

REPORTED

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

+ **FAO 758/2003**

REKHA SINGHAL AND ORS. Appellants
Through: Mr. Navneet Goyal, Advocate.

versus

KHUSHAL MANI AND ORS. Respondents
Through: None.

% Date of Decision : August 10, 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. This appeal seeks to assail the judgment and award of the Motor Accident Claims Tribunal, Shahdara, Delhi dated 14th August, 2003, whereby a sum of ₹ 4,75,000/- with interest at the rate of 8%

per annum from the date of the filing of the petition till the date of realization was awarded in favour of the appellants for the untimely demise of one Sh. S.K.Singhal in a motor vehicular accident which took place on 02.06.1998.

2. The sole grievance of Mr. Navneet Goyal, the learned counsel for the appellants, is that the appellants have been awarded a very meager amount of compensation keeping in view the fact that the deceased was a qualified Engineer and was in a stable job with the Government of India. The following contentions have been raised by Mr. Goyal with regard to the manner of calculation of the award amount by the learned Tribunal:

- (i) The learned Tribunal erred in assessment of the income of the deceased, in as much as the salary certificate of the deceased proved on record as Exhibit PW-9/A depicts the income of the deceased at the time of the accident to be in the sum of ₹ 5,609/- per month, yet the learned Tribunal assessed the income of the deceased to be in the sum of ₹ 3,000/- per month without any justification.

(ii) The learned Tribunal as a consequence of wrongly assessing the income of the deceased wrongly assessed the future increase in the income of the deceased in the sum of ₹ 6,000/- per month, and accordingly the average monthly income of the deceased has not been properly assessed.

(iii) The learned Tribunal erroneously deducted one-third of the award amount towards the personal expenses of the deceased whereas, keeping in view the fact that the deceased left behind him four dependant family members, the deduction should not have been more than one-fourth of the income of the deceased towards his personal expenses and maintenance.

(iv) The learned Tribunal awarded no amount whatsoever under the non-pecuniary heads of loss of estate of the deceased, loss of the consortium and loss of love and affection to the appellants.

3. At the time of the hearing none appeared on behalf of the respondents, although the matter was adjourned on two occasions in view of the fact that the counsel for the respondents was not present.

This court, therefore, did not have the opportunity of hearing the learned counsel for the respondents.

4. After hearing Mr. Navneet Goyal, the learned counsel for the appellants, and scrutinizing the certified copies of the documents placed on record, I am inclined to hold that the computation of compensation payable to the appellants by the learned Tribunal is not in accordance with the legal principles enunciated by the Hon'ble Supreme Court in its various decisions from time to time. Accordingly, I am left with no option except to recalculate the compensation payable to the appellants.

5. A bare glance at the salary certificate Exhibit PW-9/A proved on record by the widow of the deceased PW-9 – Smt. Rekha Singhal shows that the salary of the deceased inclusive of DA, CCA and HRA (and after excluding the travelling allowance, washing allowance, tool allowance and cycle allowance) was in the sum of ₹ 5,454/- per month. It may be mentioned that the salary of the deceased as reflected in Exhibit PW2/2, which is the 'Statement of Pay and Allowances' of the deceased, proved on record by PW-2–Shri

K.R.Verma, J.E. (Electrical), PWD Electrical Division and certified by the Executive Engineer and Assistant Engineer, is also the same, and there is thus no manner of doubt that the salary of the deceased on the date of the accident was ₹ 5,454/- per month.

6. As regards the future prospects of the deceased, keeping in view the guidelines laid down by Hon'ble Supreme Court in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, an addition of 30% to the income of the deceased must be made in view of the fact that the deceased was indisputably 44 years of age and thus fell in the age group of 40 years to 50 years at the time of his demise. Thus calculated, the average monthly income of the deceased comes to ₹ 7,090/- (Rupees seven thousand and ninety only) per month (₹ 5,454/- per month + ₹ 1,636/- per month = ₹ 7,090/- per month). In view of the fact that the deceased had left behind him four dependant family members viz. his widow, two children and widowed mother, a deduction of one-fourth of the income of the deceased towards his personal expenses and maintenance would, in my view, be justified. This is also in

consonance with the guidelines laid down by the Hon'ble Supreme Court in the case of *Sarla Verma (supra)*. Thus, deducting one-fourth ($1/4^{\text{th}}$) from the average monthly income of the deceased, the average loss of dependency of the appellants comes to ₹ 5,317.50 per month, that is, ₹ 63,810/- per annum.

7. As regards the appropriate multiplier to be adopted in the present case, although the multiplier of 15 has been considered by the learned Tribunal to be the appropriate multiplier for assessing the loss of dependency of the appellants, I am inclined to adopt the multiplier of 14, which is the tabulated multiplier approved by Hon'ble Supreme Court in the case of *Sarla Verma (supra)*, where the age of the deceased falls in the age group of 41 years to 45 years. Applying the multiplier of 14, the total loss of dependency of the appellants works out to ₹ 8,93,340/-, that is, ₹ 63,810/- x 14 = ₹ 8,93,340/- (Rupees Eight Lakh Ninety Three Thousand Three Hundred and Forty Only).

8. Apart from aforesaid amount of pecuniary damages, the appellants must also be held entitled to the sum of ₹ 5,000/- awarded to them by the learned Tribunal on account of the expenses incurred

by them for bringing the dead body from Dehradun to Delhi as well as for the funeral expenses. As regards the non-pecuniary damages, the Tribunal has awarded a sum of ₹ 20,000/- under the head of pain and suffering. Since non-pecuniary damages under the aforesaid head cannot, in law, be awarded where the deceased instantaneously dies in the accident, it is deemed expedient to award a sum of ₹ 10,000/- towards loss of estate, ₹ 10,000/- towards loss of consortium and ₹ 20,000/- towards loss of love and affection of the deceased to the appellants. The total compensation payable to the appellants, thus, works out to ₹ 9,38,000/- (rounded off).

6. In view of the aforesaid, the award amount stands enhanced by a sum of ₹ 4,63,000/-. Interest on the said amount shall also be payable by the respondents No.1 and 2 at the rate of 7.5% per annum from the date of the institution of the petition till the date of realization. Fifty per cent of the award amount shall enure to the benefit of the appellant No.1 and the balance shall be proportionately divided between the appellants No.2 to 4.

7. The appeal is allowed in the above terms.
8. Records of the learned Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

August 10, 2011
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