

REPORTED

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

+ **MAC.APP. 159/2006**

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Ms. Suman Bagga, Advocate

versus

RADHA DEVI AND ORS. Respondents
Through: Mr. O.P. Mannie, Advocate

+ **MAC.APP. 220-23/2006**

RADHA DEVI AND ORS. Appellants
Through: Mr. O.P. Mannie, Advocate

versus

SUKHDEV SINGH & ORS. Respondents
Through: Ms. Suman Bagga, Advocate

+ **MAC.APP. 164/2006**

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Ms. Suman Bagga, Advocate

versus

AMLA DEVI AND ORS. Respondents
Through: Mr. O.P. Mannie, Advocate

+ **MAC.APP. 348/2006**

AMLA DEVI AND ORS. Appellants
Through: Mr. O.P. Mannie, Advocate

versus

SUKHDEV SINGH AND ORS. Respondents
Through: Ms. Suman Bagga, Advocate

% Date of Decision : September 28, 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 common order, it is proposed to decide the aforementioned appeals, two of which are instituted by the Insurance Company and the remaining by the legal representatives of deceased

persons who died in a motor accident. All the appeals seek to assail the judgment and award of the Motor Accidents Claims Tribunal, Delhi dated 29.10.2005, whereby compensation was awarded under the Motor Vehicles Act, 1988.

2. The relevant facts for the decision of all the appeals are that one Shri Surender Kumar Thakur and one Shri Sada Nand Rishi Dev were run over by a truck bearing No.PB-11-H-5033, while they were engaged in construction work at the outer Ring Road near Haiderpur red light in the night intervening 22nd and 23rd September, 2002, resulting in the demise of both the aforementioned persons. Separate Claim Petitions were filed by the legal representatives of both the deceased persons arraying the driver, the owner and the insurer of the alleged offending truck as party respondents. Both these Claim Petitions culminated in the impugned award which is assailed by the Insurance Company as well as by the legal representatives of the deceased persons on the aspect of quantum. It is proposed to deal first with MAC. APP. Nos.159/2006 and 220-23/2006 and then with MAC. APP. Nos. 164/2006 and 348/2006.

MAC. APP. No.159/2006 and MAC. APP. No.220-23/2006

3. Both these appeals are filed against the award of the learned Tribunal passed in MACT Suit No.108/2003 titled as '*Radha Devi and Ors. versus Sukhdev Singh and Ors.*' and relate to the demise of Shri Surender Kumar Thakur. MAC. APP. No.159/2006 is filed by the Insurance Company and MAC. APP. Nos.220-23/2006 by the wife and the children of the deceased.

4. The learned Tribunal in the aforementioned Suit by its judgment dated 29.10.2005 passed an award in the sum of ₹ 4,82,500/- with interest thereon in favour of the legal representatives of the deceased Surender Kumar Thakur by assessing the wages of the deceased on the basis of minimum wages for a skilled worker, at the rate of ₹ 3,104/- per month, or say ₹ 37,248/- per annum. Deducting therefrom one-third ($1/3^{\text{rd}}$) towards the personal expenses of the deceased, the Tribunal computed the average annual loss of dependency of the appellants as ₹ 24,832/-, and on applying a multiplier of 15, awarded a total compensation of ₹ 4,82,500/- including ₹ 1,00,000/- towards personal emotional loss of the

claimants, the loss of love and affection and loss of consortium, and ₹ 10,000/- as expenses on the last rites of the deceased.

5. Aggrieved by the quantum of compensation awarded the present appeals have been filed by the Insurance Company as well as by the legal representatives of the deceased.

6. Ms. Suman Bagga, the learned counsel for the Insurance Company, contended that the Tribunal should have applied the multiplier of 13, instead of the multiplier of 15, for the purpose of augmenting the multiplicand constituting the loss of dependency of the legal representatives of the deceased for the reason that the age of the deceased, as per the post-mortem report, was 50 years. It was further contended by Ms. Bagga that the amount awarded by the learned Tribunal towards the loss of love and affection was excessive and the award amount in any case deserved to be scaled down.

7. Per contra, Mr. O.P. Mannie, the learned counsel for the claimants (appellants in MAC. APP. No.220-23/2006), contended that the learned Tribunal erred in assessing the wages of the deceased on the basis of the minimum wages, whereas the deceased was self-

employed and was actually earning ₹ 4,000/- per month. According to him, the learned Tribunal further erred in not taking into account the fact that even the minimum wages are being revised twice in a year, and as such the deceased would have earned at least ₹ 10,000/- per month in the near future, as he was only 42 years of age on the date of his accidental demise. The second contention of Mr. Mannie is that the learned Tribunal erred in deducting one-third ($1/3^{\text{rd}}$) of the income of the deceased towards the personal expenses of the deceased and that the deduction should be one-fourth ($1/4^{\text{th}}$) instead of one-third ($1/3^{\text{rd}}$), as the deceased had four dependent family members, namely, his wife and three children. The third contention of Mr. Mannie is that no amount whatsoever was awarded by the Tribunal towards the loss of consortium to the widow of the deceased.

8. I find merit in the contention of Mr. Mannie that the future increase in the minimum wages ought to have been taken into account by the learned Tribunal and that the deduction towards personal expenses of the deceased, in the instant case, keeping in view the fact that the deceased had four dependent family members ought to have

been not more than one-fourth (1/4th) of the income of the deceased. It may be noticed at this juncture that the consistent view of this High Court has been that judicial notice ought to be taken of the fact that minimum wages are revised at least twice in a year to beat the inflationary trend and rise in the price index. It has been so held in a number of decisions, including the following:

- (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.

9. Accordingly, it is proposed to re-compute the compensation by giving the benefit of doubling of minimum wages of the deceased on the date of the accident and taking the average of the wages on the date of the accident and the future anticipated wages. The average monthly income of the deceased is thus assessed to be in the sum of ₹ 4,656/- [that is, ₹ 3,104/- (minimum wages on the date of the accident) plus ₹ 6,208/- (double of minimum wages) divided by two]. The annual income thus comes to ₹ 55,872/- per annum. Deducting one-fourth ($1/4^{\text{th}}$) therefrom towards the personal expenses of the deceased, the annual financial loss of dependency of the family of the deceased works out to ₹ 41,904/- per annum.

10. The application of the multiplier, no doubt, presents some difficulty, inasmuch as in the claim petition and in the affidavit of the wife of the deceased, the age of the deceased is stated to be 42 years, whereas in the post-mortem report the age of the deceased is stated to be 50 years. In the case of *Narsingh & Anr. Vs. Balkrishan & Ors.*,

1988 ACJ 288, it has been held that the age which is mentioned in the post-mortem is only guess work and there could be a difference of 6 to 7 years in the assessment of the age of any person. In such circumstances, in my view, the Tribunal cannot be faulted for applying the multiplier of 15 which is the multiplier tabulated in the case of '*Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*' (2009) 6 SCC 121, for the age group of victims between 41 years to 45 years of age. Thus calculated, the total financial loss of dependency would come to ₹ 6,28,560/- (Rupees Six Lakh Twenty Eight Thousand Five Hundred and Sixty Only).

11. As regards the non-pecuniary damages awarded to the legal representatives of the deceased, I see no cogent reason why this Court should interfere with the same. The contention of Mr. Mannie that no amount whatsoever has been awarded towards the loss of consortium is also not correct. The learned Tribunal has awarded a sum of ₹ 1,00,000/- towards the loss of love and affection as well as towards the loss of consortium of the deceased while a sum of ₹ 10,000/- has been awarded towards the last rites of the deceased. Resultantly, the

award amount is held to be a total sum of ₹ 7,38,560/-, to which it is deemed just and fair to add a sum of ₹ 7,000/- towards the loss of estate of the deceased.

12. The claimants (appellants in MAC. APP. No.220-23/2006) are accordingly held entitled to receive compensation in the sum of ₹ 7,45,560/-, which may be rounded off to ₹ 7,46,000/- (Rupees seven lakh and forty six thousand only) with interest at the rate of 9% per annum as awarded by the learned Tribunal on the initial award amount and 7.5% per annum on the enhanced amount awarded by this Court.

13. MAC. APP. No.159/2006 and MAC. APP. No.220-23/2006 are decided accordingly with a direction to the Insurance Company to satisfy the award as modified hereinabove within 30 days from the date of this order by depositing the award amount with interest thereon with the Registrar General of this Court. The enhanced amount shall enure solely to the benefit of the widow of the deceased (appellant No.1 in MAC. APP. No. 220-23/2006).

MAC. APP. No.164/2006 and MAC. APP. No.348/2006

14. Both these appeals are filed against the award of the learned Tribunal passed in MACT Suit No.111/2003 titled as '*Amla Devi and Anr. versus Sukhdev Singh and Ors.*)' in respect of the accidental death of Shri Sada Nand Rishi Dev, who died in the same accident as the deceased Shri Surinder Kumar Thakur. The first of the aforementioned appeals being MAC. APP. No.164/2006 is filed by the Insurance Company for the scaling down of the compensation awarded to the legal representatives of the said Shri Sada Nand Rishi Dev, and the second being MAC. APP. No.348/2006 by the claimants for enhancement of the award amount.

15. Ms. Suman Bagga, the learned counsel for the Insurance Company, has assailed the award on the ground that the learned Tribunal erred in deducting only one-third ($1/3^{\text{rd}}$) of the income of the deceased towards his personal expenses and taking the dependency at two-thirds ($2/3^{\text{rds}}$). The contention of Ms. Bagga is that the learned Tribunal ought to have taken the dependency of the claimants, who were the parents of the deceased, at one-third ($1/3^{\text{rd}}$) or at the most at

one-half (1/2) instead of two-thirds ($2/3^{\text{rds}}$). Ms. Bagga also contended that the Tribunal erred in awarding a sum of ₹ 50,000/- to each of the petitioners towards non-pecuniary damages.

16. Mr. O.P. Mannie, in the cross-appeal filed by him, being MAC. APP. No.348/2006, on the other hand, has sought enhancement of the award amount on the ground that the Tribunal erred in assessing the income of the deceased on the basis of minimum wages at the rate of ₹ 2,846/- per month, whereas the deceased was self-employed, and was actually earning ₹ 3,500/- per month. He further contended that the Tribunal failed to appreciate that even the minimum wages are being revised twice in a year and as such the deceased would have earned at least ₹ 10,000/- per month in the near future, and that thereafter also his income would have kept on increasing in view of the fact that he was only 20 years of age on the date of the accident. He also submitted that the learned Tribunal, even while taking recourse to the minimum wage rate on the date of the accident, took into account the wages of a semi-skilled worker whereas the deceased was in fact a skilled workman, being a road maker.

17. For the reasons discussed above while deciding the appeals relating to the demise of Shri Surinder Kumar Thakur, *inter alia* being the dwindling value of the rupee and the fact that the minimum wage rate is revised every six months to keep pace with the inflationary trend, it is proposed to re-compute the quantum of compensation in the instant case also by taking into account the periodical increase in the minimum wages to counter increasing cost of living. Thus calculated, the average annual income of the deceased comes to ₹ 4,269/-, [that is, ₹ 2,846/- (minimum wages on the date of the accident) plus ₹ 5,692/- (double of minimum wages) divided by two]. The annual income of the deceased thus comes to ₹ 51,228/- per annum.

18. As regards the deduction to be made from the personal expenses of the deceased, I find merit in the contention of Ms. Bagga that the claimants being the parents of the deceased, a deduction of one-half (1/2) of the income of the deceased would be justified and in consonance with the judgment of the Supreme Court in the case of *Sarla Verma (Supra)*. So calculated, the average annual loss of

dependency of the legal representatives of the deceased comes to ₹ 25,614/- per annum. There is no dispute with regard to the application of the multiplier of 13, the parents of the deceased being in the age group of 46 years to 50 years. As such, the total financial loss of dependency suffered by the legal representatives of the deceased comes to ₹ 25,614/- X 13 = ₹ 3,32,982/- (Rupees three lakh thirty two thousand nine hundred and eighty two only). I am not inclined to interfere with the award of ₹ 50,000/- awarded by the learned Tribunal towards the loss of love and affection of the deceased and the sum of ₹ 10,000/- towards funeral expenses and the last rites of the deceased. It is however deemed just and fair to add a further sum of ₹ 7,000/- towards the loss of estate of the deceased, thereby awarding a total sum of ₹ 3,92,982/-, which may be rounded off to ₹ 4,00,000/- (Rupees four lakh only) to the claimants (appellants in MAC. APP. No.348/2006).

19. The award amount is accordingly enhanced from ₹ 3,56,000/- to ₹ 4,00,000/- with interest at the rate of 7.5% per annum on the enhanced amount from the date of the filing of the petition till the

date of realisation. MAC. APP. No.164/2006 and MAC. APP. No.348/2006 are decided accordingly with a direction to the Insurance Company to satisfy the award as modified hereinabove by depositing the award amount along with interest thereon within 30 days from the date of this order with the Registrar General of this Court, which shall be released to the appellants in equal proportion.

20. The appeals stand disposed of in the above terms. There shall be no order as to costs.

21. Records of the Claims Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

September 28, 2011
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