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IN THE HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.413 of 2001 & C.M. Appl. Nos.741 of 2001, 4574 of 2010

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10.05.2010

SUSHMA RANI KHURANA & ORS. Appellants
Through: Mr. H.S. Dhir, Advocate.

Versus

ATTAR SINGH & ORS. Respondents
Through: Mr. Salil Paul, Advocate for R-5.

Reserved on: 29th April, 2010
Pronounced on: 10th May, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. By this appeal, the appellants have sought enhancement in compensation awarded to them in case of death of the deceased. The learned Tribunal vide judgment dated 28th April, 2001 has awarded compensation of Rs.1,66,600/- to the legal heirs considering the income of the deceased equivalent to minimum wages prevalent for skilled worker at relevant time and also taking into account increase in the rates of minimum wages over time. The Tribunal deducted 1/3rd of the monthly income towards personal expenses of the deceased, applied multiplier of 12 and loss of dependency was calculated. The order is assailed on the ground that the Tribunal wrongly applied multiplier of 12. The age of deceased was 35 and the court should have applied multiplier of 17. It is also submitted that the court should have taken the actual income of the deceased into consideration and should have calculated compensation on the basis of actual income taking into account

future prospects as well.

2. The deceased in this case was working as a head cook in a restaurant. The evidence regarding his designation was adduced before the trial court by the legal heirs and employer of deceased. Legal heirs and employer stated that the deceased was earning around Rs.72/- per day at that time. Learned Tribunal observed that since no salary certificate of the deceased was proved, the income of deceased has to be taken as minimum wages payable to a skilled worker in the year 1989. Wages of skilled worker at that time were Rs.1,000/- per month and the wages of skilled worker in the year 2000 were Rs.2772/-. Thus, the average of the two figures was taken as Rs.1886/- and this was considered as the income of the deceased for the purpose of computation of compensation. The multiplier of 12 was applied considering the age of deceased as 35 years.

3. The Supreme Court in *Sarla Varma & Ors. vs. Delhi Transport Corporation & Anr.*; (2009) 6 SCC 121 noted down the different multipliers being used by different courts/Tribunals and laid down a standard/uniform mode of applying multiplier. I, therefore, consider that in view of judgment in *Sarla Varma's* case (supra), the issues of multiplier and deduction for personal expenses stand at rest. As per *Sarla Varma's* case (supra), the appropriate multiplier for age between 31 years and 35 years should be 16. Looking at number of dependents, the deduction for personal expenses was rightly made by the Tribunal at 1/3rd of the income. However, I consider that the Tribunal did not take into account the income of deceased objectively. The deceased was employed not as a cook but as a head cook. A cook is a skilled workman and a person who is head cook would naturally be supervising all other cooks and his wages will be more than the skilled workman. The evidence of the deceased being a head cook was not refuted or

contradicted. I, therefore, consider that the Tribunal should have considered Rs.70/- per day as the income of the deceased and considering 25 working days in a month, the income of deceased would have been Rs.1,750/- per month. Taking into account the inflation and future prospects, 50 per cent of addition in this income should have been considered as reasonable. Thus, the monthly income for the purpose of computation would be Rs.2,625/-. I, therefore, consider that the fair and just compensation to be awarded to the deceased would have been Rs.3,36,000/- $[(Rs.2625 - Rs.875) \times 12 \times 16]$. The claimants were also entitled to funeral expenses of Rs.3,000/- and compensation for loss of consortium of Rs.5,000/-.

4. I, therefore, allow this appeal and modify the award and hold that the appellants would be liable to compensation of Rs.3,44,000/-. However, I consider that the interest @ 9 per cent per annum as awarded by the Tribunal was just and proper. The insurance company is directed to deposit the enhanced compensation within 30 days from today.

5. The appeal stands allowed to the above extent.

SHIV NARAYAN DHINGRA J.

MAY 10, 2010
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