

UNREPORTED

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

+ **FAO 278/2002**

SMT. SHANTA SHARMA & ORS. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

BISHAN SINGH & ORS. Respondents
Through: Ms. Shantha Devi Raman,
Advocate for the respondent
No.3

% Date of Decision : August 01, 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 under Section 173 of the Motor Vehicles Act, 1988 has been filed against the judgment and award of the Motor

Accidents Claims Tribunal, New Delhi dated 27.02.2002 passed in Suit No.693/2001.

2. Brief facts leading to the filing of the present appeal are that one Shri B.D. Sharma aged 52 years died in a motor vehicular accident on 08.07.1992. A Claim Petition claiming compensation of ₹ 10,00,000/- from the owner, driver and insurer of the offending vehicle was filed by the widow, son and married daughter of the deceased. The learned Claims Tribunal by its award dated 27.02.2002 awarded a total compensation of ₹ 6,80,000/- to the appellants/claimants payable by the respondent No.3-insurer alongwith interest thereon at the rate of 9% per annum.

3. The learned Claims Tribunal, after taking into account all the facts and circumstances, assessed the income of the deceased for the purpose of computing the loss of dependency suffered by the appellants to be in the sum of ₹ 7,500/- per month or ₹ 90,000/- per annum. The said income of the deceased was reduced by one-third, being the personal and living expenses of the deceased, thereby arriving at a sum of ₹ 60,000/-. To augment this multiplicand, the

Claims Tribunal applied the multiplier of 11, as provided in the Second Schedule to the Motor Vehicles Act, 1988 for the age group of victims between 50 and 55 years. The loss of dependency of the appellants was, thus, assessed by the Claims Tribunal to be in the sum of ₹ 6,60,000/- (that is ₹ 60,000/- x 11). In addition to this, the Claims Tribunal awarded a sum of ₹ 20,000/- towards non-pecuniary damages, including loss of consortium and loss of love and affection. Thus, the Claims Tribunal awarded a total compensation to the appellants in the sum of ₹ 6,80,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition, that is, 17.11.1992, till the date of realisation.

4. Aggrieved by the said quantum of compensation, the appellants have filed the present appeal seeking enhancement of the same to the tune of ₹ 10,00,000/-. The sole contention of Mr. Navneet Goyal, the learned counsel for the appellants, is that the future increase in the income of the deceased has not been considered by the learned Tribunal while computing the compensation payable to the appellants. Mr. Goyal contended that the deceased, who was working as a

Section Officer in the Cabinet Secretariat, Government of India, New Delhi, was likely to be promoted to the post of Under Secretary, earning a monthly salary of around ₹ 15,000/- p.m. to ₹ 20,000/- p.m. Alternatively, it was contended by Mr. Goyal that after the implementation of recommendations of Fifth Pay Commission, the salary of the deceased in the same post would have risen to around ₹ 15,000/- p.m. to ₹ 20,000/- p.m. Mr. Goyal further submitted that the deceased was also planning to set up a mushroom growing farm after his retirement. Reference in this behalf was made to the testimony of PW-4 Smt. Shanta Sharma, the widow of the deceased, who testified that her husband had done a course in mushroom farming from Himachal Pradesh and was planning to open a mushroom farm after his retirement. PW-4, in her testimony, further stated that the deceased had also done a course in 'Homeopathy' from Shimla (H.P.) and was a registered practitioner under the Himachal Pradesh Homeopathic Practitioner's Act, 1979. The said witness placed on record certificate Ex.PW4/A with regard to the course of mushroom farming and certificate Ex.PW4/B with regard to

the course of 'Homeopathy'. On the basis of aforesaid, the learned counsel for the appellants claimed that the compensation awarded by the learned Tribunal was on the lower side and the same be enhanced to ₹ 10,00,000/- alongwith interest at the rate of 18% per annum.

5. Ms. Shantha Devi Raman, the learned counsel for the respondent No.3, on the other hand, sought to support the award of the learned Tribunal, by contending that the compensation awarded by the Tribunal was fair and just and there was no scope for the enhancement of the same.

6. I find from a perusal of the record that the deceased was a Section Officer in Cabinet Secretariat, Government of India at New Delhi. The service record of the deceased was produced before the learned Tribunal by PW2 Shri I.P. Sharma, Senior Field Officer, Cabinet Secretariat as Ex. PW2/A. According to the said record, the date of birth of the deceased was 01.01.1940 and the date of his retirement was 31.12.1997, meaning thereby that the deceased was 52 years of age on the date of the accident. PW2 – I.P.Sharma testified that the salary of the deceased at the time of his death was ₹ 4,644/-

per month and had he not died, he would have received a salary of ₹ 4,864/- per month with effect from 01.01.1993. He further deposed that at the time of his retirement, the deceased would have received a salary of ₹ 10,480/- per month.

7. The learned Tribunal on the basis of the aforesaid testimony of PW-2, assessed the monthly income of the deceased to be in the sum of ₹ 7,500/- p.m. (being approximately the mean of his income at the time of the accident and his income at the time of retirement). Thus, it is sufficiently clear from the record that the learned Tribunal while computing the loss of dependency suffered by the appellants, has given due regard to the oral and documentary evidence placed on record by the appellants. It is also noteworthy that PW-2, in his testimony, nowhere suggested that the deceased was likely to be promoted to the post of Under Secretary or that his salary would have increased to ₹ 15,000/- to ₹ 20,000/- per month after the implementation of Fifth Pay Commission. In these circumstances, the assessment of monthly income of the deceased in the sum of ₹

7,500/- per month is justified and no interference in respect thereof is warranted.

8. Before parting with the case it may be mentioned that no grievance was raised by the appellant's counsel at the time of arguments with regard to deduction of one-third of the income of the deceased towards his personal expenses or with regard to the multiplier adopted by the learned Tribunal for working out the compensation due to the appellants. Nothing further, therefore, survives to be considered in the present appeal.

9. Resultantly, in my opinion, there is no infirmity in the award of the Tribunal with respect to the quantum of compensation and no ground for enhancement is made out. The appeal is accordingly dismissed.

10. The records of the Claims Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

**August 01, 2011
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