

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

+ FAO 103/2000

RAM DEVI & ANR. Appellants
Through: Ms. Aruna Mehta, Advocate

versus

RAJ KUMAR & ORS. Respondents
Through: None

% Date of Decision : September , 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 present appeal has been preferred by the appellants for enhancement of the quantum of compensation awarded by the Motor Accident Claims Tribunal by its judgment and award dated 1.11.1999 passed in Suit No-11 of 1989, whereby and whereunder the appellants were held entitled to an award of ₹ 60,000/ with the interest thereon at

the rate of 10% per annum from the date of filing of the petition till realization.

2. The brief facts which led to the filing of the appeal are that on 31.10.1988 at about 11 a.m., one Subhash Chand (hereinafter referred as “the deceased”) was going from his house to Kirti Nagar. While he was crossing the road in front of Kishan Ganj dispensary a scooter bearing no – DBH 5633, coming from the Sarai Rohilla side at a high speed, without blowing any horn, hit the deceased with full force. As a result of the forceful impact, the deceased sustained grievous injuries to which he succumbed on 11.11.1988. A claim petition was filed by the widow and son of the deceased claiming compensation for the untimely demise of the deceased in the aforesaid accident.

3. In order to quantify the compensation payable to the appellants, the learned Claims Tribunal, in view of the fact that there was no documentary evidence on record for establishing the income of the deceased, took into consideration the minimum wages applicable to a semi-skilled worker as on the date of the accident, i.e. on 31.10.1988. Since the minimum wages applicable to a semi- skilled worker as on

16.03.1988 were in the sum of ₹ 635/- per month and the same as on 1.5.1989 were in the sum of ₹ 848/- per month, the Tribunal deemed it appropriate to take the average of the aforesaid figures, arriving thereby at the sum of ₹ 750/- per month as the monthly salary of the deceased. Deducting one-third therefrom towards the personal and living expenses of the deceased, the Tribunal calculated the loss of dependency of the appellants in the sum of ₹ 500/- per month or say ₹ 6,000/- per annum. To the aforesaid multiplicand, the Tribunal, considering the age of the deceased to be 50 years as set out in the post mortem report, applied the multiplier of 10, thereby calculating the total compensation payable to the appellants to be in the sum of ₹ 60,000/-.

4. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellants have filed the present appeal seeking enhancement of the same and assailed the award of the Tribunal on the following grounds:

- (i) The Claims Tribunal erred in assessing the monthly income of the deceased at ₹ 750/- per month on the basis of minimum

wages payable to a semi- skilled worker. The Tribunal ought to have taken the income of the deceased to be ₹ 1,500/- per month as stated by the wife of the deceased. The Tribunal further erred in not considering the future increase in the income of the deceased.

- (ii) The Claims Tribunal erred in considering the age of the deceased to be 50 years on the basis of the post mortem report, while in fact the deceased was aged only 37 years at the time of the accident. The Tribunal accordingly erred in applying the multiplier of 10 instead of the multiplier 15.
- (iii) The Claims Tribunal erred in not awarding any compensation towards pecuniary damages for the funeral expenses of the deceased and non-pecuniary damages under the heads of loss of love and affection, loss of estate of the deceased and loss of consortium.
- (iv) The Claims Tribunal erred in awarding interest at the rate of 10% per annum from the date of the filing of the petition till

the realization of the award, whereas it should be at the rate of 12% per annum.

5. As regards the first contention of the appellants, Ms Aruna Mehta, the learned counsel for the appellants contended that the learned Tribunal ought to have taken the income of the deceased at ₹ 1,500/- per month. In this regard, Ms. Mehta referred to the testimony PW-8 Smt. Ram Devi, widow of the deceased who testified that her husband used to repair old sofa-sets and also manufacture new ones on contract basis. She stated that he used to work in kothis and had some permanent and some temporary customers; that he used to earn ₹ 1,500/- to ₹ 1,600/- per month and was taking ₹ 500/- from her for his personal expenses. Ms Mehta also referred to the testimonies of PW-6 Shri Chiranji Lal and PW-7 Shri Bhup Singh. PW-6 Shri Chiranji Lal, in his testimony, stated that prior to the death of the deceased he had hired him on contract basis for repairing sofas and ₹ 1,000/- was settled between them for the same. He further stated that the deceased worked for him only for two days i.e. on 29.10.1988 and 30.10.1988 as he met with an accident on 31.10.1988.

PW7 - Shri Bhup Singh, in his testimony, stated that he was also doing the work of repair of sofas and had worked with the deceased many a times when they got work in bulk. He further stated that he used to earn ₹ 1,500/- per month in the year 1988, and so the deceased must have been earning ₹ 1,500 per month as well.

6. Ms Mehta, the learned counsel for the appellants, contended that there was no reason for the learned Tribunal to disbelieve the testimonies of the aforesaid witnesses. The following precedents were cited by the counsel to support her contention that it was difficult for persons employed in the unorganized sector to adduce documentary evidence regarding their income:

- (a) *Delhi Transport Corporation Vs Deep Kanta and Others, 2003 ACJ 1369.*
- (b) *Delhi Transport Corporation Vs T Radha and Others, 1993ACJ 276.*
- (c) *Vidyawati and Others Vs Dharam Singh and Others, FAO No-369/99 decided on 20.3.2007.*

7. Ms. Mehta further contended that as per the ration card of the deceased placed on record, the deceased was 37 years age. She contended that the age of the deceased as mentioned in the post-mortem report ought not to have been considered by the Tribunal to be conclusive, more so, when the ration card of the deceased had been placed on record. The learned counsel for the appellants relied upon the case of *Narsingh & Anr. Vs. Balkrishan & Ors., 1988 ACJ 288* to contend that the age which is mentioned in the post-mortem is only guess work and there could be a difference of 6 to 7 years in the assessment of the age of any person. The appropriate multiplier, in the instant case, according to the learned counsel for the appellants, would be the multiplier of 15.

8. As regards the income of the deceased, I find from the record that no documentary proof whatsoever has been brought on record to prove what the deceased was earning. It may also be noted that PW-6 Shri Chiranji Lal, in his cross examination categorically stated that he did not know the income of the deceased. The testimony of PW-7 Shri Bhup Singh, relied upon by learned counsel for the appellants, is

also of no avail to the appellants, as he merely stated that the deceased may be earning the same amount as he was earning being engaged in the same work. This, to my mind, does not sufficiently prove the income of the deceased.

9. However, in view of the aforesaid testimonies of PW6, PW7 and PW8 that the deceased was doing the work of sofa repair, it is deemed just and proper to quantify the compensation payable to the appellant on the basis of minimum wages for a skilled workman, for a skilled workman alone, to my mind, can repair sofa-sets. Taking the average of minimum wages for a skilled workman as on 16.3.1988, which were in the sum of ₹ 749/-, and as on 1.5.1989 which were ₹ 1,000/-, (the accident having taken place on 31.10.1988), the monthly salary of the deceased works out to be ₹ 875/- per month.

10. In view of the aforesaid, it is deemed expedient to re-compute the compensation payable to the appellants. Assuming the income of the deceased on the date of the accident to be ₹ 875/- per month, as calculated hereinabove, the same has to be doubled and averaged to neutralize the increase in price index and inflation rate and thus, the

monthly income of the deceased comes out to be ₹ 1,312.50/- per month or say ₹ 15,750/- per annum. Deducting therefrom one-third towards the personal and living expenses of the deceased the annual loss of dependency of the appellants thus comes to ₹ 10,500/- per annum.

11. Adverting next to the aspect of multiplier, it is evident from the records that the age of the deceased has been mentioned as 37 years in the ration card issued on 1-1-1988, which is exhibited as PW8/1. The appropriate multiplier for the age group of persons between 36 years to 40 years in consonance with the judgment of the Supreme Court in *Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, is the multiplier of 15. The deceased being 37 years of age on the date of the accident, the appropriate multiplier in the instant case is therefore adjudged to be the multiplier of 15. However, it may be mentioned that even if the deceased is assumed to be 40 years of age on the date of the accident, the appropriate multiplier applicable to the age of the deceased would still be the multiplier of 15. The total loss of dependency of the appellants thus

comes out to ₹ 1,57,500/- (that is, ₹ 10,500/- x 15). In addition to the said sum awarded for loss of dependency, the appellants are also held entitled to receive pecuniary and non-pecuniary damages in the sum of ₹ 5,000/- each towards the loss of love and affection, loss of consortium, loss of estate and funeral expenses of the deceased, that is, a sum of ₹ 20,000/- in all. The total compensation payable to the appellants, thus, works out to be in the sum of ₹ 1,77,500/- in all (Rupees one lakh seventy seven thousand and five hundred only).

12. Accordingly, the total compensation payable to the appellants is enhanced from ₹ 60,000/- to ₹ 1,77,500/-. The enhanced compensation shall carry interest at the rate of 7.5% per annum payable from the date of petition till realization of the award amount.

13. The impugned award is modified accordingly. The enhanced compensation alongwith interest thereon shall be paid to the appellants by the respondent No.3 within a period of four weeks from today by depositing the same with the Registrar General of this Court.

14. The appeal stands allowed to the aforesaid extent. The records of the Claims Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

**September , 2011
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