

Date of Decision: 25th March, 2009

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RAM RATTI & ORS. Appellants
Through : Mr. Rajiv Khosla, Adv.

versus

OM PARKASH & 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 compensation of Rs.1,65,600/- has been awarded to appellant No.1 and 2. The appellants seek enhancement of the award amount.

2. The road accident dated 9th October, 1993 resulted in the death of Mr. Vinod Kumar who was going to his shop on motorcycle bearing No.DL-1S-D-7376 when he was hit by tanker bearing No.DHL-152.

3. The deceased was aged 25 years at the time of the accident. The deceased was unmarried and was survived by his mother aged 46 years and widowed sister along with her four minor daughters who were residing with the deceased

and were dependent upon him.

4. The mother, widowed sister and four minor children of the widowed sister of the deceased filed the claim petition before the learned Tribunal.

5. The deceased was carrying on the business of retail shop for selling of motor parts as well as building material and was also the owner of a half body truck. In the petition it was claimed that the income of the deceased was Rs.30,000/- per month.

6. At the trial appellant No.1 appeared as PW – 1 and proved the age of the deceased. PW – 1 deposed that her husband had already expired prior to the death of her son. She further deposed that the deceased was dealing in motor parts as well as building material and was earning Rs.25,000/- per month and was giving Rs.1,100 – 1,200/- per day to her towards household expenses. She further deposed that deceased left behind a fixed deposit of Rs.1 lakh with him on which she was getting interest. She also deposed that her daughter, appellant No.2 was staying with her along with her four minor daughters after the expiry of her husband who were also dependent upon the deceased.

7. The appellant produced another witness, PW – 3 who is the brother of the deceased. He deposed that the deceased had kept amounts in the fixed deposit in the name of his mother and his widowed sister and children of the widowed sister. The copy of the fixed deposit receipts are Ex.PW – 3/1

to PW – 3/6. The witness further deposed that the deceased had also purchased a jeep in the name of his mother. He further deposed that the deceased had bank account and the original pass book was exhibited as Ex.PW3/7. The copy of the registration cover of the half body truck in the name of the deceased was also placed on record.

8. The learned Tribunal did not find the evidence sufficient to prove the income of the deceased and took Rs.1,800/- per month to be the income of the deceased at the time of the accident. The income of Rs.1,800/- was based on minimum wages of Rs.1,369/- and the fixed deposits of the deceased. The learned Tribunal also considered the future prospects by taking the average of Rs.1,800 and its double, i.e. Rs.3,600/-. The income was thus taken at Rs.2,700/- per month ($\text{Rs.1,800} + \text{Rs.3,600} \times 2$). Since the deceased was unmarried, the learned Tribunal took the dependency of the appellant at 40% which comes to Rs.1,080/-. The learned Tribunal applied the multiplier of 12 and the loss of dependency was computed at Rs.1,55,520/-. The learned Tribunal awarded Rs.10,000/- towards loss of love and affection and funeral expenses. The total compensation computed was Rs.1,65,520/-.

9. The appellants have raised the following grounds to challenge the award of learned Tribunal: -

- (i) The income of the deceased should be taken at Rs.25,000/- per month.

- (ii) The personal expenses of the deceased should be deducted @ 1/3rd instead of 60%.
- (iii) The multiplier of 18 should be applied considering the age of the deceased.
- (iv) The compensation for loss of love and affection be enhanced from Rs.10,000/- to Rs.50,000/-.

10. With respect to the income of the deceased, it has been proved by evidence of PW – 1 and 3 that the deceased was carrying on the business of building material. The deceased was also the owner of the half body truck No.DHL – 152. The challan book of the deceased was also placed on record with respect to the business of building material carried on by him at House No.75, Village & Post Office Haiderpur, Delhi – 110 042 which contains the counter folio of 100 challans from serial Nos.1001 to 1100 containing the orders relating to the building material received by the deceased. There is no documentary evidence to prove the income of the deceased except the oral statement of Pw – 1 saying that the deceased was earning Rs.25,000/- per month. No account books of the business have been placed on record. The challan book has been placed on record but it does not prove the income of the deceased. The pass book of the deceased has been placed on record but there is no evidence to prove whether the entries were relating to the income from the business. PW – 3 has proved the fixed deposit receipts in the name of appellant and other relatives but there is no evidence to

prove that the deceased had provided the source of money.

11. Considering the evidence on record that the deceased was carrying on the business of building material and was also the owner of half body truck, I do not find it appropriate for the learned Tribunal to equate the deceased with a labourer earning minimum wages. The income of the deceased from the business of building material would be at least Rs.2,000/- per month. The deceased also had a half body truck and the income from the said source would also be at least Rs.1,500/- per month. Considering the totality of the evidence led by the appellant, I am of the view that the income of the deceased can be safely assumed to be Rs.3,500/- per month.

12. With respect to the future prospects of the deceased, I agree with the principle applied by the learned Tribunal following the judgment of the Apex Court. Applying the same principle, the income of the deceased for the purposes of computation of compensation is taken as Rs.5,250/- per month $[(Rs.3,500 + Rs.7,000)/2]$.

13. The learned Tribunal has deducted 60% of the income of the deceased as personal expenses. The deduction of 60% of the income towards personal expenses of the deceased is unwarranted as the mother and widow sister with four minor daughters were dependent upon the deceased. Considering the recent judgment of the Apex

Court in the case of **Bangalore Metropolitan Transport**

Corporation vs. Sarojamma, (2008) 5 SCC 142, the personal expenses of the deceased are taken to be $\frac{1}{3}$ rd. The annual loss of dependency of the deceased on the above basis is computed as Rs.42,000/- ($\text{Rs.5,250} \times \frac{2}{3} \times 12$).

14. With respect to the multiplier, taking the age of the deceased at 25 years, the appellants claim the multiplier of 18 according to the Second Schedule. However, appellant No.1, mother of the deceased was aged 46 years at time of the accident and the appropriate multiplier is 13 according to the age of the mother of the deceased as per Second Schedule of the Motor Vehicles Act, 1988. The learned Tribunal has applied the multiplier of 12. Considering the recent pronouncements of the Hon'ble Apex Court where the multiplier lower than the Second Schedule has been applied, the multiplier of 12 is upheld.

15. The learned Tribunal has awarded Rs.10,000/- towards loss of love and affection and funeral expenses. The compensation under two heads has to be awarded separately. The compensation for loss of love and affection are non-pecuniary damages which are conventional in nature and has to be just, fair and reasonable.

16. In the present case, the compensation of Rs.10,000/- towards loss of love and affection to appellants is fair and reasonable. The compensation for funeral expenses is awarded as Rs.2,500/- considering that the accident took

place in the year 1993. The total compensation is computed at Rs.5,16,500/- (Rs.42,000 x 12 + Rs.10,000 + Rs.2,500).

17. The appeal is accordingly allowed. The compensation is enhanced from Rs.1,65,600/- to Rs.5,16,500/-. The learned Tribunal has awarded interest @ 9% per annum from the date of filing of this petition, i.e. 22nd December, 1993 up to realization minus period of 3 years. The interest @ 9 % per annum on the original award amount of Rs.1,65,600/- is not disturbed but on the enhanced amount, the rate of interest shall be 7.5% from the date of filing of the petition till realization minus period of three years.

18. Respondent No.3 is directed to deposit the enhanced award amount with the learned Tribunal within 30 days. Out of the enhanced amount, the share of appellant No.2 shall be Rs.70,000/-, which may be released to her. The balance amount along with interest is payable to appellant No.1 out of which 30% of the balance enhanced amount along with proportionate interest be released to appellant No.1 and 70% of the balance enhanced amount along with proportionate interest be kept in a fixed deposit for a period of 10 years on which the periodical interest be paid to appellant No.1.

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

20. No costs.

J.R. MIDHA, J

MARCH 25, 2009

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