by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** decided on 15th April, 2009 that where the deceased left behind four to six dependent family members, 1/4th should be deducted towards the personal expenses. The deduction of personal expenses of the deceased is, therefore, reduced from 1/3rd to 1/4th.

12. The learned Tribunal has not awarded any compensation for loss of love and affection. The compensation of Rs.10,000/- is awarded to each of the claimants for loss of love and affection. The learned Tribunal has awarded Rs.10,000/- towards loss of estate, loss of consortium and funeral expenses. The compensation under these heads is enhanced to Rs.25,000/- (Rs.10,000/- for loss of estate, Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses).

13. The learned Tribunal has computed the compensation payable to the deceased to be Rs.10,34,000/-. However, the

learned Tribunal deducted Rs.34,000/- on the ground that the claimants claimed Rs.10,00,000/- in the claim petition. The finding of the learned Tribunal is contrary to the judgment in the case of **Nagappa vs. Gurudayal Singh, AIR 2003 SC 674** where it has been held that claimants are entitled to just compensation and they can be awarded higher compensation than the compensation claimed in the petition. The deduction of Rs.34,000/- by the learned Tribunal in the award, is therefore, unjustified.

14. The learned Tribunal has awarded interest @6% per annum which is considerably low considering that prior to 2001, the bank interest rate was 12% per annum. Thereafter, the Hon'ble Supreme Court in the case of **Kaushnuma Begum vs. New India Assurance Co. Ltd., AIR 2001 SC 485** held that in view of the prevailing bank interest rates, interest @9% should be awarded. In the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the Hon'ble Supreme Court has awarded interest @7.5% per annum. Considering the bank rate of interest, the rate of interest on the award amount is enhanced from 6% per annum to 12% per annum from the date of filing of the petition till 2001 and thereafter @9% till the date of the award, i.e. 18th August, 2000 and thereafter @7.5% per annum up to the date of payment.

15. In view of the above, the appeal is dismissed and the cross-objections are allowed. The award amount is enhanced from Rs.10,00,000/- to Rs.12,27,000/- [(Rs.8,000 – Rs.2,000) x 12 x 16

+ Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.25,000)] along with interest @12% per annum from the date of filing of the petition up to 31st December, 2001, thereafter @9% per annum up to the award of the learned Tribunal, i.e. 18th August, 2000 and thereafter @7.5% per annum.

16. The appellant has deposited 50% of the award amount with the Registrar General of this Court in terms of the order dated 17th January, 2001 out of which Rs.2,50,000/- has been received by the claimants and the balance amount is lying in the fixed deposit in terms of the order dated 9th March, 2009.

17. The Registrar General is directed to transfer/remit the entire award amount along with up to date interest to the learned Tribunal within a period of two weeks. The appellant is directed to deposit the remaining award amount along with up to date interest with the learned Tribunal within 30 days.

18. The shares of the claimants in the award amount shall be as under:-

Claimant/respondent No.1	:	60%
Claimants/respondents No.2 to 5	:	10% each

19. The learned Tribunal is directed to release 10% of the enhanced award amount along with interest to claimant No.1 and 5% of the enhanced award amount along with interest to each of claimants/respondents No.2 to 5 and their remaining share be kept in the fixed deposit for a period of five years on which periodical interest be paid to them but no loan or advance be permitted without the permission of the learned Tribunal.

20. The copy of the order be given 'dasti' to learned counsel for the parties under signature of Court Master.

May 21, 2009

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J.R. MIDHA, J