

REPORTED

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

+ **FAO 523/2001**

MADHU MEHRA & ANR.	 Appellants	
	Through:	Mr. Navneet Goyal, Advocate
	versus	
KAMAL KISHORE & ORS.	 Respondents	
	Through:	Mr. Pawan Upadhyay and Ms. Anish Upadhyay, Advocates for the respondent No.1 Mr. Pankaj Seth, Advocate for the Insurance Company

+ **FAO 269/2002**

KAMAL KISHORE JAICHAND	 Appellant	
	Through:	Mr. Pawan Upadhyay and Ms. Anish Upadhyay, Advocates
	versus	
MADHU MEHRA & ORS.	 Respondents	
	Through:	Mr. Navneet Goyal, Advocate for the respondents No.1 and 2. Mr. Pankaj Seth, Advocate for the Insurance Company.

% Date of Decision : September 16, 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 this judgment it is proposed to decide two appeals , being
FAO No. 523/2001 entitled “*Madhu Mehra and Ors. Versus Kamal Kishore Jai Chand and Ors.*” and FAO No. 269/2002 entitled “*Kamal Kishore Jai Chand versus Madhu Mehra and Ors.*”, as common questions of law and fact are involved. The first of these two appeals has been filed by the claimants seeking enhancement of the amount of compensation awarded by the Claims Tribunal by its judgment dated 08.08.2001, while the second appeal has been filed by the owner of the offending vehicle praying for the setting aside of the aforesaid judgment on the ground that he had sold the offending vehicle to one Jeet Singh prior to the date of the accident and accordingly he is not liable to pay the award amount to the claimants.

2. The facts may be briefly recapitulated as follows.

3. On 01.12.1983, one Kamal Mehra, aged about 37 years, died in a motor vehicular accident caused by the driver of Bus No.DEP-2767

under the operation of the Delhi Transport Corporation. The deceased Kamal Mehra at the time of the accident was driving a two-wheeler scooter. The accident took place at the INA Flyover when he was hit by the bus in question from behind and killed at the spot. The legal representatives of the deceased, being his widow, his son and his mother, filed a claim petition under Section 92A and Section 110A of the Motor Vehicles Act, 1939 claiming compensation for his untimely demise in the aforesaid accident and impleading the respondent No.1 Shri Kamal Kishore Jai Chand – the alleged owner of the offending bus, the respondent No.2 Daya Chand – the driver of the bus, the respondent No.3 – the insurer of the bus and the respondent No.4 – the Delhi Transport Corporation as party respondents to the claim petition.

4. An application was filed by the respondent No.1 Kamal Kishore Jai Chand under Order I Rule 10 of the Code of Civil Procedure praying for deletion of his name on the ground that the vehicle in question had already been sold by him to one Jeet Singh on 24th August, 1983 prior to the accident and as such the petition was

not maintainable against him. By its order dated 20.03.1985, the Claims Tribunal dismissed the said application and held that the vehicle in question was transferred in the name of Jeet Singh only on 14.01.1985 and that on the date of the accident, that is, on 01.12.1983 even the sale was not complete as only part consideration had been received by the respondent No.1. It further held that as per the written statements filed by the respondents No.2 and 4, viz., the driver of the bus and the DTC, the respondent No.1 was stated to be the owner of the bus on the date of the accident and in the circumstances there was no question of deletion of the name of the respondent No.1.

5. Subsequent to this order dated 20.03.1985, an application was filed by the respondent No.1 on 09.04.1985 seeking impleadment of the aforesaid Jeet Singh as party respondent No.5. By an order of the same date, in view of the fact that no objection was raised by the learned counsel for the petitioners to his impleadment (though without admitting any of the averments made in the application), Jeet Singh was added as respondent No.5 to the array of parties.

6. Written statements were filed by all the respondents contesting the claim petition. It was pleaded by the respondent No.1 that the petition was not maintainable against him as he was not the owner of Bus No.DEF-2767 at the time of the alleged accident because he had already sold the said bus to Shri Jeet Singh, son of Shri Zile Singh on 24th August, 1983, much prior to the accident. The respondent No.1 further submitted that at the time of sale of the bus, the said Jeet Singh had executed certain documents in respect of the sale, that is, delivery receipt, cash receipt and an affidavit and undertaking. He, the respondent No.1, did not know anything about the accident or even about the bus route on which the bus was plying. The respondent No.5 Jeet Singh had made the full and final payment of the sale amount of ₹ 1,22,000/- to him, out of which ₹ 90,000/- was paid by him through a bank draft No.657/83 dated 03.09.1983 of Vijaya Bank and he had taken the delivery of the bus on 24.08.1983 alongwith all the relevant papers of the bus. The respondent No.2, the driver of the bus was employed by the said Jeet Singh. He, the respondent No.1, had sent intimation regarding the sale of the bus to

the Transport Authority, the concerned Insurance Company and the DTC by letter dated 12.09.1983 under UPC, and in that letter had informed about the sale of the bus to the concerned Authority, and also enclosed with the said letter the delivery receipt issued by the purchaser, the sale letter and the T.O. Form and requested the Authority concerned to change/transfer the ownership of the bus in the name of Jeet Singh, who was the owner of the bus after 24.08.1983. He also submitted that at the time of the sale he had handed over the papers of the bus, that is, the registration certificate, insurance, permit and fitness certificate to the owner Shri Jeet Singh and those papers were in the possession of Jeet Singh.

7. In the written statement filed by him, the respondent No.2 – Daya Chand admitted that on the date of the accident the bus No. DEP 2767 was being driven by him under DTC operation on route No. 400 from New Delhi Railway Station to Okhla. He further admitted that the bus had started from New Delhi Railway Station at 8:50 p.m., reached the destination, that is, Okhla at 9:50 p.m. and passed through the INA flyover approximately at about 9:10 p.m. He,

however, denied the factum of the accident and asserted that no accident as alleged in the petition had ever taken place by the bus driven by him with scooter of the deceased. As regards the ownership of the bus in question, he stated that the bus was owned and possessed by the respondent No.1 – Kamal Kishore Jai Chand.

8. The respondent No.3 – M/s. New India Insurance Company Limited admitted that the insurance policy insuring bus No. DEP 2767 was purchased by the respondent No.1 and the said policy was valid from 07.10.1983 to 06.03.1984. The respondent No.3, however, asserted that though the policy covered third party risk, the liability of the Company, if any, was limited to ₹ 50,000/- only.

9. The respondent No.4 – Delhi Transport Corporation in the written statement filed by it raised the preliminary objection that the claim petition was bad for mis-joinder of parties as it was neither the owner, nor the driver, nor the insurer of the bus in question, which was involved in the accident. The respondent no.4 asserted that the bus was owned and run by the respondent No.1. The Delhi Transport Corporation had entered into an agreement with the respondent No.1,

wherein it was specified that it would be the responsibility of the owner to take up an insurance policy covering third party risk. It was further provided in the said agreement that the owner would bear full responsibility and liability for the payment of compensation and under no circumstances the Corporation would be responsible for any civil or criminal action arising out of any accident or any action or tort arising out of the operation of the said vehicle. It was further laid down that the owner would be responsible for all the acts or deeds of the driver of the bus, who would be the employee of the owner. As such, at the time of the accident, the driver of the offending bus was an employee of the respondent No.1 and working under his control.

10. The respondent No.5 – Jeet Singh in the written statement filed by him submitted that the bus No. DEP 2767 was “owned and possessed as per record”, although the same was being driven under his management.

11. The petitioners filed replications to all the aforesaid written statements, affirming the contents of the petition and denying all the facts contrary to those set out in the petition. Issues were framed by

the learned Motor Accident Claims Tribunal on 19th August, 1985 and the case was listed for evidence on 29th April, 1986.

12. On 9th December, 1996 all the respondents except the respondents No.3 and 4 were proceeded *ex-parte*. Thereafter, the statement of RW1, an official of the Insurance Company was recorded, but despite ample opportunity granted for the purpose no evidence was adduced by any of the other respondents.

13. The learned Tribunal after analyzing the evidence adduced by the petitioners and by the respondent No.3 – Insurance Company passed an award in the sum of ₹ 95,000/- with interest thereon. The Tribunal, however, held the liability of the Insurance Company, i.e. the respondent No.3, to be limited to the extent of ₹ 50,000/- and directed that after satisfying the entire award of ₹ 95,000/- with interest, the respondent No.3 would be entitled to recover the excess amount of ₹ 45,000/- with interest thereon from the owner of the bus in question, that is, the respondent No.1.

14. Aggrieved by the meager amount of the award, the claimants preferred an appeal, being FAO No.523/2001, claiming an enhanced

amount of ₹ 6,00,000/-. Subsequently, the respondent No.1 too filed an appeal, being FAO No.269/2002, for setting aside the impugned award insofar as it held that on the alleged date of accident the respondent No.1 was the owner of the offending bus and directed the Insurance Company to recover the excess amount of ₹ 45,000/- from him. It is proposed to deal first with the appeal relating to enhancement of the award amount.

FAO No.523/2001 entitled “Madhu Mehra and Ors. vs. Kamal Kishore Jai Chand and Ors.”

15. On the aspect of quantum of compensation, the Claims Tribunal assessed the salary of the deceased to be in the sum of ₹ 1,000/- per month and the personal expenses of the deceased to be in the sum of ₹ 411/- per month. Deducting the personal expenses of the deceased from the monthly salary of the deceased, the learned Tribunal ascertained the loss of dependency of the appellants to be in the sum of ₹ 589/- per month or ₹ 7,068/- per annum. To augment the said multiplicand constituting the annual loss of dependency suffered by the legal representatives of the deceased, the Tribunal adjudged the multiplier of 12 to be the appropriate multiplier, and thus calculated

the total loss of dependency payable to the appellants to be in the sum of ₹ 84816/- (₹ 7068/- x 12). Adding thereto, ₹ 10,000/- towards the non pecuniary damages on account of loss of expectation of life, the total compensation payable to the appellants was assessed to be in the sum of ₹ 94,816/-, rounded off to ₹ 95,000/- (Rupees Ninety Five Thousand Only).

16. Mr. Navneet Goyal, the learned counsel for the respondents No.1 and 2/claimants challenged the award on the following grounds:-

- (i) The learned Tribunal erroneously assessed the income of the deceased to be in the sum of ₹ 1,000/- per month, whereas the deceased was working with M/s. Shaw Wallace and Company Limited and his salary should have been assessed as ₹ 2,000/- per month.
- (ii) The learned Tribunal ought to have taken into account the prospects of future increase in the income of the deceased for the purpose of the assessment of loss of dependency of his legal representatives.

- (iii) The learned Tribunal ought not to have deducted more than one-third of the income of the deceased towards his personal expenses and maintenance, whereas the Tribunal had deducted more than 40% of the income of the deceased for his personal expenses.
- (iv) The multiplier of 15 should have been adopted by the learned Tribunal instead of the multiplier of 12, keeping in view the fact that the deceased was 37 years of age on the date of the accident.
- (v) No amount whatsoever was awarded by the learned Tribunal towards the non-pecuniary damages, and the award deserved to be enhanced by taking into account non-pecuniary damages for the loss of consortium, loss of love and affection of the deceased and loss of estate of the deceased, as well as pecuniary damages for the funeral expenses of the deceased.

17. As regards the first contention of the learned counsel for the appellants regarding the salary of the deceased, apart from the

testimony of PW4, the widow of the deceased, there is nothing on record to prove the income of the deceased. This witness, in her testimony, stated that her husband was working in M/s. Shaw Wallace and Company as a sales man for selling wines, and that her husband used to give to her ₹ 2,000/- for household expenses. However, in her cross examination, she stated that she did not know the address where her husband was working and had never visited the Company where her husband used to work. She admitted that she had not seen the pay slip of her husband. She further admitted that her husband did not have a Bank account, though she stated that she had a Bank account. She stated that prior to the said company, viz., M/s. Shaw Wallace & Company, her husband was working with another wine merchant, but on a query put to her in this regard stated that she did not remember the name of the said wine merchant. She stated that she did not have any appointment letter or any other document showing that her husband was working with any other company prior to his joining service with M/s. Shaw Wallace & Company nor she had any appointment letter of her husband from M/s. Shaw Wallace &

Company. In such circumstances and the employer not having been produced in the witness box, the learned Tribunal, in my opinion, cannot be faulted for not considering the salary of the deceased to be ₹ 2,000/- per month and in assessing the monthly income of the deceased to be ₹ 1,000/- per month.

18. Coming next to the contention of the learned counsel for the appellants regarding the future prospects of increase in the income of the deceased, it is settled law that for the purpose of assessment of the average annual income of the deceased, the future prospects of increase in the income of the deceased may be taken into account only where the deceased is in permanent employment and has a stable job. In the present case, there is nothing on record to show that the employment of the deceased was permanent in nature, and that the deceased would have, as a matter of certainty, progressed in his career, had he not met with the unfortunate accident which terminated his life span. I am thus of the opinion that no addition can be made to the income of the deceased for future increase in his salary/income. I am fortified in coming to this conclusion from the following dicta laid

down in the case of *Smt. Sarla Verma & Ors. Versus Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121: (SCC, Page 134).

*“In **Susamma Thomas**, this Court increased the income by nearly 100%, in **Sarla Dixit**, the income was increased only by 50% and in **Abati Bezbaruah** the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”*

19. As regards the third contention of the learned counsel for the appellant regarding the forty per cent deduction made by the learned Tribunal towards the personal and living expenses of the deceased, it may be noted that the deceased left behind him three dependant family members, viz., his wife, son and mother. Therefore, I am at one with the counsel for the appellants that the deduction of not more than one-third towards the personal and living expenses of the deceased would have been justifiable. This would also be in conformity with the judgement of the Supreme Court in the case of *Sarla Verma* (supra). Thus calculated, the monthly loss of dependency of the appellants would have come to ₹ 666.67 per month and the annual loss of dependency to ₹ 8,000/- per annum.

20. In order to augment the aforesaid multiplicand constituting the annual loss of dependency of the appellants, the Tribunal, it may be noted, has applied the multiplier of 12 on the basis that the deceased was around 40 years of age on the date of his accidental death. In the absence of conclusive proof regarding the age of the deceased, the learned Tribunal, in my view, rightly considered the deceased to be of

around 40 years of age at the time of the accident on the basis of the post-mortem report Ex. PW.1/A, but the appropriate multiplier for the age group of victims between 36 years and 40 years as laid down in the case of *Sarla Verma (supra)* is the multiplier of 15. Applying the multiplier of 15 to the multiplicand of ₹ 8,000/- per annum, the total loss of dependency of the appellants works out to ₹ 1,20,000/-.

21. In addition to the aforesaid sum, the appellants are also held entitled to non-pecuniary damages under the heads of loss of consortium, loss of love and affection of the deceased and loss of estate of the deceased and pecuniary damages under the head of funeral expenses, which are assessed to be in the sum of ₹ 5,000/- each, with the clarification that in a case under the Motor Vehicles Act where compensation is claimed by the legal representatives of a deceased victim, compensation on account of loss of expectancy of life is not to be awarded. The award of the sum of ₹ 10,000/- awarded by the Tribunal under the aforesaid head is accordingly set aside. The total compensation payable to the appellants, thus, works out to be in

the sum of ₹ 1,40,000/- in all (Rupees One Lac Forty Thousand Only).

22. The award amount is accordingly enhanced by ₹ 45,000/- (Rupees Forty Five Thousand Only).

23. Resultantly, this appeal is partly allowed in the above terms.

FAO 269/2002 titled as “Kamal Kishore Jai Chand versus Madhu Mehra and Ors.”

24. Adverting now to the appeal of Sh. Kamal Kishore Jai Chand (Respondent no. 1 in FAO no. 523/2001), the sole contention of the learned counsel for the appellant is that the learned Tribunal erred in holding that on the date of the accident in question the appellant was the owner of the offending bus bearing No.DEF-2767, and in directing the Insurance Company to recover the award amount exceeding the limit of the liability of the Insurance Company, that is, the amount in excess of ₹ 50,000/-, from the appellant.

25. The learned counsel vociferously contended that the respondent No.5 Jeet Singh was the owner of the bus from 24.08.1983 and the respondent No.1 had no concern with the said bus after the sale of the bus with effect from 24.08.1983. I am not inclined to agree with the

aforesaid contention for the reason that it is not in dispute that the respondent No.1 was the registered owner of bus No.DEP-2767 on the date of the accident, which took place on 01.12.1983. It is also not in dispute that the aforesaid bus on the date of the accident was being driven by the respondent No.2, who, in his written statement, has admitted that the bus in question was owned and possessed by the respondent No.1. Further, the respondent No.4-Delhi Transport Corporation, in the written statement filed by the said Corporation has also admitted that the bus was owned and run by the respondent No.1 under an agreement entered into between the Corporation and the respondent No.1.

26. Furthermore, the bus in question is stated to have been sold for a total sale consideration of ₹ 1,22,000/- to the respondent No.5-Jeet Singh, and the respondent No.1 has asserted in his written statement that he received part payment of ₹ 90,000/- from the respondent No.5-Jeet Singh on 03.09.1983 and that he (Jeet Singh) had taken the delivery of the bus on 24.08.1983 alongwith the relevant papers of the bus. In this context, photostat copies of certain documents in respect

of the sale, that is, delivery receipt, cash receipt and an affidavit and undertaking are relied upon by the respondent No.1. In my view, however, the learned Tribunal has rightly held that no reliance can be placed upon the aforesaid documents for the reason that the originals have not been produced by the respondent No.1 nor the respondent No.1 has appeared in the witness box to state on oath that the photocopies produced by him are true copies of the originals, nor the respondent No.5-Jeet Singh has come into the witness box to depose about the veracity of the aforesaid documents. Even otherwise, these documents show that the bus in question was transferred to the respondent No.5 on 14.01.1985 by the Motor Licensing Officer, as is clear from the endorsement on the application dated 18.02.1985 addressed to the Motor Licensing Officer by the respondent No.1. Thus, from the aforesaid documents, I am unable to come to the conclusion that on the date of the accident the respondent No.1 had ceased to be the owner of the bus. Only part consideration appears to have been paid by the respondent No.5 to the respondent No.1 prior to the accident and the necessary inference, therefore, is that the sale

was not complete on the date of the accident even as per respondent No.1's own case. There is also nothing on record to suggest that possession of the vehicle was handed over to the respondent No.5 by the respondent No.1 prior to the date of the accident. As already stated hereinabove, the respondent No.1 has not appeared in the witness box to state on oath that he had handed over the possession of the bus in question to the respondent No.5 on 24.08.1983 as pleaded by him. On the other hand, the respondent No.2, who was the driver of the bus on the date of the accident, and the concerned official of the Delhi Transport Corporation who was plying the bus, have both stated that the bus was owned and possessed by the respondent No.1.

27. There is yet another circumstance which persuades me to hold that the respondent No.1 was the owner of the bus on the date of the accident. The respondent No.1 himself had got the bus released on superdginama (Ex.P4) on 05.12.1983. If the bus was not owned and possessed by him, certainly, to my mind, he would not have filed a superdginama for the release of the said bus. Yet again, the insurance policy effective on the date of the accident was valid from 07.10.1983

to 06.03.1984. If, as alleged by the appellant, the sale had been completed on 24.08.1983 and the concerned authorities had been intimated by the letter dated 12.09.1983, where was the question of the insurance policy being purchased on 07.10.1983 in the name of the appellant and not in the name of the respondent No.5-Jeet Singh.

28. The learned counsel for the appellant during the course of hearing put forth the contention that the respondent No.1 should be absolved of the liability in view of the fact that the respondent No.5 had admitted that the offending bus was running under his management. I am afraid the aforesaid contention has no merit for the reason that the respondent No.5 has nowhere admitted that the bus was owned by him or even possessed by him on the date of the accident. In his written statement, all that he stated was that the bus was owned as per the records. Even otherwise, at the risk of repetition, it is stated that the respondent No.5-Jeet Singh has not appeared in the witness box of his own accord nor has he been summoned by the respondent No.1 to substantiate the case of the respondent No.1 that the bus was owned and possessed by him (the

respondent No.5) on the date of the accident. The respondent No.1 being the registered owner of the bus, the burden of proof lay heavily upon him to prove that the possession of the bus had been handed over by him to the respondent No.5 prior to the accident. In my opinion, he has miserably failed to discharge the same. The necessary corollary is that the respondent No.1 must be held to be the owner of the offending bus and in possession of the said vehicle on the date of the accident. The inevitable conclusion is that it must be held that there is no merit in the present appeal. The same is accordingly dismissed as being devoid of merit.

29. Resultantly, FAO No.523/2001 is partly allowed and FAO No.269/2002 is dismissed.

30. There will be no order as to costs. Records of the Claims Tribunal be sent back.

**REVA KHETRAPAL
(JUDGE)**

September 16, 2011
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