

UNREPORTED

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

+ FAO NO. 339/2002

VINOD KUMAR AND ORS.

..... Appellants

Through: Mr. Sandeep Phogat, Advocate.

versus

RANBIR SINGH & ORS

..... Respondents

Through: Ms. Manjusha Wadhwa with
Ms. Angana Goswami, Advocate
for the respondent No.3/Insurance
Company.

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Date of Decision : August 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?

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. The appellants in this appeal seek to assail the judgment and award of the Motor Accident Claims Tribunal passed in Suit No. 288/1995 on 28.02.2002, whereunder an award in the sum of ₹ 1,53,600/- (including interim compensation) was passed in favour of the appellants and against the respondents with interest thereon at

the rate of 9% per annum from the date of the filing of the petition till realization, with a direction to the respondent No.3/Insurance Company to pay the award amount.

2. The facts relevant for decision of the present appeal are that on 14.01.1995 one Jagdish Chander died in a road accident, which took place within the jurisdiction of Police Station, Najafgarh, resulting in the registration of case FIR No. 19/1995 under Sections 279/337/304A IPC. A claim petition under the Motor Vehicles Act, 1988 was filed by his legal representatives being his widow, two minor daughters and one son.

3. The Motor Accident Claims Tribunal after holding an enquiry passed an award in favour of the legal representatives of the deceased as aforementioned. Aggrieved therefrom, the present appeal has been preferred by the appellants seeking enhancement of the award amount on the ground that the award amount is a niggardly one. Mr. Sandeep Phogat, the learned counsel for the appellants, has challenged the award on a number of grounds.

4. The first ground urged by the learned counsel is that the learned Tribunal wrongly assessed the income of the deceased to be in the sum of ₹ 1,420/- per month, which was the minimum wage rate applicable to an unskilled workman as on 01.08.1994 in Delhi. The learned counsel contends that the deceased was an agriculturalist, who also owned a milk dairy. He has pointed out that as per the Khatauni proved on record as Exhibit PW1/1, the deceased along with his brother Banwari was the co-owner of land admeasuring 99 bigas 7 biswas (approximately 12 ½ acres), meaning thereby that the deceased owned more than 6 acres of land. Apart from this, as testified by PW1 – Shri Vinod Kumar, the son of the deceased, the deceased also owned 10 to 12 buffaloes and was selling milk from his milk dairy. After the death of the deceased the said milk dairy had to be closed down and the agricultural land had to be given for ploughing on a crop-sharing basis.

5. The other contentions of the learned counsel are that the learned Tribunal did not take into account the fact that the wages of the deceased would have certainly increased with the passage of time;

and that the multiplier adopted by the Tribunal was on the lower side, in as much as the Tribunal had applied the multiplier of 10 whereas the appropriate multiplier in view of the fact that the age of the deceased was 45 years, would be the multiplier of 16.

6. Lastly, it is contended by the learned counsel for the appellants that no non-pecuniary damages whatsoever were awarded by the learned Tribunal to the appellants.

7. Ms. Manjusha Wadhwa, the learned counsel for the respondent No.3/Insurance Company, on the other hand, seeks to support the award on the ground that the award is a just and fair one. She contends that the learned Tribunal has rightly taken into account the minimum wages for an un-skilled workman on the date of the accident for the purpose of computing the loss of dependency of the appellants. According to her, the admitted factual position is that the aforesaid land belonging to the deceased has now been mutated in favour of the appellants, and they have given the land for cultivation on a crop-sharing basis and thus, the appellants are getting returns from the said land to the extent of at least 50% of the income of the

deceased. As regards the future prospects of increase in the income of the deceased, Ms. Wadhwa contends that there is no evidence on record with regard to the future prospects of the deceased. On the aspect of deduction, she submits that the deduction towards the personal expenses and maintenance of the deceased should be not less than $1/4^{\text{th}}$ of the income of the deceased keeping in view the number of dependant family members left behind by the deceased, whereas the Tribunal has deducted $1/5^{\text{th}}$ only of the income of the deceased for his personal expenses. As regards the multiplier, it is submitted by her that the multiplier of 16 is not the appropriate multiplier in the present case. The appellants are entitled to seek application of only that multiplier which is in accordance with the age of the deceased and in consonance with the guidelines laid down 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*.

8. Having heard the learned counsel for the parties and scrutinized the records, it is deemed expedient to first note down certain factual aspects of the case which are not in dispute. The first is that the

appellant No.1, the son of the deceased, has tendered in evidence document Exhibit P-A, which shows that the deceased had passed his Higher Secondary Examination in the year 1968 through the Central Board of Secondary Education (C.B.S.E.) and that the date of birth of the deceased was 11.05.1949, meaning thereby that the deceased was aged 45 years and 6 months on the date of the accident. It also deserves to be noted that there is on record document PW1/1, which is a Khatauni in Form No.6, showing that the deceased alongwith his brother was the owner of 99.7 bigas of land in the Najafgarh area. The share of the deceased in the said land was thus to the extent of 50%, the remaining 50% being owned by his brother. It is not in dispute that the said land now stands mutated in the names of the appellants and has been given out for ploughing on a crop-sharing basis. As regards the milk dairy owned by the deceased, the only evidence on record to show that the deceased had 10 to 12 buffaloes is the statement of PW1 – Shri Vinod Kumar, the son of the deceased alone.

9. There is no manner of doubt that the assessment of

compensation in a case such as the present one is a difficult task in view of the fact that there is no documentary evidence to support the version of the appellants that the deceased was earning ₹ 6,000/- per month. The learned Tribunal has however taken the income of the deceased at par with the wages of an unskilled worker on the date of the accident, which, in my view, is not appropriate keeping in view the fact that the deceased was an agriculturist owning more than 6 acres of land and was also an educated person. I would, therefore, prefer to go by the Higher Secondary School Certificate of the deceased and assess his income on the basis thereof. The minimum wage rate for a matriculate as notified by the Government of India on the date of the accident was to the tune of ₹ 1,868/- per month. The income of the deceased is accordingly assessed to be in the sum of ₹ 1,868/- per month.

10. Judicial notice has time and again been taken by different Benches of this Court of the fact that minimum wages get doubled over a period of 10 years to counter the rise in price index and inflation, and this fact cannot be brushed aside while computing the

loss of dependency of the legal representatives of the deceased in a motor vehicular accident. The following are the decisions in which the aforesaid view has been expressed by this Court:

- (i) *Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182;*
- (ii) *National Insurance Co. Ltd. vs. Kailash Devi, II (2008) ACC 770;*
- (iii) *National Insurance Company Limited vs. Renu Devi, III (2008) ACC 134;*
- (iv) *UPSRTC vs. Munni Devi, IV (2009) ACC 879;*
- (v) *Shanti Devi and Ors. vs. Ghasiya Khachhap and Ors., ILR (2010) Delhi 412;*
- (vi) *Jitender Kumar vs. Virender Singh, II (2010) ACC 322;*
- (vii) *New India Assurance Co. Ltd. vs. Sujata & Ors., MAC. APP. No.19/2011 decided on January 21, 2011; and*
- (viii) *The New India Assurance Co. Ltd. vs. Rajni Devi & Ors., 2011 (179) DLT 744.*

11. I see no reason to disagree with the aforesaid view nor any

cogent reason could be pointed out to me by the learned counsel for the respondent No.3 to enable me to justify a departure from the same. Accordingly, the income of the deceased at the time of his demise must be added to the future anticipated income of the deceased and the resultant sum must be divided by two to arrive at the average monthly income of the deceased. Calculated thus, the income of the deceased comes to ₹ 2802/- per month, that is, ₹ 1,868/- plus ₹ 3,736/- divided by 2. Keeping in view the fact that the deceased had four dependant family members, in my view, a deduction of $\frac{1}{4}^{\text{th}}$ from the income of the deceased would be justified towards the personal expenses and maintenance of the deceased and thus, the average monthly loss of dependency of the appellants comes to ₹ 2101.50 per month, that is, ₹ 25,218/- per annum (Rupees Twenty Five Thousand Two Hundred and Eighteen Only).

12. Indisputably, the deceased was 45 years and 6 months of age on the date of the accident and thus, the appropriate multiplier to augment the aforesaid multiplicand would be the multiplier of 14, which is also the multiplier approved of and tabulated by the Hon'ble

Supreme Court in the case of *Sarla Verma (supra)* for the age group of deceased persons between 41 years and 45 years of age. Applying the multiplier of 14 to the aforesaid sum of ₹ 25,218/- , the total loss of dependency of the appellants comes to ₹ 3,53,052/- (Rupees three lakh fifty three thousands and fifty two only).

13. In addition to the aforesaid amount, the appellants are also entitled to receive non-pecuniary damages and accordingly, non-pecuniary damages under the heads of loss of love and affection, loss of consortium, loss of estate and funeral expenses in the sum of ₹ 10,000/- each are awarded. Thus, the total award amount works out to ₹ 3,93,052/-(Rupees three lakh ninety three thousands and fifty two only). .

14. The award amount accordingly stands enhanced by the sum of ₹ 2,39,452/-, which is rounded off to ₹ 2,39,500/-. The enhanced amount shall be paid by the respondent No.3 to the appellants within 6 weeks from today alongwith interest at the rate of 9% per annum from the date of the institution of the petition till the date of realization by depositing the same in the Tribunal. The orders with

regard to the apportionment and disbursement shall be passed by the Tribunal as deemed fit.

15. The appeal is allowed in the above terms.

16. Records of the learned Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

**August 11, 2011
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