

Date of Decision: 16th April, 2009

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GHAN SHAM DASS & ORS. Appellants
 Through : Mr. Santosh Kumar Chauriha and
 Mr. K. Pramod, Advs.

versus

SHANKER & ORS. Respondents
 Through : Mr. D.K. Sharma, 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 appellants have challenged the award of the learned Tribunal whereby the compensation of Rs.2,04,600/- has been awarded by the learned Tribunal.

2. The accident dated 19th November, 1991 resulted in the death of Radha Rani aged 41 years working as a midwife earning Rs.1,500/- per month. The deceased was survived by her husband, two sons and a daughter who filed the claim petition before the learned Tribunal.

3. The learned Tribunal awarded Rs.2,04,600/- to the claimants/appellant Nos.1 to 4. The learned Tribunal took the

income of the deceased at RS.1,500/- per month. 30% was deducted towards the personal expenses of the deceased and the dependency of the appellants was taken to be Rs.1,050/- per month. The learned Tribunal assessed the value of services rendered by the deceased to her family at Rs.500/- per month. The total dependency per month was taken to be Rs.1,550/- per month. The learned Tribunal applied the multiplier of 11 and the total compensation was computed at Rs.2,04,600/-.

4. The learned counsel for the appellants has raised the following grounds for enhancement of the award amount: -

- (i) The value of service of the deceased towards her family be taken at Rs.3,000/- instead of Rs.500/-.
- (ii) The multiplier be enhanced from 11 to 15.
- (iii) The compensation for loss of consortium be awarded to appellant No.1.
- (iv) The compensation for loss of love and affection be awarded to appellant Nos.1 to 4.
- (v) The funeral expenses be also awarded to the appellants.

5. With respect to the value of the services of the deceased, the learned Tribunal has taken the same to be Rs.500/- considering that she was working as a midwife and was earning Rs.1,500/- per month. There is no infirmity in the finding of the learned Tribunal in taking the value of services at Rs.500/- considering that she was earning and

her income had been taken to compute the loss of dependency of the appellants.

6. With respect to the multiplier, the learned counsel for the appellant submits that the Second Schedule provides the multiplier of 15 considering the age of the deceased to be 41. However, the learned Tribunal has applied the multiplier of 11 considering that the husband was working as a TGT teacher and was earning a handsome salary and, therefore, he could not be dependent upon the wife who was earning a meager amount of Rs.1,500/-. The learned Tribunal further noted that two sons were working and with respect to the daughter also there was no evidence that she was financially dependent on the deceased. Considering these factors, the learned Tribunal applied the multiplier of 11 against the multiplier of 15 provided in the Second Schedule of the Motor Vehicles Act.

7. I am of the view that even though the income of the deceased wife was very meager, i.e., Rs.1,500/- per month but the income of both the parents is utilized in the family to meet the expenses. The daughter was unmarried and presumed to be dependent upon both the parents for her upbringing and for her marriage. So far as the husband and two sons are concerned even if they are taken to be not dependent upon the mother, the income of the mother would certainly be added to the estate and the compensation would be treated as loss to the estate.

8. In any view of the matter, the limited issue is whether the multiplier of 11 is appropriate or multiplier of 15 should be applied according to the Second Schedule of the Motor Vehicles Act. The Insurance Company has not challenged the computation of compensation on the basis of the multiplier of 11 applied by the learned Tribunal and there is no challenge that no compensation be awarded on the ground that the appellants were not dependent upon the deceased.

9. Considering the facts and circumstances of this case and also that the Apex Court has adopted the lower multiplier in some cases, the multiplier of 14 is appropriate in the present case.

10. The learned Tribunal has not awarded any compensation to the appellants towards loss of consortium, loss of love and affection and funeral expenses which are non-pecuniary damages payable in respect of the death of a person. In **Mohinder Kaur vs. Hira Nand Sindhi, 2007 ACJ 2123**, the Apex Court has awarded interest @9% per annum on the compensation of Rs.50,000/- towards loss of consortium relating to the accident of 1982. The Madras High Court in the case of **United India Insurance Co. Ltd. vs. Sulochana, III (2007) ACC 50 (DB)**, has awarded Rs.50,000/- towards loss of consortium and Rs.25,000/- to each of the claimants towards loss of love and affection. This Court has also awarded Rs.50,000/- towards loss of

consortium in the case of **New India Assurance Co. Ltd. Vs. Amresh Kumar, 2005 ACJ 538.**

11. Considering the facts and circumstances of this case, I award Rs.50,000/- towards loss of consortium to appellant No.1 and Rs.15,000/- to each of the appellants towards loss of love and affection. I further award Rs.5,000/- towards funeral expenses of the deceased. The total compensation computed on the aforesaid basis is Rs.3,75,400/- (Rs.18,600 X 14 + Rs.50,000 + Rs.15,000 + Rs.15,000 + Rs.15,000 + Rs.15,000 + Rs.5,000/-).

12. The learned Tribunal has awarded interest @ 9% per annum. The rate of interest on the original award amount of Rs.2,04,600/- from the date of filing of the petition till payment is not disturbed. However, on the enhanced amount the appellants shall be entitled to interest @ 7.5% per annum from the date of filing of the petition till realization.

13. The appeal is allowed and the compensation is enhanced from Rs.2,04,600/- to Rs.3,75,400/-. The enhanced amount be deposited by respondent No.3 with the learned Tribunal within 30 days. The shares of appellants in the enhanced amount shall be as under:-

Appellant No.1	:	55%
Appellant No.2	:	15%
Appellant No.3	:	15%
Appellant No.4	:	15%

14. The learned Tribunal shall release 50% of the respective shares of the appellants out of the enhanced amount along with interest thereon to the appellants. The remaining 50% of the respective shares of the appellants be kept in fixed deposit for a period of five years on which the periodical interest be paid to them. However, no loan or advance be sanctioned to the appellants without prior permission of the learned Tribunal.

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

J.R. MIDHA, J

APRIL 16, 2009

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