

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

Date of Decision: 21st April, 2010

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+ MAC.APP. 309/2009

BALJEET KAUR & ORS. Appellants
Through : Mr. K.K. Lal, Adv.

versus

R.MUTHU BATCHA & ANR. Respondents
Through : Mr. P.K. Maitra,
Mr. V. Senthil Kumar and
Mr. M.A. Chinnasamy, Adv.
for R-2.

+ MAC.APP. 423/2009

STATE OF TAMILNADU Appellant
Through : Mr. P.K. Maitra,
Mr. V. Senthil Kumar and
Mr. M.A. Chinnasamy, Adv.

versus

BALJIT KAUR & ORS. Respondents
Through : Mr. K.K. Lal, Adv.
for R-1 to 4.

**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. The appellant in MAC.APP.No.423/2009 is seeking reduction of the award amount whereas the appellant in MAC.APP.No.309/2009 seeks enhancement of the award amount.

2. The accident dated 25th September, 2001 resulted in the death of Prem Singh Minhas. The deceased was survived by his widow and three sons who filed the claim petition before the Claims Tribunal.

3. The deceased was riding his two-wheeler scooter at Rao Tula Ram Marg, Sector 8, R.K. Puram, near Shanti Niketan, Delhi when a car bearing No.DL 2CH 7604 hit him and thereafter a TSR. The deceased was working as Training Officer with M/s Detective & Security Services earning Rs.8,000/- month apart from pension of Rs.3,000/- per month. The income of the deceased was proved vide salary certificate – Ex.PW2/2. However, the Claims Tribunal disregarded the salary certificate and took the minimum wages of Rs.2,592/- per month, deducted 1/3rd towards his personal expenses and applied the multiplier of 11 to compute the loss of dependency at Rs.2,88,096/-. Rs.50,000/- has been awarded towards loss of consortium, Rs.50,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.3,38,096/-.

4. The learned counsel for the appellant in MAC.APP.No.423/2009 has urged following two grounds at the time of hearing of this appeal:-

(i) The liability to pay the compensation should be put on the driver of the offending vehicle.

(ii) The award amount be reduced following the

principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129.**

5. The learned counsel for the appellant in MAC.APP.No.309/2008 seeks enhancement of the award amount on the following grounds:-

- (i) The income of the deceased be taken as Rs.8,000/- per month. In the alternative, the increase in minimum wages due to inflation be taken into consideration.
- (ii) The deduction towards the personal expenses should be reduced from 1/3rd to 1/4th.
- (iii) The multiplier of enhanced from 11 to 13.
- (iv) Compensation be awarded for loss of estate.

6. With respect to the accident having occurred due to the rash and negligent driving of driver of car bearing No.DL-2CH-7604, the Claims Tribunal has referred to and relied upon the charge sheet and other documents in which it is recorded that the said car hit the scooter being driven by the deceased and thereafter the TSR. The learned counsel for the appellant in MAC.APP.No.423/2009 submits that the driver of the offending car should be held liable to pay said amount. Admittedly, the driver was employed with State of Tamil Nadu and still continuing the said employment and, therefore, the employer is vicariously liable to pay the compensation in respect of the accident in question. The

finding of the Claims Tribunal in this regard is upheld.

7. The deceased was working as a Training Officer with M/s Detective and Security Service. It was claimed that the deceased was earning Rs.8,000/- per month. The Claims Tribunal held that the income of the deceased was not proved by sufficient evidence and, therefore, the minimum wages of Rs.2,592/- per month were taken into consideration by the Claims Tribunal. The claimants produced the salary certificate, Ex.PW2/2 but neither the salary record nor salary slips were produced before the Claims Tribunal. In the absence of sufficient evidence, the Claims Tribunal was justified in taking the minimum wages of Rs.2,592/- per month. It is well settled by catena of judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134 and UPSRTC vs. Munni Devi, MAC.APP.No.310/2007** decided on 28.07.2008 that the Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate. The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. Following the aforesaid judgments, the income of the deceased for computation of compensation is taken as Rs.3,888/- per month $[(Rs.2,592 + Rs.5,184)/2]$. The deceased was aged 51 years at the time of the accident and has left behind four

legal representatives. The appropriate multiplier at the age of 51 years is 13 and appropriate deduction towards the personal expenses considering that the deceased has left behind four legal representatives is $\frac{1}{4}^{\text{th}}$ in terms of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**. Following the said judgment, the personal expenses of the deceased are reduced from $\frac{1}{3}^{\text{rd}}$ to $\frac{1}{4}^{\text{th}}$ and the multiplier is enhanced from 11 to 13.

8. Taking the income of the deceased as Rs.3,888/- per month, deducting $\frac{1}{4}^{\text{th}}$ towards the personal expenses and applying the multiplier of 13, the loss of dependency is computed to be Rs.4,54,896/- (Rs.3,888 x 12 x $\frac{3}{4}$ x 13).

9. The Claims Tribunal has not awarded any compensation towards loss of estate. However, since Rs.50,000/- has been awarded towards loss of consortium and Rs.50,000/- towards loss of love and affection, the said amount is treated to include the compensation for loss of estate as well.

10. The claimants are entitled to total compensation of Rs.5,64,896/- (Rs.4,54,896 + Rs.50,000 + Rs.50,000 + Rs.10,000).

11. The MAC.APP.No.423/2009 is dismissed and the MAC.APP.No.309/2009 is allowed and the award amount is enhanced from Rs.3,38,096/-. The Claims Tribunal has awarded interest @ 9% per annum which is not disturbed on the original award amount of Rs.3,38,096/-. However, on the

enhanced award amount, the rate of interest shall be 7.5% per annum from the date of filing of the petition till realization.

12. The appellant in MAC.APP.No.423/2009 has deposited the amount awarded by the Claims Tribunal. The Registrar General of this Court is directed to transfer/remit the said amount to UCO Bank A/c Baljit Kaur, Delhi High Court Branch within a period of four weeks.

13. The enhanced award amount along with interest be deposited by the appellant with UCO Bank A/c Baljit Kaur, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

14. Upon the aforesaid amount being deposited with the UCO Bank, the UCO Bank is directed to release 25% of the said amount to the appellants in MAC.APP.No.309/2009 in equal shares. The balance amount be kept in fixed deposit in the name of Baljit Kaur in the following manner:-

- (i) Fixed deposit in respect of 25% of the award amount for a period of one year with cumulative interest.
- (ii) Fixed deposit in respect of 25% of the award amount for a period of two years with cumulative interest.
- (iii) Fixed deposit in respect of 25% of the award amount for a period of three years with

cumulative interest.

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

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

17. On the request of the claimant, the Bank shall transfer the Savings Account to any other branch according to the convenience of the claimant.

18. The claimant 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.

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

20. 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.

APRIL 21, 2010
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J.R. MIDHA, J