

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4242/2006

Reserved on: January 21, 2010

Decision on : March 17, 2010

SWARN SINGH Petitioner
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Mr. Amiet Andlay, Advocate for R-2.
Ms. Geetanjali Mohan, Advocate for Railways.

W.P.(C) 4243/2006

RAMESH KUMAR Petitioner
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Ms. Geetanjali Mohan, Advocate for Railways.
Ms. Ruchi Sindhwani with Ms. Bandana
Shukla, Advocate for R-2

W.P.(C) 4253/2006

PUSHPA DEVI & ORS Petitioners
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Ms. Geetanjali Mohan, Advocate for Railways.
Ms. Payal Srivastava, Advocate for R-2

W.P.(C) 4300/2006

SUNITA DEVI & ORS. Petitioners
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Ms. Geetanjali Mohan, Advocate for Railways.
Ms. Ruchi Sindhwani with Ms. Bandana
Shukla, Advocate for R-2

W.P.(C) 4494/2006

RAMESH Petitioner
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Ms. Geetanjali Mohan, Advocate for Railways.
Ms. Payal Srivastava, Advocate for R-2.

And

W.P.(C) 4506/2006

SANTOSH KUMARI Petitioner
Through Ms. Aruna Mehta, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ajay Arora with
Mr. Kapil Dutta, Advocate for MCD.
Ms. Geetanjali Mohan, Advocate for Railways.
Ms. Ruchi Sindhwani with Ms. Bandana
Shukla, Advocate for R-2

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed
to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the digest? Yes

JUDGMENT

1. These are six petitions arising from a common set of facts and are
accordingly disposed of by this common judgment.

2. Six persons, namely, Swarn Singh, aged 23 years, s/o Munshi Ram; Ramesh Kumar, aged 40 years, s/o Prakash Chand; Ramesh, aged 40 years, s/o Ram Singh; Raj Singh, aged 35 years, s/o Puran Singh; Raj Singh, aged 38 years, s/o Gyan Chand and Sardar Singh, aged 38 years s/o Tirath Singh, were working as *Paledars* (Loaders) with different transport companies which were having their godowns behind the wall near property No. 1716/19 Pili Kothi which was believed to belong to the Railways. While these persons were taking a tea break at around 5.18 a.m. on 1st October 2004, the dilapidated wall of the property in question collapsed on these six persons. Three of them, Raj Singh, s/o Puran Singh, Raj Singh s/o Gyan Chand and Sardar Singh s/o Tirath Singh succumbed to their injuries. The remaining three, Swarn Singh s/o Munshi Ram, Ramesh Kumar s/o Prakash Chand and Ramesh s/o Ram Singh suffered grievous injuries.

3. An FIR No. 335 of 2004 dated 1st October 2004 registered at Police Station, Lahori Gate, arising out of the said incident states that information was received through Police Control Room (PCR) Constable Vinod on 1st October 2004 to the effect that at about 5.18 am “one rear wall near the bank in front of property No.1716/19 Pili Kothi had collapsed and many persons had buried under the malba”. On getting this information, SI Naresh Kaushik working at PS Lahori Gate reached the site where other policemen also arrived. It was noticed that the wall was about 15 ft. in height and about 50-60 ft. in length. The incident took place on the collapsing of the wall which was very old. It

further stated that around 10 persons were buried under the collapsed wall. The injured persons were rushed to the hospital.

4. The present petitions are by the injured persons and the legal representatives of the deceased seeking compensation.

5. While the above facts are not in dispute, there appears to be a dispute between the Railways on the one hand and the Municipal Corporation of Delhi (MCD) on the other. Railways are arraigned as Respondent No.1 and MCD as Respondent No.3. Each is trying to palm off the liability for payment of compensation to the other. According to the Railways, the property in question measuring about 811 sq. yds. is situated in front of the Delhi Main Railway Hospital and by the side of the MCD TB Clinic. It was leased out to the Railways on a perpetual lease since 1927. The plot had been taken on lease from MCD in 1920 by one Shri Madan Gopal Khatri. In 1927 Madan Gopal Khatri sold his right in the property to Lal Banke Rai who in turn assigned his rights to the Secretary of State for India (North Western Railway). The Railways have been using the building as a clearing account office since 1952. The building had been burnt down during the “Quit India Movement”. Since then the plot had been lying vacant.

6. It is then stated that on 15th June 1999, the Additional Commissioner (R), MCD cancelled the said lease in respect of the plot and directed the Railways to hand over the possession forthwith. It is alleged that on 23rd

July 1999 the possession of the property was forcibly taken by the MCD which had put a lock on the entry gate and had also fixed a display board showing its possession.

7. Protesting against the above action, the Railways filed a Civil Writ Petition No.4055 of 1999 in this Court. This Court appointed Justice Jaspal Singh, a retired Judge of this Court as Arbitrator and referred the following question to him for adjudication:

“Whether the MCD is justified in revoking the perpetual lease deed dated 6.8.1920 in respect of property bearing Plots No. 2 to 5 adjacent to Pilli Kothi, Queens Road, Delhi on account of alleged violation of the terms and conditions of the lease deed dated 6th August, 1920 and taking possession thereof, if so, to what effect?”

8. Mr. Justice Jaspal Singh gave his Award on 20th May 2003 holding that though the MCD was not justified in taking forcible and illegal possession of the disputed plot, the MCD was justified in revoking the lease on account of the violation of its terms by the Railways. It is stated that the Railways thereafter filed OMP No.5 of 2003 in this Court challenging the Award. According to the Railways, it was apparent from the Award that on the date of the incident, i.e., 1st October 2004, more than a year and half after the Award was made, the possession of the plot was with the MCD. It is stated that the reply filed by the MCD in the OMP also bears this out.

9. The MCD, on the other hand, refers to what the Railways have stated

in OMP No. 5 of 2003 in this Court. It is stated that the Railways “cannot be allowed to blow hot and cold in the same breath and having admitted the possession of the land in dispute, it cannot be allowed to take a diametrically opposite stand.”

10. A reference is also made to the order dated 6th October 1999 passed in this Court in WP(C) No. 4055 of 1999 whereby the MCD was asked to remove its display boards. The request of the Railways for posting the Railway Protection Force in the property was accepted. Status quo in respect of the premises was directed to be maintained.

11. According to the MCD, in relation to the FIR lodged arising out of the incident, the MCD had been asked by the Magistrate to file a reply regarding the possession and ownership of the site where the incident took place. It is stated that the case is pending for framing of charges. In short, the MCD denies any liability for payment of compensation to the legal heirs of the deceased and to the injured.

12. From the replies filed by the Respondents in the petition, it appears that none of them is disputing the fact that the incident took place in the manner described in the FIR. They are not denying the identities of the persons who were killed and of the persons who were injured as a result of the collapse of the wall. That the wall was in a dilapidated condition, is also not denied. Interestingly, it is also not denied that the Petitioners

are liable to be compensated. The only dispute is about who should compensate them, the answer to which really hinges on who can be said to be in possession of the property on the date of the incident.

13. In relation to the said question, the facts as well as the dispute between the Railways and the MCD have been encapsulated in the order dated 6th August 1999 of this Court in Writ Petition (Civil) No. 4055 of 1999. The said order reads as under:-

“Rule.

Heard.

Four plots bearing Nos. 2 to 5 situated at Queens Road adjacent to Pilli Kothi were sold out by public auction by the Municipal Committee of Delhi on 9th July, 1919 to Shri Madan Gopal. A perpetual lease was executed on 6th August, 1920 between Sh. Madan Gopal and the Municipal Committee. The rights in the aforesaid property/plots along with the building thereon was sold by Sh. Madan Gopal to one Lala Bankey Rai on 18th July, 1927. On that very day Lala Bankey Rai assigned all his rights, title and interest in the said plots and the building crested thereon to the Secretary of the State for India. Thereafter the building was used to accommodate the Railway Clearing Accounts Office. The building was gutted in 1942. Difference having arisen between the Municipal Committee and the Government General of Council as owner of the North Western Railway, the same were referred to arbitration. The award was made on 11th November, 1944 holding that MCD was not entitled to repossession of the building on account of its use as office between 1927 and 1942. Notice was issued by the Municipal Corporation of Delhi on 8th April, 1999 for cancellation of the lease deed. Reply to the said notice was filed by the petitioner on the 28th May, 1999. An order was passed by

the respondent/MCD dated 11/15th June, 1999 informing the petitioner that the lease was cancelled and vacant possession be handed over forthwith to the respondents. It is in these circumstances that the present petition came to be filed.

The deed of perpetual lease dated 6th August, 1920 provides for reference of disputes and differences between the lessor and the lessee to arbitration.

Counsel for the parties are agreed that the disputes and differences as set out in the scope of reference hereafter be referred to arbitration in terms of clause 11 of the lease deed executed on 6th August, 1920 between Municipal Corporation of Delhi and the predecessor-in-title of the petitioner. It is also agreed between the parties that this court shall nominate the Arbitrator and the parties shall abide by the order of this court. The scope of reference, as agreed to by the counsel for the parties, is as under:

“Whether the MCD is justified in revoking the perpetual lease deed dated 6.8.1920 in respect of property bearing plots No. 2 to 5 adjacent to Pilli Kothi, Queens Road, Delhi on account of alleged violation of the terms and conditions of the lease deed dated 6th August, 1920 and taking possession thereof, if so, to what effect?”

In the circumstances I appoint Mr. Justice Jaspal Singh, a retired Judge of this Court as Arbitrator to decide the aforesaid disputes between the parties. The Arbitrator shall be at liberty to fix his fee in the matter.

Possession of the property in dispute was taken by the MCD on 23rd July, 1999 by the MCD during the pendency of the present proceedings. There is a boundary wall, constructed around the property and the MCD has put its lock on the entry gate and has

also put up display boards showing its possession. The watch and ward staff of the MCD is stated to be present in the said property. However, keeping in view the nature of the dispute between the parties and the circumstances in which the possession was taken, the request of the counsel for the petitioner for posting of the Railway Protection Force in the said property is accepted. The petitioner shall be at liberty to post the Railway Protection Force in the said premises till the disposal of the arbitration proceedings and the respondents shall not object to their presence. This is without prejudice to the rights of the parties and the outcome of the arbitration proceedings.

In view of the aforesaid arrangement it would be proper if the MCD shall remove their display board till the matter is decided by the arbitrator.

Subject to the aforesaid status quo in respect of the premises be maintained as on today. Neither party shall create any third party rights in the property.

With these observations the writ petition is disposed of.”

14. Consequent to the above reference, Justice Jaspal Singh gave his Award on 20th May 2003. He notes in his Award that the following events took place after the notice dated 15th June 1999 issued by the Additional Commissioner (R), MCD:

“It appears that pursuant to the above said “Order” the officials of the Municipal Corporation of Delhi went to the spot to take possession but as the Railway officials refused to hand over possession, another opportunity “for seven days” was granted for delivery of possession “peacefully”. Since this too had no

effect, the Municipal Corporation of Delhi took possession of the land in question on July 23, 1999. It appears from the order of the High Court of August 6, 1999 that there is a boundary wall constructed around the property and consequent upon taking possession, the Municipal Corporation had not only put lock on the entry gate but had also posted its watch and ward staff in it. The High Court, it further appears, has allowed the Railway Department to post its Railway Protection Force “in the said premises”. Admittedly, now there is no lock on the gate of the boundary wall, the sign board put up by the Municipal Corporation showing its possession is also not there and we find within the property not only the watch and ward of the Municipal Corporation of Delhi but also the Railway Protection Force.”

15. The Award then proceeds to hold that the Railways have been in breach of the terms of the lease. It further records that the officers of the MCD took law into their own hands in dispossessing the Railways “by the display of force” and therefore exhibited “a callous disregard of the normal requirements of the rule of law”. The question posed for the adjudication of the Arbitrator was answered as under:

“The question posed in the order of the High Court dated August 16, 1999 is thus answered as under:

- (i) The Municipal Corporation of Delhi is justified in revoking the lease on account of the violation of its terms as noted above, and
- (ii) In the circumstances of the case for the reasons delineated above, the Municipal Corporation was not justified in taking possession in the manner as noted above.”

16. It is apparent to this Court on a reading of the order dated 6th August

1999 passed by this Court in Writ Petition (Civil) No. 4055 of 1999 and the Award of the learned Arbitrator that as of the date of the Award, i.e., 20th May 2003 the board of the MCD on the property had been removed. The Railway Protection Force was guarding the premises. Interestingly, the Award records that there is no lock on the gate of the boundary wall but “within the property **not only the watch and ward of the Municipal Corporation of Delhi but also the Railway Protection Force**” was found.

17. In the OMP No. 5 of 2003 filed in this Court, the Railways have stated in para 13 as under:-

“That it is submitted that the Respondents and its officials without any lawful authority and in utter violation of its obligations forcibly entered the premises and took the possession. They also installed their locks at the outer gate of the premises and also displayed their board. This action of the Respondents was totally unwarranted, illegal and contrary to the terms of lease deed and against the ratio of several judgments of the Apex Court on this point. The said locks had to be directed by the Hon’ble High Court of Delhi to be removed including the display boards put up by the Respondents and as on date, the Petitioner is guarding the property.”

18. In reply to the paras 12 and 13, the MCD has stated as under:

“12. Para No.12 of the petition is wrong and denied. It is submitted that the possession of the land was taken as per law.

13. Para No. 13 of the petition is wrong and denied. It is emphatically denied that the answering respondent without any lawful authority and in utter violation of its obligations forcibly entered into the premises. It is submitted that it is the petitioner

who was using the plot in utter violation of the terms and conditions. It is further submitted that a violator cannot be allowed take shelter of law.”

19. The above stands of the two Respondents, i.e., the Railways on the one hand and the MCD on the other, do not bring out a clear picture as to which of them was in possession of the property in question on the date of the incident. However, if one went by the Award of the arbitrator, then both the Railway Protection Force as well as the officials of the MCD were found guarding the property. There was no lock on the premises. Pursuant to the orders of this Court passed on 6th August 1999, the parties were directed to maintain status quo.

20. It appears to this Court that till the time the incident happened, each party was only too eager to claim to be in possession of the property in question. However, after the incident, when the question of payment of compensation for the deaths and injuries has arisen, each party wants to argue to the contrary, in order to escape liability. This change of stand is, in the considered view of this Court, most unfortunate.

21. In order to ensure that the poor persons who have lost earning members of their family, this Court proceeds on the observation made in the Award that as on the date of the Award i.e., 20th May 2003, the watch and ward of both the MCD and the Railway Protection Force were found at the property, unless there is a finding in the proceedings challenging the award, that the above position did not continue on the date of the incident, i.e., 1st October 2004, and that only one of the

parties was in possession on that date, the presumption would be that as on 1st October 2004 both were in possession of the property in question. Consequently, this Court directs that both the Railways and the MCD should share the liability in equal halves. It will, however, be open to either party to be reimbursed by the other depending on whether the question as to who was in possession on that date comes to be decided in OMP No. 5 of 2003.

22. The Supreme Court and this Court have awarded compensation for deaths or injuries on account of the failure of the State agencies to exercise reasonable care in maintaining essential services in several cases. For example, see *Rudul Sah v. State of Bihar* (1983) 4 SCC 141, *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746, *Shakuntala v. Govt. of NCT of Delhi* 2009 (162) DLT 264, *Smt. Kamla Devi v. Govt. of NCT of Delhi* 114 (2004) DLT 57, *Rishalo Devi v. Secretary (NCT of Delhi) & Ors.* 167 (2010) DLT 211, *Smt. Shyama Devi v. NCT & Ors* 78 (1999) DLT 827, *Darshan v. Union of India* 79 (1999) DLT 432, *Ashwani Gupta v. Govt. of India* 117 (2005) DLT 112, *Ashok Sharma v. Union of India* ILR (2008) 1 Delhi 96, *Master Dheeru v. Govt. of NCT of Delhi* 160 (2009) DLT 759 and *Ram Kishore v. MCD* 2007 VII AD (Delhi) 441.

23. The question that arises in the present case relates to the quantum of compensation to which each of the Petitioners is entitled. There are sufficient precedents to substantiate the claim of the Petitioners. The calculations as regards the compensation payable to these Petitioners set

out as under are as per the income of the petitioners on the date they suffered injuries.

Calculation of compensation payable in case of death

24. This Court, in ***Kamla Devi v. Govt. of NCT of Delhi*** [followed in ***Ram Kishore v. MCD*** and ***Ashok Sharma v. Union of India 2009 ACJ 1063***] has propounded that standard compensation for non-pecuniary losses and compensation for pecuniary loss of dependency be calculated separately and added up to arrive at the total amount of compensation payable. The age, income and the number of dependents of the deceased are considered as relevant indicators. The same method is being adopted in these cases and is explained hereunder.

25. As it is one common accident which caused the deaths, the standard compensation for non-pecuniary losses would also be the same. The Standard Compensation in 1989 is taken to be Rs. 50,000/- as propounded in ***Lata Wadhwa v. State of Bihar (2001) 8 SCC 197***. The said sum is required to be adjusted for October 2004, when the incident took place, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India. With the base year 1982(=100), the average CPI (IW) for the year 1989 was 171 and the average CPI (IW) for the year 2004 was 514. Hence, the inflation-corrected value works out to Rs. 1,50,000/- [50,000 x 514/171]. The Standard Compensation, for each of the deceased thus, is Rs. 1,50,000/-.

Calculation of compensation for pecuniary loss of dependency in individual cases

W.P.(C) 4253/2006 (Pushpa Devi & Ors. v. Union of India & Ors.)

26.1 In W.P. (C) 4253/2006, a compensation of Rs. 15 lakh has been claimed by the Petitioners, viz., Pushpa Devi, the widow of the deceased, Pritam Singh and Munna, minor sons; Neha Devi, minor daughter; Puran Singh, the father; and Shani Devi, the mother. The deceased, Raj Singh, was 35 years old at the time of the accident and earned Rs. 4,500/- per month.

26.2 To calculate the compensation for pecuniary loss of dependency, the multiplier method (multiplier value given in the Second Schedule of the Motor Vehicles Act, 1988 $\times$ Yearly income of the deceased less the amount spent on himself or herself) is used. This is consistent with the procedure adopted in ***G.M., Kerala SRTC v. Susamma Thomas AIR 1994 SC 1631, Mrs. Sudha Rasheed v. Union of India 1995 (1) SCALE 77, U.P. State Road Transport Corporation v. Trilok Chandra (1996) 4 SCC 362, Smt. Kamla Devi v. Govt. of NCT of Delhi, Ram Kishore v. MCD and Ashok Sharma v. Union of India.***

26.3 The method of calculating the amount spent on oneself as explained in ***Smt. Kamla Devi v. Govt. of NCT of Delhi 114 (2004) DLT 57*** reads as under:

“This (the multiplicand) is calculated by dividing the family into units - 2 for each adult member and 1 for

each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member.”

26.4 In the present case, the deceased, Raj Singh, had old parents, a widow and three minor children. The value of each unit thus works out to 4909 (54,000/11). Therefore, the multiplicand would be 44,182 (Gross annual income - the value of two units = 54,000-9818). Multiplying this by 16 as per the Second Schedule to the MVA 1988, a figure of Rs. 7,06,912/- is obtained, which when rounded off to Rs. 7,07,000/-, constitutes the pecuniary compensation payable by the Respondents.

26.5 Consequently, adding the standard compensation for non-pecuniary losses and the compensation for pecuniary loss of dependency, the total compensation payable by the respondents, Railways and the MCD, in equal halves to the petitioners, Pushpa Devi, Pritam Singh, Munna, Neha Devi, Puran Singh, and Shani Devi, is computed at Rs. 8,57,000/-, the break up of which is as under:

Standard compensation for non-pecuniary losses	Rs. 1,50,000/-
Compensation for pecuniary loss of dependency	Rs. 7,07,000/-
Total compensation Payable	Rs. 8,57,000/-

W.P. (C) 4300/2006 (Sunita Devi & Ors. v. Union of India & Ors.)

27.1 In W.P. (C) 4300/2006, a compensation of Rs. 15 lakh has been claimed by the Petitioners i.e. Sunita Devi, the widow of the deceased; Ajay Kumar and Arun Singh, sons; Jyoti Devi, daughter; Gyan Chand, the father and Dayie, the mother. The deceased, Raj Singh, was 38 years old at the time of the accident and earned Rs. 4,500/- per month.

27.2 To calculate the compensation for pecuniary loss of dependency, we shall use the multiplier method as explained above. In the present case, the deceased, Raj Singh, had old parents, a widow and three minor children. The value of each unit thus works out to 4909 (54,000/11). Therefore, the multiplicand would be 44,182 (Gross annual income - the value of two units = 54,000-9818). Multiplying this by 16, as per the Second Schedule to the MVA 1988, a figure of Rs. 7,06,912/- is obtained, which when rounded off to Rs. 7,07,000/-, constitutes the pecuniary compensation payable by the Respondents.

27.3 Consequently, adding the standard compensation for non-pecuniary losses and the compensation for pecuniary loss of dependency, the total compensation payable by the respondents, the Railways and the MCD, in equal halves, to the petitioners, Sunita Devi, Ajay Kumar, Arun Singh, Jyoti Devi, Gyan Chand and Dayie, is computed at Rs. 8,57,000/-, the break up of which is as under:

Standard compensation for non-pecuniary losses	Rs. 1,50,000/-
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Compensation for pecuniary loss of dependency	Rs. 7,07,000/-
Total compensation Payable	Rs. 8,57,000/-

W.P. (C) 4506/2006 (Santosh Kumari & Ors. v. Union of India & Ors.)

29.1 In W.P. (C) 4506/2006, a compensation of Rs. 15 lakh has been claimed by the Petitioners, viz., Santosh Kumari, the widow of the deceased; Nitin Kumar and Rishi Pal, sons; Tirath Ram, the father and Suman Kumari, the mother. The deceased, Sardar Singh was 38 years old at the time of the accident and earned Rs. 4,500/- per month.

29.2 In the present case, the deceased had old parents, a widow and two minor children. The value of each unit thus works out to 5,400 (54,000/10). Therefore, the multiplicand would be 43,200 (Gross annual income - the value of two units = 54,000-10,800). Multiplying it by 16 as per the Second Schedule to the MVA 1988 gives a figure of Rs. 6,91,200/-, which constitutes the pecuniary compensation payable by the Respondents calculated using the multiplier method.

29.3 Consequently, adding the standard compensation for non-pecuniary losses and the compensation for pecuniary loss of dependency, the total compensation payable by the respondents, the Railways and the MCD, in equal halves, to the petitioners, Santosh Kumari, Nitin Kumar, Rishi Pal, Tirath Ram and Suman Kumari, is computed at Rs. 8,41,200/-.

Standard compensation for non-pecuniary losses	Rs. 1,50,000/-
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Compensation for pecuniary loss of dependency	Rs. 6,91,200/-
Total compensation Payable	Rs. 8,41,200/-

Calculation of compensation in the injury cases

30. Though the facts and circumstances of each case and the nature of injury is bound to be different, the basic norms for injury cases have been discussed by the Supreme Court in several cases including, ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. (1995) 1 SCC 551***, ***Lata Wadhwa & Ors. v. State of Bihar (2001) 8 SCC 197*** and ***Divisional Controller, KSRTC v. Mahadeva Shetty & Anr. (2003) 7 SCC 197***. This Court in ***Sher Singh v. Naresh Kumar & Ors. 2009 ACJ 358*** has recently discussed various cases where compensation was awarded in case of injury.

W.P. (C) 4242/2006 (Swarn Singh v. Union of India & Ors.)

31.1 In W.P. (C) 4242/2006, the Petitioner suffered a fracture in the left femur and head injuries. The left femur never joined properly and the Petitioner continues to have a 20% permanent partial disablement according to the affidavit of the doctor, which is not disputed. The Petitioner was 23 years old at the time of the accident and lived with his parents earning an income of Rs. 4,500/- per month. In spite of undergoing regular treatment for about a year, he would not be able to undertake the work of a *paledar* again. He thus claims a total compensation of Rs. 6,67,600. Rs. 15,000/- for medical expenses, Rs.

8,000/- for conveyance, Rs. 30,000/- for special diet, loss of income of one year Rs. 54,000/-, Rs. 1,53,000/- for loss of future income, Rs. 1,00,000/- for mental pain and agony, Rs. 50,000/- lakh for loss of amenities of life, Rs. 1,00,000/- for permanent disability, Rs. 50,000/- for loss of expectation of life, Rs. 57,600 for gratuitous services rendered by family members and Rs. 50,000/- for loss of marriage prospects.

31.2 Following the broad scheme of *Sher Singh*, Rs. 35,000/- (15,000 + 12,000 + 8,000) for medical expenses, special diet and conveyance and Rs. 54,000/- (4,500 × 12) for loss of income for one year are payable. Multiplying the annual income of the Petitioner with the multiplier given in the Second Schedule of the Motor Vehicles Act, 1988 and the percentage of permanent partial disablement, a sum of Rs. 1,83,600/- is arrived at, which is payable towards loss of earning capacity (5,400 × 17 × 20%). Rs. 25,000/- is payable towards pain and suffering and Rs. 50,000/- towards non-pecuniary damages for loss of amenities and future prospects. This Court thus finds a sum of Rs. 3,47,600/- to constitute fair and reasonable compensation payable to the petitioner, Swarn Singh, by the respondents, the Railways and the MCD, in equal halves. The break up of the said amount is as under:

Medical expenses, special diet and conveyance	Rs. 35,000/-
Loss of income for one year	Rs. 54,000/-
Loss of earning capacity	Rs. 1,83,600/-
Pain and suffering	Rs. 25,000/-

Loss of amenities and future prospects	Rs. 50,000/-

Total compensation payable	Rs. 3,47,600/-

W.P. (C) 4243/2006 (Ramesh Kumar v. Union of India & Ors.)

32.1 In W.P. (C) 4243/2006, the Petitioner suffered a fracture in his femur, the pelvic bone and also a urinary bladder rupture. He had to undergo a urethroplasty surgery on 21st November, 2005 which failed and a repeat surgery is advised. The Petitioner has to undergo catheterization every month which costs Rs. 3,000/-. According to the affidavit of the doctor, which is not disputed, the Petitioner has suffered a 15% permanent partial disablement, one of his legs has become shorter and he can never undertake the work of a *paledar*. He was 40 years old at the time of the incident and lived with his wife, three children and old parents earning a sum of Rs. 4,500/- per month. The Petitioner consequently, claims a compensation of Rs. 14.24 lakh. Rs. 8,10,000/- for loss of income, claiming a 100% loss, Rs. 1,00,000/- for medical expenses, Rs. 30,000/- for expenses incurred over conveyance, Rs. 25,000/- for special diet, Rs. 1,00,000/- for mental pain and agony, Rs. 1,00,000/- for loss of amenities of life, Rs. 1,00,000/- for permanent disability, Rs. 1,00,000/- for loss of expectation of life, and Rs. 57,600/- for gratuitous services rendered by the family members.

32.2 Following the above scheme, Rs. 1,20,000/- (1,00,000 + 12,000 + 8,000) for medical expenses, special diet and conveyance and Rs.

WP(C)Nos.4242, 4243, 4253, 4300, 4494 & 4506/2006

54,000/- (4,500 × 12) for loss of income for one year are payable. Multiplying the annual income of the Petitioner with the multiplier given in the Second Schedule of the Motor Vehicles Act, 1988 and the percentage of permanent partial disablement, a sum of Rs. 1,21,500/- is arrived at, which is payable towards loss of earning capacity (54,000 × 15 × 15%). Rs. 50,000/- is payable towards pain and suffering which the Petitioner underwent not only at the time of the accident but continues to suffer. Rs. 25,000/- is payable towards non-pecuniary damages for loss of amenities. This Court, thus, finds a sum of Rs. 3,70,500/- to constitute fair and reasonable compensation payable to the Petitioner, Ramesh Kumar, by the respondents, the Railways and the MCD, in equal halves. The break up of the said amount is as under:

Medical expenses, special diet and conveyance	Rs. 1,20,000/-
Loss of income for one year	Rs. 54,000/-
Loss of earning capacity	Rs. 1,21,500/-
Pain and suffering	Rs. 50,000/-
Loss of amenities	Rs. 25,000/-
Total compensation payable	Rs. 3,70,500/-

W.P. (C) 4494/2006 (Ramesh v. Union of India & Ors.)

33.1 In W.P. (C) 4494/2006, the Petitioner suffered a fracture in the left knee with ligament injury and swelling and abrasions in the left elbow. Even after the fracture healed, the Petitioner could not walk properly and experienced locking of the left knee. Doctor’s certificates, which are not disputed, state that wasting of left quadriceps muscles and pain and

locking of the left knee was observed even ten months after the injury. This continues in spite of the Petitioner undergoing four months of physiotherapy. The Petitioner is not allowed to squat and is unable to work as a *paledar* any longer. He was 40 years old at the time of the incident and was earning a sum of Rs. 4,500/- per month. Consequently, he claims a total compensation of Rs. 3,02,600. Rs. 10,000/- for medical expenses, Rs. 10,000/- for conveyance, Rs. 30,000/- for special diet, Rs. 45,000/- for loss of income of one year, Rs. 50,000/- for mental pain and agony, Rs. 50,000/- for loss of amenities of life, Rs. 5,00,000/- for loss of expectation of life and Rs. 57,600/- for gratuitous services rendered by the family members. The Petitioner remained under regular treatment for ten months.

33.2 Following the above scheme, Rs. 26,000/- (10,000 + 10,000 + 6,000) for medical expenses, special diet and conveyance and Rs. 45,000/- ($4,500 \times 10$) for loss of income for ten months are payable. No specific percentage of permanent partial disability has been pleaded or stated in the certificates. This Court is therefore, unable to award compensation for loss of earning capacity. Rs. 25,000/- are payable towards pain and suffering and Rs. 25,000/- towards non pecuniary damages for loss of amenities. This Court, thus, finds a sum of Rs. 1,21,000/- to constitute fair and reasonable compensation payable to the Petitioner, Ramesh, by the respondents, the Railways and the MCD, in

equal halves. The break up of the said amount is as under:

Medical expenses, special diet and conveyance	Rs. 26,000/-
Loss of income for one year	Rs. 45,000/-
Pain and suffering	Rs. 25,000/-
Loss of amenities	Rs. 25,000/-
Total compensation payable	Rs. 1,21,000/-

Directions

34. It is accordingly directed as under:

(i) Within a period of four weeks from today, respondents 1 and 3 will deposit in this Court the following amounts:

a) In W.P. (C) 4242/2006 an amount of Rs. 3,47,600/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e. the date of the accident) till the date of payment and costs of Rs. 5,000/-.

b) In W.P. (C) 4243/2006 an amount of Rs. 3,70,500/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e. the date of the accident) till the date of payment and costs of Rs. 5,000/-.

c) In W.P. (C) 4253/2006 an amount of Rs. 8,57,000/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e. the date of the accident) till the date of payment and costs of Rs. 5,000/-.

d) In W.P. (C) 4300/2006 an amount of Rs. 8,57,000/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e.

the date of the accident) till the date of payment and costs of Rs. 5,000/-.

e) In W.P. (C) 4494/2006 an amount of Rs. 1,21,000/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e. the date of the accident) till the date of payment and costs of Rs. 5,000/-.

f) In W.P. (C) 4506/2006 an amount of Rs. 8,41,200/-, together with simple interest at 6% per annum from 1st October, 2004 (i.e. the date of the accident) till the date of payment and costs of Rs. 5,000/-.

(ii) Within four weeks of the deposit of the above amounts, the legal representatives of the three deceased and the three injured petitioners will appear in person before the Registrar General on a notice to be issued to them for a specific date, who will be identified by their respective counsel and through proper documentation.

(iii) The amounts payable to the legal representatives of the deceased will be divided into equal shares amongst the respective legal heirs of the deceased. While the adults will be handed over their respective cheques, as regards the minors, individual account(s) will be opened in each of their names with the father or the mother as the case may be, being the natural guardians. The bank in which the account is opened will keep the said amount in a fixed deposit till such time the minor attains the age of 18 years. Till then the interest on the fixed deposit will be transferred to the minor's savings account which can be withdrawn

and used by the natural guardian for the benefit of such minor. After the child becomes a major, the account will be operated independently by such child.

(iv) The amounts payable to the injured petitioners will be disbursed to them by cheques.

(v) Depending on the outcome of the proceedings in OMP No. 5 of 2003, it will be open to either Respondents 1 & 3 to claim reimbursement from the other of the amounts paid by each of them in terms of the present order.

35. All the writ petitions are accordingly disposed of in the above terms.

36. Copy of the judgment be given dasti to the counsel for the parties.

S. MURALIDHAR, J.

MARCH 17, 2010
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