

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

Date of Hearing: 24th October, 2011

Date of Decision: 18th November, 2011

+ **MAC APP. 251/2011**

MOHINI SRIVASTAVA & ORS. Appellants
Through: Mr. Manish Maini, Advocate.

Versus

RADHA KISHAN & ORS. Respondents
Through: Mr. Shadab Khan Advocate for
R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

J U D G M E N T

G. P. MITTAL, J.

1. The Appellants seek enhancement of the compensation of ₹ 3,32,032/- awarded by the order of the Tribunal dated 11.11.2010. The Appellants grievance is that the deceased Ashok Kumar Srivastava was working in Paradise Restaurant Pvt. Ltd. and was getting salary of ₹ 9,800/- per month. He worked in the restaurant till 03.02.2008 i.e. the date of the accident in which Late Ashok Kumar Srivastava lost his life. The Tribunal relied on Shri K.N. Umesh, H.R. Manager of Paradise Restaurant Pvt. Ltd. (PW-2) testimony who deposed

that the deceased never worked with them. The Tribunal found that although the deceased had worked as a Captain in Claridges Hotel Pvt. Ltd. but that was only upto 01.08.2003. The deceased took voluntary retirement from the Hotel under the Claridges Hotel Employees Voluntary Retirement Scheme 2003 w.e.f. 01.08.2003. Since there was no proof of the deceased's income, the Tribunal took into consideration the minimum wages of a skilled worker i.e. ₹ 4057/- per month on the date of the accident. The Tribunal further found that there were just two dependents i.e. the widow and the mother of the deceased Ashok Kumar Srivastava thus, 1/3rd of his assumed income was taken as his personal living expenses and applying the multiplier of 09, the Tribunal calculated the dependency at ₹ 2,92,104/-. The Tribunal further awarded a sum of ₹ 40,000/- i.e. ₹ 10,000/- each towards loss of consortium, loss of love and affection, loss of estate and funeral expenses and worked out the total compensation to be ₹ 3,32,032/-.

2. Since the salary certificate (though marked as Ex.PW-1/11) was not proved; rather, the same was disowned by Shri K.N. Umesh, H.R. Manager of Paradise Restaurant Pvt. Ltd., the Tribunal rightly disbelieved the same and took into consideration the minimum wages of the skilled worker to arrive at the dependency. PW-2 who also proved the letter Ex.PW-2/A to the effect that there was no person by the name of Ashok Kumar Srivastava employed as '*Restaurant Manager*' in the

outlet of Paradise Restaurant Pvt. Ltd. The Appellants were content to give a mere suggestion to PW-2 that Ex.PW-2/A was a false document but the certificate Ex.PW-1/11 was not even confronted to this witness. The only conclusion that can be drawn is that the deceased did not work in the Restaurant at any point of time.

3. The date of birth of the deceased as per Pan Card Ex.PW-1/2 was proved as 29.10.1952. Thus, the deceased was only 55 years and four months on the date of the accident. As per *Sarla Verma v. Delhi Transport Corporation, 2009 (6) Scale 129*, the Appellants were entitled to multiplier of 11 instead of 09 as used by the Tribunal in calculating the dependency. Similarly, the deduction towards the personal expenses would be 1/4th instead of 1/3rd as the numbers of dependents (Claimants) were five.
4. It is urged by the learned counsel for the Appellants that although the future prospects are not to be considered when the deceased was more than 50 years of age (As per *Sarla Verma (supra)*), yet the Court ought to have taken into consideration the inflation and should have added 50% of the minimum wages to arrive at the average income of the deceased. Reliance is placed on a decision of this Court in *Kanwar Devi and Ors. v. Bansal Roadways & Ors., 2008 ACJ 2181*, where it was held that the minimum wages is not akin to future prospects. Paragraph 6 of the report is extracted hereunder:-

“6. As regards compensating the appellants towards the increase in the minimum wages, this court has already taken view in a number of judgments that in a period of 10 years the minimum wages almost get more than doubled and, therefore, the same criteria can also be made applicable in the present case. The increase in the minimum wages is not akin to the future prospects as the said increase takes place so as to meet the price index and inflation rate and are subject to periodical revision by the government as per the provisions of the Minimum Wages Act. The multiplier of 17 has been applied in the present case as per the Second Schedule to the Motor Vehicles Act and, therefore, safely the income of the deceased in this period can be taken to have doubled, i.e. ₹ 6,174 and taking an average of the same the monthly income of the deceased can be taken at ₹ 4,630.50.....”

5. It is true that the inflation and price indexation is not the same as the future prospects, yet the future prospects are considered where the deceased or injured is comparatively young. The principles as given in *Sarla Verma (supra)* while considering the future prospects would equally apply while considering the indexation due to inflation in case of minimum wages i.e. addition of 50% towards inflation and indexation where the deceased / injured was below 40 years and ‘NIL’ where the deceased/injured was more than 50 years Thus, the total compensation works out as under:-

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| 1. Loss of dependency (4057 – 1014 x 12 x 11) | = | 4,01,676/- |
| 2. Loss of love and affection | = | 10,000/- |

3. Loss of consortium	=	10,000/-
4. Funeral Expenses	=	10,000/-
5. Loss to Estate	=	10,000/-
TOTAL		= 4,41,676/-

6. Hence, in my view the Appellants are entitled to an additional compensation of ₹ 1,09,644/- along with interest @ 8 % per annum. Out of the additional amount of ₹ 1,09,644/-, a sum of ₹ 80,000/- shall be payable to Appellant No.1 Smt. Mohini Srivastava and a sum of ₹ 29,644/- shall be payable to Appellant No.5 Smt. Laxmi Devi with proportionate interest. Respondent No.3 is directed to pay the enhanced compensation within 30 days.
7. As per direction given in Para No.21 of the impugn award, 50% of the enhanced award amount shall be deposited by Appellant No.1 and 5 in the FDR for a period of two years and 50% shall be credited in their saving bank account and the interest on the same would be transferred in the saving bank account regularly.
8. The appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

NOVEMBER 18, 2011
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