

NATIONAL INSURANCE CO. LTD. Appellant
Through Mr. L.K. Tyagi, Adv.

versus

KAVITA CHOPRA AND ORS. Respondents
Through Mr. Mohit Gupta, Adv. for
R-1 to 3 and 5.

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 appellant has challenged the award of the learned Tribunal whereby the compensation of Rs.30,37,532/- has been awarded to claimants/respondents No.1 to 4. Claimants/respondents No.1 to 4 have filed cross-objections seeking enhancement of the award amount.

2. The accident dated 19th April, 2007 resulted in the death Kapil Chopra. The deceased was survived by his widow, minor daughter and parents who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 31 years at the time of the accident and was working as a Deputy Manager with Agility

Logistics Pvt. Ltd. earning Rs.45,000/- per month. The learned Tribunal took the income of the deceased as Rs.19,245/-, added 50% towards future prospects, deducted 1/3rd towards his personal expenses and applied the multiplier of 13 to compute the loss of dependency at Rs.30,02,532/-. Rs.10,000/- has been awarded towards funeral expenses and Rs.25,000/- towards loss of love and affection. The total compensation awarded is Rs.30,37,532/-.

4. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

- (i) The deceased was contributory negligent and, therefore, the compensation should be proportionately reduced due to the contributory negligence of the deceased.
- (ii) The future prospects of the deceased should not be taken into consideration.
- (iii) The recovery rights be granted to the appellant as the owner of the truck was not holding a valid permit at the time of accident.

5. The learned counsel for claimants/respondents No. 1 to 4 has urged the following grounds at the time of hearing of this appeal:-

- (i) The income of the deceased be taken as Rs.45,000/- per month.
- (ii) The personal expenses of the deceased be reduced from 1/3rd to 1/4th.

(iii) The multiplier be enhanced from 13 to 16.

(iv) The compensation be awarded for loss of consortium and loss of estate.

6. With respect to the ground of contributory negligence of the appellant, it is noted that accident occurred on 19th April, 2007 at Gurgaon - Faridabad road at about 5.30am. The deceased was driving a Santro Car bearing No.DL-4C-AG-0296 which had head-on collision with Truck No.HR-38A-2059 on Ghata Raod, near Village Katgandhi resulting in the death of the deceased. Raj Sinha, the eye witness of the accident appeared as PW-2 and deposed that the accident occurred due to rash and negligent driving of the truck. PW-2 deposed that there was no divider in between the road. PW-2 further deposed that the car of the deceased was on the correct side of the road and the truck came on the wrong side and hit the car. The certified copy of the site plan and photographs Ex.PW1/2 to Ex.PW1/4 also confirm that the car was on the correct side of the road whereas the truck was on the wrong side. Considering that there was head-on collision on an empty road in the early morning hour and driver can see the vehicle coming from the opposite direction, the negligence of the deceased is held to be 20%. The deceased could have avoided the accident by being careful. The finding of the learned Tribunal in this regard is modified to the above extent.

7. The deceased was working with M/s Agility Logistics Pvt. Ltd. as Deputy Manager drawing a salary of Rs.45,000/-. The widow of the deceased appeared in the witness box as PW-1 and proved the appointment letter Ex.PW1/9. PW-1 further deposed that the deceased after completing his graduation and three years Aptech Computer Course, worked at an annual salary of Rs.4,55,000/- as Warehouse Manager vide appointment letter Ex.PW1/12. The secondary school certificate and the Computer Course certificate were exhibited as Ex.PW1/10 & Ex.PW1/11. The Senior Executive of M/s. Agility Logistics Pvt. Ltd. appeared in the witness box as PW-5 and proved the offer letter Ex.PW-5/A, details of the salary as Ex.PW-5/B, appointment letter as Ex.PW-5/C and salary slip as Ex.PW-5/D. As per the salary certificate Ex.PW-5/B, the salary structure of the deceased was as under:-

"SL. NO.	COMPONENT	PER MONTH
1.	Basic	Rs.13,500/-
2.	HRA	Rs.6,750/-
3.	Conveyance allowance	Rs.15,000/-
4.	Special allowance	Rs.4,630/-
5.	Medical reimbursement	Rs.1,250/-
6.	Bonus	Rs.1,125/-
7.	LTA	Rs.1,125/-
8.	Provident fund	Rs.1,620/-
	Total	<u>Rs.45,000/-"</u>

8. The conveyance allowance of Rs.15,000/- and special allowance of Rs.4630/- are deductible from the total salary of the deceased and the income of the deceased for computation of compensation is taken to be Rs.25,370/- [(Rs.45,000 – (Rs.15,000 + Rs.4630)). Rs.2,370/- is deducted

toward Income Tax and the net income of the deceased is taken to be Rs.23,000/- per month.

9. The deceased was on probation at the time of the accident. However, considering that the deceased was professionally qualified and was working as Warehouse Manager with M/s Geetanjali since 26th August, 2006, appointed vide appointment letter Ex.PW-1/12 at the annual salary of Rs.4,55,000/- per annum and he joined M/s Geo Logistics Pvt. Ltd. upon being offered senior position of Deputy Manager at an increased package of Rs.5,40,000/- per month, the job of the deceased is taken to be permanent and following the judgment of Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, 50% of the salary of the deceased is to be added towards future prospects and income of the deceased for computation of compensation is taken to be Rs.34,500/- (23,000 + 50%).

10. The deceased has left behind four legal representatives namely widow, minor daughter and parents and the appropriate deduction according to the judgment of **Sarla Verma** (Supra) is 1/4th. The personal expenses of the deceased are reduced from 1/3rd to 1/4th.

11. The learned Tribunal has applied the multiplier of 13. The deceased was aged 31 years at the time of the accident and the appropriate multiplier is 16. The multiplier is therefore enhanced from 13 to 16. Taking the income of the

deceased to be 34,500, deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses and applying the multiplier of 16, the loss of dependency is computed to be Rs.49,68,000/- ($34,500 \times \frac{3}{4} \times 12 \times 16$).

12. The learned Tribunal has awarded Rs.10,000/- for funeral expenses and Rs.25,000/- towards loss of love and affection. No compensation is awarded for loss of consortium and loss of estate. Rs.10,000/- is awarded towards loss of consortium and Rs.10,000/- towards loss of estate. The total compensation is computed to be Rs.50,23,000/- ($49,68,000 + 10,000 + 25,000 + 10,000 + 10,000$).

13. Since the deceased is held to be contributory negligent to the accident by 20%, the compensation computed above is reduced by 20%, i.e., Rs.40,18,400/ ($\text{Rs.}50,23,000 - 20\%$).

14. The appeal as well as cross-objections are partially allowed and the award amount is enhanced from Rs.30,37,532/- to Rs.40,18,400/- along with interest @7.5% per annum from the date of filing of the petition till date of deposit under Order 21 Rule 1 of the Code of Civil Procedure.

15. The enhanced award amount along with interest be deposited by the appellant with SBI Bank, Tis Hazari Branch A/c Kavita Chopra A/c No. 30784117048 by means of a cheque through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 30 days.

16. Upon the enhanced award amount being deposited,

State Bank of India is directed to release 10% of the same to respondent No.1 (Kavita Chopra A/c No. 30784117048), Respondent No.3 (Ravi Chopra A/c No. 30784114660) and respondent No.5 (Aruna Chopra A/c No. 30784115879), in equal shares. The remaining amount be kept in the fixed deposits in the following manner:

- (i.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for the period of 6 months.
- (ii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of one year.
- (iii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of one and a half years.
- (iv.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of two years.
- (v.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of two and a half years.
- (vi.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of three years.
- (vii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of three

and a half years.

(viii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of four years.

(ix.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of four and a half years.

(x.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of five years.

(xi.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of five and a half years.

(xii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of six years.

(xiii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of six and a half years.

(xiv.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of seven years.

(xv.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of seven and a half years.

(xvi.) Fixed deposit in respect of 5% of the amount in

the name of respondent No.5 for a period of eight years.

(xvii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.1 for a period of eight and a half years.

(xviii.) Fixed deposit in respect of 5% of the amount in the name of respondent No.5 for a period of nine years.

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

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

19. No cheque book be issued to respondent No.1 without the permission of this Court.

20. 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.

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

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

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

24. The respondent Nos.1, 2, 3 & 5 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322).

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

26. Copy of this order be also sent to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) under the signature of Court Master.

27. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

MARCH 08, 2010
HL

J.R. MIDHA, J