

+ MAC.APP. 330/2004Date of Decision: 19th March, 2009

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MANWARI

..... Appellant

Through : Ms. Aruna Mehta, Adv.

versus

HARSH VARDHAN & ORS.

..... Respondents

Through : Mr. Kanwal Choudhary,
Adv. for R-3**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.1,00,000/- has been awarded to the appellant. The appellant seeks the enhancement of the award amount.

2. On 27th September, 1989, at about 5:30pm, a child named Manju, along with some other children, was walking on the kacha side of the road near House No.85, Pocket E-16, Sector-8, Rohini when a Fiat car bearing No.DIA-7191 driven rashly and negligently by respondent No.1 came on the kacha side of the road and hit an electricity box which was broken and thereafter the car hit Manju who sustained fatal injuries and died on the spot.

3. The deceased was aged six years at the time of the accident. She was survived by her parents who filed the claim petition before the learned Tribunal. The father of the deceased expired during the pendency of the petition before the learned Tribunal whereupon her brother was impleaded who has also since expired. The mother of the deceased is the sole surviving claimant and is appellant in this appeal.

4. The learned Tribunal has awarded lump-sum amount of Rs.1,00,000/- as compensation on account of the death of the deceased in the accident.

5. In the case of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257**, the Hon'ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-“

6. In the case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** relating to the death of a child aged 5 years, this Court relying on the judgment of the Apex Court in **Manju Devi's case (supra)** awarded compensation to

the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation

determinable comes to Rs.15,000 x 15 = Rs.2,25,000/-.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. The case of **Sobhagya Devi vs. Sukhvir Singh, II (2006) ACC 1997** related to the death of a 12-year old boy in which following the decision of the Apex Court in **Manju Devi's case (supra)**, the Rajasthan High Court also awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

8. In the case of **R.K. Malik vs. Kiran Pal, III (2006) ACC 261**, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation.

This Court awarded Rs.75,000/- towards non-pecuniary compensation.

9. This case is squarely covered by the aforesaid judgments of the Apex court followed by this Court. The compensation to the appellant is, therefore, enhanced from Rs.1,00,000/- to Rs.3,00,000/- (Rs.2,25,000/- as per the Second Schedule taking the notional income of the deceased to be Rs.15,000/- and applying the multiplier of 15 and Rs.75,000/- towards non-pecuniary damages for loss of love and affection, loss of company of the child and also pain and suffering as a result of the untimely death of her daughter).

10. With respect to the interest, the learned Tribunal has awarded interest @9% per annum from the date of filing of the petition till realization. The rate of interest from the date of filing of the petition till realization on the award of Rs.1,00,000/- is not being disturbed. However, on the enhanced amount, the rate of interest shall be 7.5% from the date of filing of the petition till realization in terms of the judgment of the Apex Court in the Case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC.**

11. The appeal is accordingly allowed. The compensation to the appellant is enhanced from Rs.1,00,000/- to Rs.3,00,000/- along with interest @9% per annum on Rs.1,00,000/- from the date of filing of the petition till

realization and @7.5% per annum on the remaining amount of Rs.2,00,000/- from the date of filing of the petition till realization.

12. Respondent No.3 is directed to deposit the enhanced award amount along with interest with the learned Tribunal within 30 days. 70% of the award amount shall remain in a fixed deposit with a nationalized bank or post office for a period of 10 years on which she shall be entitled to periodical interest and the remaining 30% of the award amount along with proportionate interest be released to her.

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

J.R. MIDHA, J

MARCH 19, 2009

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