

UNREPORTED

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

+ MAC.APP.110/2011

BUM BAHADUR & ANR. Appellants
Through: Mr. O.P. Mannie, Advocate

versus

DHIRAJ KUMAR & ORS Respondents
Through: Ms. Suman Bagga, Advocate for the
respondent No.3

% Date of Decision : April 28, 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

ORDER (Oral)

: REVA KHETRAPAL, J.

1. This appeal is directed against the judgment and award of the Motor Accident Claims Tribunal dated 26th October, 2010 passed in

case No.05/10 titled “*Bum Bahadur and Anr. vs. Dhiraj Kumar and Ors.*”

2. With the consent of the parties, the matter is taken up for final hearing at this stage. Since a short point is involved and the counsel for the parties are agreed that it will not be necessary to refer to the lower court records, the same have not been requisitioned.

3. The brief facts relevant for the decision of the present appeal are that on 22.12.2009 at about 2.30 a.m., one Monu suffered fatal injuries in a road accident which took place at Rohtak Road, 21, Dharam Colony, opposite Metro Station Nangloi, Delhi, when his motorcycle was struck by a tempo bearing No.DL-1LG-5711. The appellants, who are the parents of the deceased, filed a claim petition claiming a total sum of ₹ 20 lakhs by way of compensation from the respondents No.1 and 2, the owner and the driver respectively of the offending tempo, and the respondent No.3 – Insurance Company. Pertinently, the claim petition was filed under the provisions of Section 163-A of the Motor Vehicles Act 1988. Since there was no need to establish rash and negligent driving on the part of the driver

of the offending vehicle, the learned trial court proceeded to assess the compensation payable to the appellants as follows:

*“.....the deceased was stated to be working as a labourer and was stated to be earning ₹ 40,000/- per annum. No income proof has been filed by the petitioners. In these circumstances, the income of the deceased can very well be assessed on the basis of the chart available in the Minimum Wages Act. The date of accident was 22.12.2009 on which the minimum wages for an unskilled labourer were ₹ 3953/-. Accordingly, the total annual income of deceased comes out to be ₹ 3953 x 12 = 47436/-. Since the annual income limit in cases u/s 163A MV Act can only be upto ₹ 40,000/-, I hereby treat the annual income of the deceased to be ₹ 40,000/- instead of ₹ 47436/-. It has been held by the Hon'ble Supreme Court in a judgment titled **Sarla Verma Vs. DTC decided on 15.4.2009 in C.A. No.3483/08** that in case of death of a bachelor the multiplier is required to be ascertained on the basis of the age of the mother of the deceased. As per the ESI identity card of the father of the deceased, the year of birth of the mother of the deceased is 1970. The date of accident is 22.12.2009. Accordingly, the age of mother of the deceased as on the date of accident come out to be 39 years for which the relevant multiplier as mentioned in the aforesaid judgment is 15. Therefore, the loss of dependency to the petitioners would be 40,000/- x 15 = ₹ 6,00,000/-. It can very well be presumed in terms of the aforesaid judgment of the Hon'ble*

Supreme Court of India that the deceased might have been spending one-half of ₹ 6,00,000/- on his personal expenses as he had left behind two dependents as he was bachelor. Therefore, after deducting one-half towards personal expenses, the total loss of dependency per month comes out to be ₹ 3,00,000/-. To this the general damages were to be added as ₹ 2,000/- towards funeral expenses and ₹ 2500/- towards loss of estate in terms of the aforesaid judgment of Hon'ble High Court in Ram Parkash case (Supra). No other general damage can be considered by the Tribunal as directed by the judgment of Hon'ble High Court of Delhi in National Insurance Company Limited Vs. Nirmal Kaur MAC Appeal No.112/10 decided on 17.5.2010. Therefore, in total, I hereby award a sum of ₹ 3,04,500/- in favour of the petitioners and against the respondents.

RELIEF:

I award ₹ 3,04,500/- (Rupees three lacs four thousand and five hundred only) as compensation with interest at the rate of 7.5% per annum including interim award, if any from the date of filing the petition i.e. 11.01.2010 till the notice under Order 21 Rule 1 is given by the insurance company, in favour of the petitioner and against the respondents on account of their liability being joint and several.”

4. Mr. O.P. Mannie, the learned counsel for the appellants, seeks to assail the aforesaid assessment of compensation by the Claims Tribunal on two counts:

- (i) The learned Tribunal erred in deducting one-half of the income of the deceased towards his personal expenses on the ground that the deceased was a bachelor, though a deduction of only 1/3rd could have been made in accordance with the structured formula laid down in the Second Schedule to the Motor Vehicles Act, 1988.
- (ii) The learned Tribunal in accordance with the Second Schedule should have applied the multiplier of 16 keeping in view the age of the mother of the deceased, which was admittedly 39 years on the date of the accident, instead of the multiplier of 15.

5. Ms. Suman Bagga, the learned counsel for the respondent No.3, on the other hand, sought to support the award of the Tribunal by contending that the award was a just and fair award.

6. In the present case, as no proof of the income of the deceased was forthcoming on the record, the Claims Tribunal took the minimum wages of an unskilled labourer as the basis for assessment of the income of the deceased. Thus far, the Claims Tribunal cannot

be faulted. The Tribunal then proceeded to deduct one-half of the earnings of the deceased towards his personal expenses on the premise that since the deceased was a bachelor, in consonance with the judgment of the Hon'ble Supreme Court in ***Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121***, 50% of his income was required to be deducted towards the personal and living expenses. What the Tribunal failed to notice was that in ***Sarla Verma's*** case (*supra*), the Hon'ble Supreme Court was dealing with a claim petition preferred under Section 166 of the Motor Vehicles Act, 1988, whereas in the present case the claim petition was instituted under Section 163-A of the Act.

7. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule on the principle of no fault liability. A three Judge Bench of the Supreme Court in ***Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385***, after taking note of the fact that Section 163-A had been introduced in the Act with effect from 14.11.1994 as a social security provision

intended for the grant of immediate relief to a section of the people whose annual income was not more than ₹ 40,000/-, held that compensation under the provisions of Section 163-A read with the Second Schedule appended thereto was required to be paid in accordance with a structured formula. It was further observed that Section 163-A, which begins with a *non-obstante* clause, provides for special provisions as to payment of compensation on the principle of no-fault-liability. Paragraph 50 of the aforesaid decision is apposite, which reads as under:

“50. Apart from the fact that compensation is to be paid by applying multiplier method under the Second Schedule other relevant factors, namely, reduction of one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, general damages in case of death as also in the case of injuries and disabilities as also the disability in non-fatal accidents, a notional income for compensation to those who had no income prior to accident are provided for, are required to be considered.....”

8. Referring to the judgment of the Supreme Court in ***Deepal Girishbhai Soni’s*** case (*supra*), a learned Single Judge of this Court (Hon’ble Mr. Justice Pradeep Nandrajog) in the case of ***United India***

Insurance Co. Ltd. vs. Kaushalya Devi & Ors., 2008 ACJ 1267,

negated the plea of the claimants/respondents that assessment of compensation in excess of the annual income of ₹ 40,000/-, as stipulated in the Second Schedule to the Motor Vehicles Act, 1988, was permissible where compensation was assessed under Section 163-A of the said Act, and held that 1/3rd of the income was liable to be deducted as the personal expenses of the deceased. The following pertinent observations were made in paragraphs 8 and 9 of the said decision:

“8. It may be that the M.V. Act 1988 is a beneficial legislation and, thus, deserves liberal construction with a view to implement the legislative intent but Courts cannot travel beyond the enacted provisions and extend the scope of the statute on the pretext of extending the statutory benefits to those who are not covered thereby or exceeding the limits of compensation.

9. It is thus obvious that the IInd schedule referred to in Section 163-A of the M.V. Act 1988 provides for a structured formula which has to be applied while assessing compensation to a third party involved in a fatal accident/injury. A multiplier system is introduced, pursuant where to and in furtherance whereof the compensation has to be

calculated having regard to the age of the victim or the dependants as also the annual income of the deceased/injured.”

9. I am, therefore, of the opinion that the appropriate deduction towards the personal and living expenses of the deceased would be one-third and not one-half of the income of the deceased, as has been deducted by the Tribunal.

10. Adverting to the second limb of the case of the appellants with regard to the appropriate multiplier to be adopted in the instant case, in the Second Schedule of the Act there is a table fixing the mode of calculation of compensation for third party accident claims arising out of fatal accidents. The first column of this table gives the age-group of victims of accident, the second column thereof indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousands payable to the heirs of the deceased victims. According to this table, the multiplier varies from 5 to 18 depending on the age-group to which the victim belongs. In paragraph 19 of the judgment of the Supreme Court in the case of *Smt. Sarla Verma (supra)*, the multipliers indicated in the cases of

Kerala State Road Transport Corporation vs. Susamma Thomas AIR 1994 SC 1631, UP State Road Transport Corporation vs. Trilok Chandra (1996) 4 SCC 362 and New India Assurance Co. Ltd. vs. Charlie AIR 2005 SC 2157 for claims made under Section 166 of the Motor Vehicles Act were given in juxtaposition with the multipliers mentioned in the Second Schedule for claims made under Section 163-A of the Motor Vehicles Act. Not satisfied with this, in paragraph 20 of its judgment, the Supreme Court further clarified that it was concerned with cases falling under Section 166 and not under Section 163-A of the Motor Vehicles Act, thereby making it abundantly clear that in cases under Section 163-A of the Motor Vehicles Act the multipliers set out in the Second Schedule must be strictly adhered to. For the sake of ready reference, the table in paragraph 19 is reproduced hereunder:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted by Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in second column in the Table II Schedule to MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 yrs.	-	-		15	20

15 to 20 yrs.	16	18	18	16	19
21 to 25 yrs.	15	17	18	17	18
26 to 30 yrs.	14	16	17	18	17
31 to 35 yrs.	13	15	16	17	16
36 to 40 yrs.	12	14	15	16	15
41 to 45 yrs.	11	13	14	15	14
46 to 50 yrs.	10	12	13	13	12
51 to 55 yrs.	9	11	11	11	10
56 to 60 yrs.	8	10	09	8	8
61 to 65 yrs.	6	08	07	5	6
Above 65 yrs.	5	05	05	5	5

11. A bare glance at the said table is sufficient to show that the appropriate multiplier for the age-group of persons between 36 to 40 years of age is the multiplier of 16 and not the multiplier of 15 as applied by the Tribunal. The age of the mother of the deceased at the time of the accident was admittedly 39 years and accordingly the multiplier of 16 must be applied to augment the multiplicand of ₹ 40,000/- in the instant case. Thus calculated, the loss of dependency of the appellants, after deducting 1/3rd towards the personal expenses and maintenance of the deceased, works out to ₹ 4,26,666.66 (i.e. ₹ 40,000/- x 2/3 x 16), which may be rounded off to ₹ 4,27,000/-. Adding to these pecuniary damages the non-pecuniary damages awarded by the Tribunal, the total amount of compensation payable to the appellants works out to ₹ 4,31,500/-.

12. The award is accordingly modified to the extent that the respondent No.3 – Insurance Company is held liable to pay an enhanced amount of ₹ 1,27,000/- to the appellants within 30 days from today along with interest to be calculated @ 7.5% per annum from the date of the institution of the petition till the date of its realisation.

The appeal stands disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

April 28, 2011
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