

* HIGH COURT OF DELHI : NEW DELHI

MAC. App. No.647/2006

% Judgment reserved on: 24th November, 2009

Judgment delivered on: 30th November, 2009

1. Smt. Suman Akbar,
Wd/O. Late Mohd. Akbar @ Francis Peter.
R/o. House of Shri S.K. Chauhan,
Gali No.18B, Saadh Nagar Part II, Palam Colony,
Delhi Cantt, New Delhi-110 047.
 2. Mrs. Anita W/o. Shri Vinay Joseph,
D/o. Late Mohd. Akbar @ Francis Peter,
R/o. 15/303, Kariappa Marg,
Delhi Cantt-10.
 3. Ms. Alka wife of Shri Arack
D/o. Late Mohd. Akbar @ Francis Peter,
R/o. C/o. Smt. Suman Akbar,
Gali No.18B, Saadh Nagar Part II, Palam Colony,
Delhi Cantt, New Delhi-110 047.
 4. Mrs. Alveen S/o. Late Mohd. Akbar @ Francis Peter,
R/o. House of Shri S.K. Chauhan,
Gali No.18B, Saadh Nagar Part II, Palam Colony,
Delhi Cantt, New Delhi-110 047.
- Appellants

Through: Mr. Sanjay Mishra with Ms.
Hemangi Saikia, Advs.

Versus

1. Commissioner of Police, Police Head Quarters,
I.P. Estate, New Delhi.
2. Constable Nirander Singh No.596/SW,
Staff South West, Sadar Bazar,
Police Station, Delhi Cantt.
3. The Govt. of N.C.T. of Delhi
Through its Chief Secretary,
5, Shamnath Marg, Delhi-54.

(earlier the petition was filed against the
Delhi Administration)

...Respondents.

Through: Ms. Sonia Sharma with Mr. Aslam
Mirza, Advs.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

V.B.Gupta, J.

By way of this appeal appellants are seeking enhancement of
compensation amount to Rs.4 lacs.

2. Brief facts of this case are that on 12th February, 1989 deceased Mhd.
Akbar @ Francis Peter died in a road accident. The offending vehicle which is
Gypsy police Van, was being driven by respondent No.2.

3. Vide judgment dated 26th April, 2006, Motor Accident Claims Tribunal
(for short as 'Tribunal'), awarded compensation amounting to Rs.1,42,500/- along
with 12% interest from the date of filing of the petition till realization.

4. Aggrieved by the impugned judgment, claimants have filed the present
appeal seeking enhanced compensation.

5. It is contended by learned counsel for appellants that though Tribunal
considered the age of deceased at the time of accident to be 45 years but erred in
adopting the multiplier of 13 years applicable to the person aged 45 years but not

exceeding 50 years. Tribunal ought to have taken the multiplier of 15 as per second Schedule of the Motor Vehicle Act, 1988 (for short as 'Act') which is applicable when the person dies at the age of 40 years but not exceeding 45 years.

6. Second contention is that deceased was earning Rs.1800/- per month as per the salary certificate while Tribunal has taken monthly income as Rs.825 per month only.

7. Thirdly, Tribunal deducted $\frac{1}{3}^{\text{rd}}$ amount towards personal expenses of the deceased, ignoring the fact that deceased was having four legal heirs. Under these circumstances, $\frac{1}{4}^{\text{th}}$ amount should have been deducted towards personal expenses.

8. On the other hand, it is contended by learned counsel for respondents that no proof of age was submitted by the appellant with regard to the age of deceased. As per appellants own case, age of deceased was 45 years. So, under these circumstances, Tribunal correctly applied the multiplier of 13 years, as per second Schedule of the Act.

9. Coming to the income of the deceased, it is contended that monthly income of deceased has been assessed as Rs.825/- per month as per salary certificate. Tribunal has also taken into account the future advancement prospects and as such the Tribunal correctly calculated the compensation.

10. Lastly, it is contended that deduction of $\frac{1}{3}^{\text{rd}}$ is as per standard laid down by the Supreme Court and compensation awarded by the Tribunal is just and fair.

11. As per salary certificate Ex. PX, deceased was employed as a driver and was being paid salary of Rs.825/- per month. During the month of January 1989,

he was also paid Rs. 944/- as overtime allowance. As deceased was getting overtime allowance, Tribunal ought to have taken this factor into consideration. Since overtime allowance varies from month to month, it would be reasonable to presume that on average, deceased must have been getting about Rs.500/- to Rs.600/- per month as overtime allowance. Under these circumstances, monthly income of deceased is taken as $\text{Rs.}825 + \text{Rs.}575 = \text{Rs.}1400/-$.

12. Now, the question is to be considered is as to what multiplier should be adopted in this case. It is well-settled that future prospects of advancement in life and career should also be considered while adopting the proper multiplier.

13. In *Smt. Sarla Dixit and Anr. v. Balwant Yadv & Ors.*, AIR 1996 SC 1272, the Apex Court has observed;

“So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise.

The average gross future monthly income could be arrived at by adding the actual gross income at the time of death to the maximum which he would have otherwise got had he not died a premature death and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner.”

14. No proof with regard to date of birth has been filed but as deceased was aged 45 years old, Tribunal rightly adopted the multiplier as per second Schedule of the Act for the age 45 to 50 years, which comes to 13 years.

15. In plethora of cases, Apex Court and various High Courts have held that $\frac{1}{3}^{\text{rd}}$ amount of the income should be deducted towards self-expenses of the deceased. In *New India Assurance Co. Ltd. V. Charlie and another*, AIR 2005 Supreme Court 2157, the Court observed;

“What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, $\frac{1}{3}^{\text{rd}}$ deduction has to be made for personal expenditure.”

16. Thus, I do not find any force in the contention of learned counsel for the appellants that Tribunal wrongly deducted $\frac{1}{3}^{\text{rd}}$ of the income of the deceased towards personal expenses.

17. The average monthly earning of the deceased, after taking into consideration the future advancement prospects and applying the principles laid down in *Sarla Dixit (Supra)* would be $\text{Rs.}1400 + \text{Rs.}2800 = \text{Rs.}4200/2 = \text{Rs.}2100/-$. Out of this, amount of $\frac{1}{3}^{\text{rd}}$ is to be deducted on account of his personal expenses, the loss of his family dependency comes to $\text{Rs.}1400/-$. The yearly loss of dependency will be $\text{Rs.}1400 \times 12 = \text{Rs.}16,800/-$. As multiplier for the age group between 45 to 50 years as per second Schedule of the Act is 13, total loss of dependency of the claimants will be $\text{Rs.}16,800 \times 13 = \text{Rs. } 2,18,400/-$.

18. In addition, claimants have also been awarded $\text{Rs.}20,000/-$ on account of loss of love and affection, $\text{Rs.}20,000/-$ on account of loss of consortium and

Rs.5,000/- towards funeral expenses. Thus, claimants in all are entitled to compensation amounting to Rs.2,18,400 + Rs.45,000 = Rs.2,63,400/-.

19. As per impugned award, claimants have been awarded total compensation amounting to Rs.1,42,500/- (less interim award) along with 12% interest from the date of accident.

20. Now, the appellants shall be entitled to 6% interest at the enhanced amount of compensation only (keeping in view the Bank Rate prevailing at present) from the date of filing of the petition till realization.

21. Present appeal thus stands allowed accordingly.

22. Parties shall bear their own costs.

23. Trial court record be sent back.

30th November, 2009
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V.B.GUPTA, J.