

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4136/2008**

ASHOK KUMAR & ANR. Petitioner
Through Mr. Praveen Kumar Pandey,
Advocate.

versus

MATBAR SINGH & ORS. Respondent
Through Mr. Pradeep Gaur, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
% **06.10.2009**

1. The petitioners are the parents of late Mr. Ashish Kumar, who expired in a road accident on 1st September, 2005. The petitioners thereafter filed a claim petition under the Motor Vehicle Act, 1988, against Delhi Transport Corporation, the bus driver Mr. Matbar Singh and the National Insurance Company Ltd., the insurance company. They claimed compensation of Rs. 12,00,000/-.
2. By order dated 13th September, 2007, an interim compensation of Rs.50,000/- was granted to the petitioners under Section 140 of the Motor Vehicle Act, 1988. However, the payment was not made.
3. Subsequently, the matter was referred for conciliation. It appears

that the Advocate appearing for the petitioners gave consent to compromise the claim for Rs. 75,000/- including Rs. 50,000/-, which was payable to the petitioners in terms of the order dated 13th September, 2007. After recording statement of parties, the Motor Accidents Claim Tribunal vide order dated 4th December, 2007, disposed of the claim petition as settled on payment of Rs. 75,000/- by the insurance company to the petitioners. It was directed that in case of non-payment within 30 days, interest @ 12% per annum will be payable after expiry of 30 days, interest @ 12% per annum will be payable after expiry of 30 days till realization. Certain other directions were also issued by the learned Tribunal for deposit of the compensation amount in fixed deposits.

4. On 4th December, 2007, itself, the petitioners filed an application before the learned Tribunal stating that the compromise on payment of compensation of Rs.75,000/- was not acceptable to them. They further stated that they were under the impression that the amount was being paid towards interim compensation and they had misunderstood the object and purpose of the compromise. The trial court record reveals that the application was listed before the Tribunal on 4th December, 2007 and was directed to be taken up for further hearing after notice on 7th December, 2007. The said application was subsequently dismissed vide order dated

23rd April, 2008, holding, inter alia, that the petition was compromised and cannot be re-opened.

5. As noticed above, the petitioners have lost their son. The factum that the petitioners' son has expired is not disputed. It is also not disputed that the petitioners in terms of the Section 140 of the Motor Vehicle Act, 1988 were/are entitled to interim compensation of Rs. 50,000/-. It is difficult to conceive and accept that the petitioners would have accepted a settlement on payment of Rs. 75,000/- as compensation payable on death of their son, who was aged about 18 years as per the petitioners. The quantum of compensation is extremely low and cannot be justified. It is apparent that the petitioners had misunderstood or did not properly understand the effect of the so called compromise. As noticed above, on 4th December, 2007 itself, the petitioners had filed an application for cancellation of compromise. Till that date, they had not received payment of the compensation amount of Rs. 75000/-.

6. In the wake of glaring facts, it becomes inevitable for the Courts to unveil what is posited in front of it be facts, to look in to conduct of the parties, their state of mind and understand their acts. The petitioners are parents of a deceased son, who was a victim of a motor accident and have claimed compensation. In their distressed state of mind, they may not have

understood the true nature of their acts and the effects thereof. An inadvertent and apparent mistake in the form of an improper understanding or misunderstanding of the settlement has occurred. It deserves correction and the petitioners should not be further punished after having lost their son. Especially, when they were diligent enough to take a note of what had occurred and had taken steps to remedy the mistake immediately. The quantum of compensation is ridiculously low and unjustifiable and a decision upholding it would only be incongruous and perpetuate injustice. The settlement per se is vitiated and bad.

7. Keeping in view the aforesaid facts, the order dated 4th December, 2007 is set aside and quashed and the matter is remanded back to the learned Tribunal for fresh adjudication. The compromise will be treated as cancelled.

6. The writ petition stands disposed of. The parties will appear before the learned Tribunal on 13th October, 2009. This order is being passed keeping in view the peculiar facts and circumstances of the case.

SANJIV KHANNA, J.

OCTOBER 06, 2009

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