

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

+ FAO 13/2000

BIMLA GUPTA AND ORS. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

ESS GEE TRANSPORT P. LTD. AND ORS. Respondents
Through: None.

% Date of Decision : July 11, 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. By way of this appeal, the appellants seek enhancement of the award of compensation dated 22.11.1999 passed in Suit No. 349/1981 by the Motor Accident Claims Tribunal, whereunder the appellants

were held entitled to an amount of ₹ 1,79,712/-, alongwith interest thereon, against the respondents no. 1, 2 and 6 for the untimely demise of Shri Daya Kishan Gupta (hereinafter referred to as “the deceased”) in a motor vehicular accident, which took place on 27.01.1981.

2. The undisputed facts in the present case are that the deceased aged 37 years was working as an Assistant Engineer in the Flood Control and Drainage Department of Delhi Administration, drawing a salary of ₹ 1152.80 per month besides other benefits on the date of the accident. The Claims Tribunal, after considering the salary records of the deceased and referring to the decisions of the Supreme Court in the cases of *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, 1994 ACJ 1 and *Smt. Sarla Dixit and Another Vs. Balwant Yadav and others* 1996 AD-III SC 13, added 50% of the salary of the deceased to his income on the date of the accident towards future prospects and deducted one-third of the resultant income of the deceased towards his personal and living expenses to

arrive at a sum of ₹ 1152/- as the monthly loss of dependency of the claimants or ₹ 13,824/- as the annual loss of dependency. To the aforesaid multiplicand, the Tribunal applied the multiplier of 13, thereby calculating the compensation for loss of dependency awardable to the appellants to be in the sum of ₹1,79,712/- alongwith interest at the rate of 12% per annum from the date of filing of the petition till the realization of the award.

3. Mr. Navneet Goel, the learned counsel for the appellants has assailed the aforesaid computation of compensation awarded to the appellants by the Claims Tribunal on the following three grounds:

(i) The Claims Tribunal ought to have deducted 1/4th of the income of the deceased towards his personal and living expenses instead of deducting one-third in view of the fact that the deceased had left behind six dependent family members.

(ii) The appropriate multiplier in the instant case should have been the multiplier of 15 instead of the multiplier of 13 as adopted by the Claims Tribunal.

(iii) The Claims Tribunal erred in not awarding anything to the claimants towards the non-pecuniary damages.

4. None appeared on behalf of the respondents. After hearing the learned counsel for the appellants, this Court is inclined to agree with all the three submissions put forth by the learned counsel for the appellants for enhancement of the award amount. As regards the first submission, it is evident from the record that the deceased left behind six dependents viz. parents, widow, son and two daughters, who had filed the claim petition in the first instance. The parents of the deceased, however, died during the pendency of the claim petition and their names were deleted from the array of parties. Subsequently, the wife of the deceased died on 11.09.2002 i.e. during the pendency of the present appeal. It has been clearly laid down in the case of ***Smt. Sarla Verma and Ors. V. Delhi Transport Corporation and Anr. AIR 2009 SC 3104***, that the deduction towards personal and living expenses of the deceased has to be 1/4th in case the deceased is survived by 4 to 6 number of dependents. As the number of dependents in the present case was six as on the date of the accident,

the income of the deceased deductible towards his personal expenses while calculating the loss of dependency of the appellants, ought to be one-fourth and not one-third.

5. As regards the multiplier adopted by the Claims Tribunal, it is submitted by the learned counsel for the appellants that the deceased was 37 years of age at the time of the accident and for the age group of victims between 36 years and 40 years of age, the appropriate multiplier in consonance with the judgment of the Supreme Court rendered in the case of *Smt. Sarla Verma (supra)* is the multiplier of 15. The said submission, in my opinion, is justified and the multiplier deserves to be enhanced from 13 to 15.

6. The submission of the learned counsel for the appellants that the appellants were also entitled to general damages for the loss of love and affection, funeral expenses and loss of the estate of the deceased is also well-founded, for, it is settled law that in a death case, non-pecuniary damages under the aforesaid heads are liable to be awarded to the legal representatives of the deceased.

7. In view of the aforesaid, the compensation payable to the appellants must be re-computed in accordance with the evidence on record and the settled legal position. Taking the income of the deceased to be in the sum of ₹ 1,152/- per month as computed by the learned Tribunal and ₹ 1,728/- per month after adding 50% towards the future prospects, and deducting therefrom one-fourth towards the personal and living expenses of the deceased, the loss of dependency of the appellants comes to ₹ 1296/- per month or say ₹ 15,552/- per annum. Applying the multiplier of 15 to the aforesaid multiplicand, the total loss of dependency of the appellants works out to ₹ 2,33,280/-. Adding thereto, non-pecuniary damages of ₹ 10,000/- towards loss of love and affection, ₹ 4,000/- towards the funeral expenses and ₹ 5,000/- towards the loss of the estate of the deceased, the total compensation payable to the appellants works out to ₹ 2,52,280/- which may be rounded off to ₹ 2,52,000/-. The award amount, accordingly, stands enhanced from ₹ 1,79,812/- to ₹ 2,52,000/-.

8. The appellants are thus held entitled to receive a sum of ₹ 2,52,000/- with interest thereon @ 12% per annum as awarded by the Claims Tribunal from the date of filing of the petition i.e. 03.07.1981 till the date of realisation. The enhanced amount of compensation shall be paid to the appellants by the respondent No.6 within 30 days of the receipt of this order, by depositing the same in this Court.

9. The appeal stands allowed to the aforesaid extent.

10. A copy of this order be sent to the respondent No.6 by the Registry forthwith.

**REVA KHETRAPAL
(JUDGE)**

July 11, 2011
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