

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

+ MAC.APP.No.255/2007

Date of Decision: 13th May, 2010

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POOJA DEVI & ORS. Appellants
Through : Mr. Sandeep Kumar, Adv.

versus

JAGVIDER SINGH Respondent
Through : None.

**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 Claims Tribunal whereby their claim petition has been dismissed.

2. The accident dated 30th August, 2005 resulted in the death of Jai Nath Jha. The deceased was survived by his widow, two minor sons and father who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 29 years at the time of the accident and was working as a rickshaw puller.

4. Appellant No.1 appeared in the witness box and deposed that the deceased met with an accident with scooter bearing No.DL4S AD 7717 on 30th August, 2005.

PW-1 further deposed that the deceased was aged 28 years

at the time of the accident and has left behind the following legal heirs:-

- (i) Appellant No.1 (widow), aged 24 years.
- (ii) Kaushal Kumar (minor son), aged 5 years.
- (iii) Krishan Kumar (minor son), aged one year.
- (iv) Shaligram Jha (father).

PW-1 further deposed that the deceased was the rickshaw puller earning Rs.3,300/- per month.

5. The Claims Tribunal dismissed the appeal on the ground that there is no evidence to prove that the person who died in the accident was Jai Nath Jha. The Claims Tribunal observed that it was recorded in the FIR that unknown person was injured in the accident on 30th August, 2005. The unknown injured was admitted in Din Dayal Upadhyay Hospital and he died on 31st August, 2005 and till that time, his identity was unknown. The Claims Tribunal further observed that appellant No.1 has not been able to prove that the deceased was her husband and was the rickshaw puller by profession.

6. The Claims Tribunal did not conduct any inquiry to ascertain whether the victim of the road accident dated 30th August, 2005 was Jai Nath Jha. It has time and again been held by this Court that the Claims Tribunal should conduct a summary inquiry under Section 168 and 169 of the Motor Vehicles Act. The procedure for conducting such an inquiry has been laid down by this Court in the case of **Mayur Arora Vs Amit @ Pange, MAC.APP.609/2009** decided on 12th

April, 2010.

7. This Court, in exercise of the appellate jurisdiction, is empowered to conduct an inquiry which the Claims Tribunal ought to have undertaken. This Court, therefore, issued notice to the Investigating Officer of FIR No.425/2005 along with the record of the FIR in pursuance to which the Investigating Officer of this case appeared before this Court on 11th May, 2010 and was examined as a Court witness.

8. Mr. Kali Charan, ASI, the Investigating Officer of this case has deposed as under:-

“I was appointed as Investigating Officer in respect of FIR bearing No.425/2005, PS Kirti Nagar upon receipt of the intimation of the accident from the PCR. On 30th August, 2005, I reached the spot of the accident at about 11:10pm where I found the offending scooter bearing No.DL-4SAD-7717 and the rickshaw in accidental condition. The accused as well as the victim were not present on the site. The persons available on the site told me that the victim has been removed to Deen Dayal Upadhyay Hospital whereupon I left a Constable on the spot and went to Deen Dayal Upadhyay Hospital. The victim was lying in emergency ward whereupon I moved an application before the Doctor for permission to record the statement of the victim. The Doctor on duty stated that the victim was unfit for statement. I again came back at the site of the accident and seized both the vehicles by preparing seizure memo. I came back to the Police Station and on my report, the FIR was lodged. I again visited the hospital in the morning at about 4:00am. The victim was still unconscious. I again went back to the accident spot and inquired about the victim from the owner of the rickshaw who told me the name and address of the victim. I then intimated the relatives of the victim

about the accident.

At 7:00am next day, I got the intimation that the victim of the accident had died. I again went to the hospital where I met the brother-in-law of the deceased named Lal Jha. The body of the deceased victim was sent for postmortem. The body of the victim was identified by his cousin brother and brother-in-law.

I say from the investigation of this case that the deceased, Jai Nath Jha met with an accident with scooter No.DL-4SAD-7717 on 30th August, 2005 at Rama Road, Furniture Market, Kirti Nagar which resulted in his death in Deen Dayal Upadhyay Hospital, Hari Nagar, Ghanta Ghar, Delhi. The deceased was taken to the hospital by PCR Van which is mentioned at point 'A' on the MLC. The copy of the MLC in the Lower Court Record is marked as Ex.P-1. The copy of the postmortem report in the LCR is marked as Ex.P-2. The copy of the death reports in the LCR are Ex.P-3 and Ex.P-4. The copy of the FIR in the LCR is marked as Ex.P-5. After the investigation, I filed the chargesheet against the accused under Sections 279/304A IPC. The copy of the chargesheet is produced by the witness at the time of recording of the evidence which is marked as Ex.P-6.

The criminal case is still pending against driver of the offending vehicle before the concerned Magistrate and the case is listed for hearing on 23rd August, 2010.

From the investigation conducted by me, I say that the accident dated 30th August, 2005 was caused by rash and negligent driving of scooter No.DL-4SAD-7717 which resulted in the death of Jai Nath Jha."

9. From the statement of the Investigating Officer, it has been proved that the accident dated 30th August, 2005 occurred due to the rash and negligent driving of the scooter

bearing No.DL4S AD 7717 which resulted in the death of Jai Nath Jha. The deceased was taken to the hospital by PCR Van which is mentioned at point 'A' of the MLC, Ex.P-1. The body of the deceased was identified by his cousin brother and brother-in-law and the statement has been recorded by the police and is on the police record. The police has filed the charge-sheet against the respondents which has been marked as Ex.P-6. The Court witness has deposed that the accident dated 30th August, 2005 was caused by the rash and negligent driving of the scooter bearing No.DL4S AD 7717 resulting in the death of Jai Nath Jha. The finding of the Claims Tribunal that the death of Jai Nath Jha due to the accident dated 30th August, 2005 has not been proved, is set aside and it is held that the accident dated 30th August, 2005 was caused due to the rash and negligent driving of scooter bearing No.DL4S AD 7717 and it resulted in the death of Jai Nath Jha.

10. The deceased was aged 28 years at the time of the accident and has left behind four legal representatives, namely, widow, two minor sons and father. The appropriate multiplier at the age of 28 years according to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 17. The income of the deceased has not been proved by the sufficient evidence and, therefore, the minimum wages of unskilled worker at the time of accident are taken into

consideration to compute the compensation. The minimum wages for unskilled worker on the date of the accident were Rs.3,165/- per month.

11. Taking the income of the deceased to be Rs.3,165/- per month, deducting $\frac{1}{4}^{\text{th}}$ towards his personal expenses and applying the multiplier of 17, the loss of dependency is computed to be Rs.4,84,245/- ($\text{Rs.3,165} \times 12 \times \frac{3}{4} \times 17$). Rs.10,000/- is awarded towards loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate and further sum of Rs.5,000/- towards funeral expenses. The total compensation awarded is Rs.5,14,245/- ($\text{Rs.4,84,245} + \text{Rs.10,000} + \text{Rs.10,000} + \text{Rs.5,000} + \text{Rs.5,000}$).

12. The appeal is allowed and the award for Rs.5,14,245/- along with interest @ 7.5% per annum from the date of filing of the petition till realization is passed in favour of the appellants and against the respondent.

13. The respondent is directed to deposit the entire award amount along with up to date interest with UCO Bank, Delhi High Court A/c Pooja Devi through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the same to appellant No.1 by transferring the same to her Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:-

- (i) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of one year.
- (ii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of two years.
- (iii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of three years.
- (iv) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of four years.
- (v) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of five years.
- (vi) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of six years.
- (vii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of seven years.
- (viii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.2 till he attains the age of majority.
- (ix) Fixed deposit in respect of 10% of the award

amount in the name of appellant No.3 till he attains the age of majority.

14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.

15. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

16. No cheque book be issued to appellant No.1 without the permission of this Court.

17. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellant No.1.

21. The appellant No.1 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team,

UCO Bank Zonal, Parliament Street, New Delhi.

22. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

23. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

MAY 13, 2010
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J.R. MIDHA, J