

UNREPORTED

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

+ MAC. APP. 108/2005

JYOTI AGGARWAL & ORS. Appellants
Through: **Mr. Santosh Chaurihaa,**
Advocate

versus

HARE RAM SAHU & ORS. Respondents
Through: **Mr. A.K. Soni, Advocate for**
the respondent No.3

% Date of Decision : March 01, 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 (ORAL)

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellants seek to impugn the award dated 06.11.2004 whereby the appellants were awarded a sum of ₹ 5,70,000/- with simple interest at the rate of 6% per annum from the

date of the filing of the petition, i.e., 29.10.2002 till its realization on the ground that the appellants are entitled to the enhanced award amount of ₹ 25 lakhs with costs and interest.

2. The facts relevant for the disposal of the appeal are that on 27.09.2002 a road accident took place at Flyover after the crossing of Maya Puri Chowk Red Light, in which the motorcycle of Tanmay Aggarwal, the son of the appellants, was hit by a tempo being driven rashly and negligently by its driver. In the said accident, Tanmay Aggarwal (hereinafter referred to as “the deceased”) sustained grievous injuries to which he succumbed. He was a young boy aged 20 years and was studying in B.E. (Polymer Science and Chemical Technology) second year. Apart from studying engineering, the deceased was giving tuitions. It is claimed that in all he was earning a sum of ₹ 55,000/- per annum and was an income-tax payee. A claim petition claiming compensation in the sum of ₹ 25 lakhs was filed by the appellants against the respondent No.1/Hare Ram Sahu – the driver, the respondent No.2/Hanuman Marble Sales Corporation – the owner and the respondent No.3/Oriental Insurance Co. Ltd. – the

insurer of the offending vehicle, claiming that they were jointly and severally liable to pay the compensation for the untimely demise of their son.

3. The respondents No.1 and 2 filed a joint written statement admitting the factum of accident, but denying that the accident took place on account of the rash and negligent driving of their vehicle, and hence their liability to pay compensation to the appellants. The respondent No.3 – Insurance Company in the written statement filed by it admitted the factum of insurance, but denied its liability to pay compensation on the ground that the drivers of both the vehicles were not holding valid and effective driving licences.

4. The appellants in support of their claim examined PW1 Vikas Kaushal, who was the pillion rider on the motorcycle driven by the deceased at the time of the accident and PW2 Rakesh Kumar Aggarwal, the father of the deceased (the appellant No.2 herein), who proved on record the relevant documents with regard to the educational qualifications of the deceased as Ex.PW2/1 to Ex.PW2/6 and the income-tax returns filed by him as Ex.PW2/7 to Ex.PW2/9.

He also proved on record the income-tax returns filed by the appellants to prove their status as Ex.PW2/10 to Ex.PW2/15. The appellants also examined PW3 Amit Kumar, a witness from the Delhi College of Engineering, who proved the relevant record to show that the deceased was a student of the Third Semester with the said college in B.E. as Ex.PW3/1 to Ex.PW3/2.

5. The respondents adduced no evidence at all to prove their defence.

6. On appreciation of the evidence, the learned Motor Accident Claims Tribunal recorded its satisfaction that the accident had taken place on 27.09.2002 due to the rash and negligent driving of the tempo driven by the respondent No.1, owned by the respondent No.2 and insured with the respondent No.3, resulting in fatal injuries on the person of the deceased. The Tribunal then proceeded to compute the compensation payable to the parents of the deceased (the appellants herein) on the basis that the deceased was a student of B.E. Third Semester, from Delhi College of Engineering at the time of the accident and was also taking tuitions, wherefrom he was earning a

sum of ₹ 4,600/- per month. The Tribunal recorded that the deceased was an income-tax payee as borne out by his income-tax return for the assessment year 2001-02 (Ex.PW2/7) and for the assessment year 2002-03 (Ex.PW2/8). The Permanent Account Number of the deceased, the Tribunal noted, had been proved on record as Ex.PW2/9 and the income-tax returns filed by both the appellants as Ex.PW2/10 to Ex.PW2/15.

7. The Tribunal further noted that the annual income of the deceased as per the income-tax return for the assessment year 2001-02 was ₹ 68,400/-, which return was filed on 28.08.2002, and could not have been manipulated in any manner as the deceased was not apprehending his death in the accident at that point of time. The Tribunal, however, rightly refused to take note of the income-tax return placed on record as Ex.PW2/8, filed in September, 2003, as the same was filed subsequent to the death of the deceased. It recorded that the deceased, who was a student of Engineering and simultaneously was earning by taking tuition, evidently had a bright future ahead and after the completion of his education, he would have

earned at least ₹ 10,000/- per month. At the same time, the deceased in due course would have got married and raised his own family and, therefore, the financial dependency of the claimants must be taken to be only 1/3rd of the total income of the deceased, which he would have earned in future.

8. On the aforesaid basis, the average annual income of the deceased was worked out by the Tribunal to be ₹ 1,20,000/-, i.e., ₹ 10,000/- x 12, and the financial dependency of the appellants as ₹ 40,000/- (one-third of the income of the deceased). To augment this multiplicand, the Tribunal applied the multiplier of 13 on the basis that the date of birth of the mother of the deceased, as per her income-tax return (Ex.PW2/10), was 19.10.1957, meaning thereby that she was 45 years of age at the time of the death of the deceased. The Tribunal thus awarded a sum of ₹ 5,20,000/- towards the loss of dependency of the appellants and to the aforesaid amount made an addition of ₹ 50,000/- towards general damages, which included funeral expenses, loss of love and affection, loss of estate, mental pain and shock, and thus awarded a total sum of ₹ 5,70,000/- to the

appellants towards compensation for the unfortunate demise of their young son.

9. Aggrieved by the aforesaid award, the appellants have preferred the present appeal for enhancement of the award amount on the basis of evidence adduced by them.

10. Mr. Santosh Chaurihaa, the learned counsel for the appellants contended that the Claims Tribunal erred in arriving at the conclusion that after the completion of his education the deceased would have earned ₹ 10,000/- per month. According to him, keeping in view the fact that the deceased was a student of engineering in an institute of some repute and the income of the deceased as borne out by his income-tax return for the assessment year 2001-02 was ₹ 68,400/- per annum from tuitions alone, it stands to reason that after completion of his engineering the deceased, had he remained alive, would have secured a good job, and thus the annual income of the deceased ought to have been assessed by the Tribunal to be ₹ 50,000/- per month after the completion of his engineering. He submitted that the learned Tribunal ought to have computed the income of the deceased to be at

least ₹ 15,000/- per month, if not more, for determination of the compensation payable to his legal representatives and the monthly dependency of the appellants to be ₹ 10,000/- per month. The deduction of $\frac{2}{3}$ rd of the income of the deceased towards his personal expenses was also unwarranted and not more than $\frac{1}{3}$ rd of his income ought to have been deducted by the Claims Tribunal towards the personal expenses of the deceased. In the context of multiplier also, the learned counsel contended, the learned Tribunal ought to have applied the multiplier of 16 as prescribed in the Second Schedule of the Motor Vehicles Act and it grossly erred in applying the multiplier of 13 only. Finally, he urged that the interest awarded by the Claims Tribunal should have been at least at the rate of 12% per annum, if not more, from the date of the petition till the date of realization in the present case.

11. Mr. A.K. Soni, the learned counsel for the respondent No.3, on the other hand, sought to support the award by contending that just and fair compensation had been awarded by the Claims Tribunal and, as such, the award called for no interference from this Court.

12. Having considered the matter and gone through the records, I am unable to concur with the contentions of the learned counsel for the appellants that the Claims Tribunal ought to have held that the income of the deceased was ₹ 15,000/- per month. There is no manner of doubt that at the time of the accident the deceased was a student of B.E. Second Year and was earning a sum of ₹ 68,400/- per annum, i.e., ₹ 5,700/- per month from taking tuitions as is evident from the income-tax return filed by the deceased immediately prior to his death. In due course of time, the odds are that the deceased would have completed his engineering course and after obtaining an engineering degree would have earned a sum of ₹ 10,000/- per month. Presumably, the deceased at that point of time would have been unable to supplement his income by giving tuitions as it is universally known that a person engaged in a regular job, which is not a part-time job, has little or no time left for giving tuitions. On the other hand, there is also a possibility that the deceased would have been unable to complete his engineering course or after completion of the same would have been unable to secure a professional job. The

imponderables are many and it is indeed impossible to contemplate all the uncertainties of life, in my view, the Tribunal rightly held that the income of the deceased after completion of his engineering course may fairly be assessed to be in the sum of ₹ 10,000/- per month. No cogent reason has been pointed out to me as to why I should make a different assessment. As regards the deduction of $\frac{2}{3}$ rd of the income of the deceased towards his personal expenses, however, I am of the view that the Tribunal erred in assessing the loss of dependency of the appellants to be $\frac{1}{3}$ rd of the income of the deceased. In the case of *Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, the Supreme Court has laid down that as a rule of thumb in the case of a bachelor, where his parents are his legal representatives, 50% of the income of the deceased must be deducted towards his personal expenses. Thus calculated, the loss of dependency of the appellants works out to ₹ 5,000/- per month (one-half of ₹ 10,000/-), i.e., ₹ 60,000/- per annum.

13. As regards the multiplier adopted by the Tribunal for augmenting the loss of dependency of the appellants, there is no

dispute about the age of the appellant No.1, the mother of the deceased. Her income-tax return Ex.PW2/10 depicts her date of birth to be 19.10.1957, meaning thereby that she was 45 years of age at the time of the death of the deceased on 27.09.2002. Thus, the multiplier applicable in the instant case, in consonance with the judgment of the Supreme Court in *Sarla Verma's* case (*supra*), would be the multiplier of 14. Thus, the total loss of dependency of the appellants works out to ₹ 60,000/- x 14 = ₹ 8,40,000/-. After adding the non-pecuniary damages awarded by the learned Tribunal towards funeral expenses, loss of affection, loss to the estate of the deceased, etc., the total compensation works out to ₹ 8,90,000/- including the amount of the interim award, if any. Apart from this, the appellants would also be entitled to interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of realization.

14. The appellants are accordingly held entitled to receive an enhanced amount of ₹ 3,20,000/- towards compensation for the unfortunate demise of their son from the respondent No.3 – Insurance Company with interest at the rate of 7.5% per annum from the date of

the filing of the petition till the date of realization. The award stands modified accordingly.

The appeal is allowed to the aforesaid extent and stands disposed of.

REVA KHETRAPAL
(JUDGE)

March 01, 2011
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