

UNREPORTED

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

+ FAO 292/2002

SMT. TARA DEVI AND ORS. Appellants
Through: Mr. Y.R. Sharma, Advocate

versus

SH. SUNIL KUMAR SHARMA AND ORS. Respondents
Through: Ms. Neelam Singh, Advocate for
the respondent No.3

% Date of Decision : July 18, 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 to assail the judgment and award dated 9th April, 2002 passed by the Motor Accidents Claims Tribunal on the ground that a very meagre and

inadequate compensation has been awarded to them for the death of their only son in a motor vehicular accident.

2. The facts relevant for the disposal of the appeal are that on 14th June, 1995, Jeevan Singh, aged 21 years, was travelling in a bus bearing No.DL-1P 2741 and while alighting from the said bus at NDSE, Part 1, Ring Road, New Delhi, he sustained grievous injuries on account of the rashness and negligence of the driver of the said bus who started the bus all of a sudden, as a result of which the boy fell down and came under the left front wheel of the bus. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by his parents seeking compensation to the tune of ₹ 10 lakhs for his untimely demise. The said claim petition was not contested by the driver and owner of the offending bus, who chose to remain ex parte. The insurer, M/s. National Insurance Co. Ltd., however, contested the petition and in its written statement disowned its liability to indemnify the insured alleging that the offending vehicle was not being driven by a person holding a valid driving licence. The said plea raised in defence was negated by the Claims Tribunal and an

award in the sum of ₹ 2,60,200/- with simple interest @ 9% per annum from the date of the filing of the petition till the date of payment was passed in favour of the appellants. It is this award against which the present appeal has been filed.

3. Mr. Y.R. Sharma, the learned counsel for the appellants has challenged the award principally on the following grounds:

- (a) The Claims Tribunal erred in assessing the income of the deceased to be in the sum of ₹ 2,500/- per month whereas his income was at least ₹ 4,000/- per month, if not more.
- (b) The Claims Tribunal erred in not taking into consideration the chances of increase in the income of the deceased and the future prospects of advancement of the deceased in his chosen field of work.
- (c) The Claims Tribunal wrongly deducted one-half of the income of the deceased for his personal expenses and maintenance, thereby assessing the monthly dependency of the appellants in the sum of ₹ 1,250/- per month only. The deduction ought not to have been more than one-third of the

income of the deceased [See *Oriental Insurance Co. Ltd. v. Deo Patodi and Others* 2009 ACJ 2359 and *Jayakodi & Ors. v. National Insurance Co. Ltd. & Anr. II* (2010) ACC 592 (SC)].

4. Ms. Neelam Singh, the learned counsel for the Insurance Company sought to counter the contentions of the learned counsel for the appellants by submitting that the award was a just and fair one and deserved to be maintained.

5. Adverting first to the aspect of assessment of the income of the deceased, I am inclined to agree with the learned counsel for the appellants that the income of the deceased has not been properly assessed by the learned Tribunal. There is on record the testimony of Shri Bhawan Singh, the father of the deceased who appeared in the witness box as PW2 to depose that his son was an electrician with M/s. Balaji Electric Store, 67, Sarojini Nagar on part-time basis and was also doing his own personal work and used to earn about ₹ 4,000/- per month, out of which he used to send ₹ 2,000/- per month to the appellants. The testimony of this witness is

corroborated by the testimony of Shri Parkash Gangwani, who appeared in the witness box as PW3 and stated that he was a partner in M/s. Balaji Electric Store at the aforementioned address and that the deceased was doing part-time job of electric repair work with the said store, earning thereby ₹ 2,500/- per month. The witness further testified that the deceased was also doing his own work wherefrom he was earning about ₹ 2,000/- per month; had he been alive, he would have earned ₹ 6,000/- to ₹ 7,000/- per month. He also proved on record document Ex.P5 to the effect that the deceased was earning ₹ 2,500/- per month from M/s. Balaji Electric Store.

6. The testimonies of PW2 Shri Bhawan Singh (father of the deceased) and PW3 Parkash Gangwani (part-time employer of the deceased) are unrebutted and unchallenged on record. In this view of the matter, I find no difficulty in assessing the income of the deceased to be in the sum of ₹ 4,000/- per month, that is, ₹ 2,500/- from M/s. Balaji Electric Store plus ₹ 1,500/- (approximately) from his own work. According to PW3, had the deceased remained alive, he would have earned a sum of ₹ 6,000/- to ₹ 7,000/- per month. Although it is

difficult, in my view, to assess the future income of the deceased and some amount of guess work and conjecture are necessarily involved, it is by no means an impossible job. Judicial notice may be taken of the fact that the deceased was an electrician and keeping in view the fact that he was only 21 years of age on the date of the accident, there was every chance of a manifold increase in his income. Even assessing his income on a conservative basis and adding 50% by way of future increase to his income on the date of the accident, the average monthly income of the deceased for the purpose of assessment of loss of dependency of the appellants comes to ₹ 6,000/- per month, that is, ₹ 4,000/- + ₹ 2,000/- (50% increase) = ₹ 6,000/-.

7. Mr. Y.R. Sharma, the learned counsel for the appellants, as noted above, urged that not more than one-third of the income of the deceased should have been deducted by the Tribunal towards the personal expenses and maintenance of the deceased keeping in view the fact that the deceased was the only son of his parents, who had three other progeny apart from the deceased, all of whom were daughters. Had the three daughters been unmarried, this Court would

have been inclined to uphold the aforesaid contention of Mr. Sharma, but keeping in view the fact that it is set out in the claim petition that two out of the three sisters of the deceased were married on the date of the accident, no fault can be found with the deduction of one-half of the income of the deceased by the learned Tribunal towards his personal expenses. Accordingly, the monthly loss of dependency of the appellants is held to be one-half of ₹ 6,000/-, that is, ₹ 3,000/- per month or ₹ 36,000/- per annum (₹ 3,000/- x 12). Multiplying the aforesaid multiplicand with the multiplier of 15 as adopted by the Claims Tribunal, the loss of dependency of the appellants comes to ₹ 5,40,000/-.

8. The Claims Tribunal apart from awarding pecuniary damages awarded a sum of ₹ 5,200/- to the appellants as expenses incurred by the appellants in hiring a van for the removal of the body of the deceased to his native place and ₹ 5,000/- as expenses of funeral and last rites. The learned Tribunal also awarded a sum of ₹ 25,000/- for the loss of love and affection of the deceased. In addition to the aforesaid, a sum of ₹ 5,000/- is awarded to the appellants towards the

loss of estate of the deceased, that is, in all, a sum of ₹ 40,200/- is awarded to the appellants towards pecuniary and non-pecuniary damages.

9. The award is accordingly modified to the extent that the appellants are held entitled to receive an enhanced amount of ₹ 3,20,000/-. The appellants are also held entitled to interest @ 7.5% per annum on the enhanced amount from the date of the accident till the date of payment. The Insurance Company shall deposit the enhanced amount of compensation with the learned Tribunal latest within 30 days from the date of the passing of this order.

10. The appeal stands disposed of accordingly.

REVA KHETRAPAL
(JUDGE)

July 18, 2011
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