

REPORTED

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

+ **FAO 19/2002**

RAJ RANI KAPUR AND ORS. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

ASHOK KUMAR AND ORS. Respondents
Through: Mr. Pankaj Seth, Advocate for
the respondent No.4/Insurance
Company.

% Date of Decision : September 14, 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?

J U D G M E N T

: REVA KHETRAPAL, J.

1. The appellants in this appeal seek to assail the judgment and award dated 15.09.2001 passed by the learned Motor Accident Claims Tribunal, New Delhi, whereby a sum of ₹ 64,100/- with interest at

the rate of 9% per annum from the date of the filing of the petition till its realisation was awarded to them.

2. The concise facts leading to the filing of the present appeal are that the appellants had brought a petition for grant of compensation in the sum of ₹ 7,20,000/- under Section 110-A of the Motor Vehicles Act, 1939 against the driver, the owners and the insurer of taxi bearing No. DLT-5386, on the allegation that the rash and negligent driving of the said taxi by the respondent No.1 resulted in the death of their bread-earner – Tilak Raj Kapur (hereinafter referred to as “the deceased”) in an accident which took place on 02.02.1980. The proceedings in the said claim petition culminated in the passing of the aforesaid award by the Motor Accident Claims Tribunal with a direction to the respondent No.4-Insurance Company to pay the entire award amount. The liability of the respondent No.4-Insurance Company was, however, held to be limited to the extent of ₹ 50,000/- only and it was, therefore, given the liberty to recover the excess amount of ₹ 14,100/- with proportionate interest thereon from the insured/the respondent No.5 by executing the award.

3. Aggrieved by the meager amount of compensation awarded to them, the appellants, who are the wife, the son and the two daughters of the deceased, have preferred the present appeal for enhancement of the award amount on the ground that the learned Tribunal has passed the award by ignoring the facts proved on record and in utter disregard of the provisions of law in this regard.

4. All the five respondents were duly served with notice of the filing of the appeal, The respondents No.1 to 3 and 5, in default of appearance, were proceeded *ex-parte*. The respondent No.4- Insurance Company was represented through their counsel Mr. Pankaj Seth, Advocate.

5. Mr. Navneet Goyal, the learned counsel for the appellants at the outset has taken me through the testimony of PW6 – Vipan Kapur, the son of the deceased (the appellant No.2), who stated that his father during his lifetime was earning ₹ 3,500/- to 4,000/- per month by running a poultry farm in the name of M/s. Kapur Poultry Farm, opposite Wireless Station Gadaipur Road, Mehrauli, New Delhi, and proved on record the income of the deceased through the

Income-tax Assessment Orders for the Assessment Years 1980-81, 1979-80 and 1978-79 as Exhibit PW6/A to Exhibit PW6/C. He also proved on record the matriculation certificate of his father, Exhibit PW6/D and a certificate issued by the Delhi Administration showing that the deceased had undergone training in poultry farming as Exhibit PW6/E. As per the matriculation certificate of the deceased his date of birth was 10.09.1923, meaning thereby that the deceased was about 56 years of age at the time of the accident. Exhibit PW6/A is the copy of the order under Section 143 of the Income-tax Act for the Assessment Year 1980-81 showing the income of the deceased as ₹ 15,306/- per annum. Exhibit PW6/B is the copy of the order under Section 143 of the Income-tax Act in respect of the Assessment Year 1979-80 showing the income of the deceased as 15,023/- for the said year from poultry farming. Exhibit PW6/C pertains to the Assessment year 1978-79, wherein the income of the deceased is reflected to be in the sum of ₹ 26,480/- per annum.

6. Referring to the aforesaid Income-tax orders, the learned Tribunal observed that the income of the deceased for the

Assessment-year 1979-80 (that is the financial year 1978-79) had been shown as ₹ 15,023/- for the said year. This assessment having been filed prior to the accident in question, the learned Tribunal assessed the income of the deceased as ₹ 15,023/- per annum on the date of the accident. Thereafter, the Tribunal after assessing the personal expenses of the deceased to be in the sum of ₹ 500.38 per month or ₹ 6,004.56 per annum, held that the annual dependency of his legal representatives to be ₹ 9018.36. The Tribunal applied the multiplier of 6 to the aforesaid multiplicand and accordingly, the compensation was worked out to ₹ 54,110.16. To this amount, a sum of ₹ 10,000/- was added for loss of expectation of life and the total amount of ₹ 64110.16 rounded off to ₹ 64,100/-, was thus awarded to the appellants.

7. The contention of Mr. Goyal the counsel for the appellants is that the prospects of increase in the income of the deceased has not been taken into account by the learned Tribunal. He further contended that keeping in view the fact that the deceased was survived by four legal representatives, even assuming the income of

the deceased to be ₹ 15,023/- per annum as reflected in the order of the Income-tax Authority for the Assessment year 1979-80, a deduction of not more than 1/4th was justified towards the personal expenses and maintenance of the deceased. He also contended that keeping in view the age of the deceased, being 56 years, the appropriate multiplier would have been the multiplier of 9, instead of the multiplier of 6 applied by the Tribunal. Lastly, he contended that no amount whatsoever had been awarded by the learned Tribunal towards the funeral expenses of the deceased and towards the non-pecuniary expenses under the heads of loss of estate, loss of love and affection and loss of consortium. The compensation awarded to the appellants therefore, deserved to be re-computed in accordance with the settled principles of law.

8. As regards the future prospects of the deceased, I am not inclined to agree with the submission of Mr. Goyal that the Tribunal erred in not taking into account the future anticipated increase in the earnings of the deceased. The reason is that the deceased was a self-employed person and the documents pertaining to his Income-tax

Assessment reflect a descending scale of income, rather than an ascending one. As a matter of fact his income for the Assessment Year 1978-79 is shown to be ₹ 26,480/-, which appears to have dwindled in the Assessment Year 1979-80 when it is shown as ₹ 15,023/-. Thus, in my opinion, the learned Tribunal rightly assessed the income of the deceased to be in the sum of ₹ 15,023/- per annum. I am, however, inclined to agree with the contention of Mr. Goyal that a deduction of not more than one-fourth of the income of the deceased would be justified towards the personal expenses and maintenance of the deceased and that the appropriate multiplier in the instant case keeping in view the fact that the deceased was in the age group of victims between 56 to 60 years of age would be the multiplier of 9, as tabulated by the Hon'ble Supreme Court in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*. Thus calculated, the loss of dependency of the appellants comes to ₹ 1,01,405/- (that is, ₹ 15,023/- x $\frac{3}{4}$ x 9 = 1,01,405/-). I also deem it just and fair to award a sum of ₹ 5,000/- each towards the loss of consortium, the loss of love and affection and

the loss of the estate of the deceased and a further sum of ₹ 4,000/- towards the funeral expenses and last rites of the deceased, in all, a sum of ₹ 1,20,405/-. Interest at the rate of 9% per annum as awarded by the Tribunal from the date of the filing of the petition till the date of the realisation is also awarded to the appellants.

9. In view of the aforesaid, the award amount is enhanced by a sum of ₹ 56,305/-, which may be rounded off to ₹ 56,300/-. The said enhanced amount of compensation along with interest thereon shall enure to the benefit of appellant No.1 – the widow of the deceased. The respondent No.4 – Insurance Company is directed to pay the enhanced amount of compensation within thirty days of the passing of this order with liberty to recover the same from the respondent No.5 – insured.

10. The appeal is allowed to the aforesaid extent.

11. The records of the Tribunal be sent back forthwith.

12. There shall be no order as to costs.

REVA KHETRAPAL
(JUDGE)

September 14, 2011
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