

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

Reserved on: 28th November, 2011
Pronounced on: 14th December, 2011

+ **MAC APP. 805/2006**

JAI KANWAR TYAGI & ANR. Appellants
Through: Mr. K. S. Bana, Adv.

Versus

SATNAM SINGH & ORS. Respondents
Through: Mr. Mohan Babu Agarwal with
Mr. H. C. Agarwal, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellants impugn the award dated 06.12.2005 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby a sum of ₹ 63,200/- was awarded as compensation in respect of the injuries received by Jitender Kumar in an accident, which took place on 19.04.1996.
2. Deceased Jitender Kumar joined as a Constable in Delhi Police on 13.12.1993. He was aged 25 years and was getting a salary of ₹ 3,125/- on the date of his accident, which was revised retrospectively on account of grant of 5th Pay Commission by the Central Government to its employees (w. e. f. 01.01.1996).

The Tribunal by the impugned award held that the deceased sustained injuries on account of rash and negligent driving of Truck No.PB-062272 by Respondent No.1. The Tribunal opined that the injuries suffered in the accident were not the proximate cause of the deceased's death and thus the owner and the driver of the offending vehicle were not liable to compensate the deceased's dependents for his untimely death.

3. Neelam Tyagi the deceased's wife was impleaded as Respondent No.4 before the Tribunal as also in this appeal. It is not in dispute that Neelam Tyagi was given a job in Delhi Police on compassionate ground. It is established that she re-married on 12.02.2002 i.e. about 6 years after the accident.

4. Questions for determination are: -

(i) Whether the injuries sustained in the accident were the proximate cause of Jitender Kumar's death.

If first question is answered in affirmative then the question to be determined is the compensation payable to the Appellants and Respondent No.4, and the effect of her re-marriage.

QUESTION NO.(i)

5. The Tribunal held that the accident occurred on 19.04.1996. The deceased was treated and discharged from Hindu Rao Hospital on 07.09.1996. He was re-admitted in the Hospital on

19.10.1996 after a gap of about 5 months. The Tribunal observed as under: -

“.....The first injury of Fracture Pelvis and Abdomonal (sic) and his second admission for intestinal obstruction and his post operative development i.e. Staphyloccal bronchopneumonia are not co-related to each other. Thus, from the evidence on record, it cannot be said that death of Jitender Kumar is a result of injuries sustained by him in a roadside accident.”

6. It is urged by the learned counsel for the Appellant that the claim petition was filed by deceased Jitender Kumar during his lifetime on 03.10.1996 for the injuries suffered by him. The Respondents No.1 and 2 in their written statement denied that the accident occurred on account of rashness or negligence on Respondent No.1's part. Respondent No.3 the Oriental Insurance Co. Ltd. also raised the plea that Jitender Kumar himself was careless and negligent in driving his scooter No.DL-7SD-3875. The claim petition was amended by the Appellants after Jitender Kumar's death. The Appellants pleaded that on 29.04.1996 the deceased's suffered grievous/ dangerous injuries in his stomach and right leg. The injured was operated upon on the same day. He remained under constant treatment in Hindu Rao Hospital and as per advice of the doctors he was again admitted for another surgery in October, 1996. In spite of their best efforts the doctors could not save him. It is a matter of record that these averments have

not been denied specifically or by necessary implication by any of the three Respondents i.e. Respondents No.1, 2 & 3. Thus, the factum of the deceased's continuous treatment in Hindu Rao Hospital and his second surgery as a complication for the injuries suffered in the accident was admitted by the Respondents.

7. PW-5 Dr. S. K. Gupta treated deceased Jitender Kumar; performed the first and the subsequent surgery. His testimony was not challenged by putting any question in cross-examination. His examination-in-chief is extracted hereunder: -

*“I have seen the case sheet of patient Jitender Kr. The same is Ex. PW-5/1. The patient was admitted in Hindu Rao Hospital on 19.4.96 vide MLC No.4789/96 as a case of roadside accident and at that time the patient had fracture of pelvis and abdominal injury for which he was operated upon 19.4.96. Patient was discharged on 7.5.96 when he recovered from the injury. Patient was re-admitted on 19.10.96 for intestinal obstruction for which he was operated upon. After operation patient developed staphylococcal bronchopneumonia and expired on 4.12.96. On 20.12.96 I recd. a letter from DCP, Delhi through M.S. of our hospital regarding supply of cause of death in which I replied that **the patient had intestinal obstruction due to bands which could be following previous surgery.**”*

8. From the opinion Ex. PW-5/2 of Dr. S. K. Gupta PW-5, it would be fruitful to extract the opinion Ex. PW-5/2 hereunder: -

“Dr. S. K. Gupta (Sr. Surgeon)

Pt. Jitender Kumar 25 Yrs. male was admitted vide MRD No.30182 on 19.10.96 as a case of Sub Acute Int Obstruction. He was operated upon and Int Obst due to bands following previous surgery, which he underwent following an accident. In the post OP period he developed Staphylococcal Bronchopneumonia and expired on 04.12.1996.

Ex. PW-5/2

*Sd/-
28.12.96”*

9. From PW-5 Dr. S. K. Gupta’s testimony and the opinion Ex. PW-5/2, it is clear: -

- (i) That Jitender Kumar was admitted in the hospital on 19.10.1996 as a case of sub-acute intestine Int obstruction.
- (ii) Intestine obstruction was due to bends following previous surgery.
- (iii) The previous surgery, which Jitender Kumar underwent was on account of an accident.
- (iv) In the post operative period Jitender Kumar developed Staphylococcal Bronchopneumonia and expired on 04.12.1996.

Thus, it was crystal clear from the opinion given by the Dr. S. K. Gupta, which was not challenged in cross-examination that the deceased died on account of post operative

complications on account of the serious injuries suffered in the accident. Simply because there was a time gap of 6 months in the accident and the death, it cannot be said that the death was not the direct or proximate cause of the accident.

10. Now is the time to turn to the next question. Jitender Kumar was a young Police Constable aged 25 years, who joined the police force a little less than three years before the accident. As stated earlier he was survived by a young widow (Respondent No.4 herein) and the parents (Appellant's herein). The trend of the superior Courts is that the prospects of re-marriage is not considered as a ground to deny or refuse the amount of compensation, even if the widow is young. It is neither a sin nor a stigma to re-marry. In *Vijay v. Laxmi Chand Jain & Ors.*, 1995 ACJ 755, a contention of prospects of re-marriage as a ground for reduction of compensation was rejected but it was held that if by additional evidence, it was proved that the widow had remarried, the same could have affected the award of compensation. In *Oriental Fire and General Insurance Co. Ltd. v. Shrimati Chandrawati*, AIR 1983 Allahabad 174, Allahabad High Court held that a widow is not entitled to compensation after she remarries. In *Nisha v. Gyanwati*, ILR (2007) 2 Delhi 53, this Court held that "*It would be appropriate if the loss of dependency is confined to the period from the date of the accident till the date of remarriage of the widow*". So in this case Respondent No.4 (widow) remarried after a period of 6

years. The fact that she got employment on compassionate ground would not be a factor to disentitle her from the compensation to which she was otherwise entitled just for the reason that she is being paid by the employer for the work, which she is performing. It is a different matter that where the husband and wife are working (and not dependent on each other) there is no loss of dependency and the surviving spouse is entitled to the compensation only under the head of loss of estate and not on account of loss of dependency as held in *A. Manavalagan v. A. Krishnamurthy & Ors.*, 2005 ACJ 1992 by the Karnataka High Court and in *Keith Rowe v. Prashant Sagar & Ors.*, MAC APP. No.601/2007 decided on 15.01.2001 by this Court.

11. The deceased was a young boy of 25 years with good future prospects. Evidence in this regard was led by the Appellants by examining PW-4 HC Karan Singh. Even as a Constable in Delhi Police his salary would have been ₹ 7,595/- on 01.12.2002 i.e. just after 6 years of the accident.
12. Since, the widow has remarried I have to select the multiplier as per the age of Appellant No.2 i.e. the deceased's mother. Unfortunately, no evidence was led as to the age of the deceased's parents. This accident took place 15 years back, from the age of the deceased and the photograph of the Appellants their age can be assumed to be about 45 years. In the circumstances of the case on the principles laid down by the

Supreme Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121, I would award future prospects, deduct 1/3rd towards personal expenses and apply the multiplier of '14'. The loss of dependency works out as ₹ 4,395/- + 50% = ₹ 6,592/- - 1/3rd = ₹ 4,395/- x 12 x 14 = ₹ 7,38,360/-. I would award a further sum of ₹ 10,000/- towards loss of estate, ₹ 10,000/- towards funeral expenses and ₹ 25,000/- on account of loss of love and affection. The overall compensation in addition to the compensation of ₹ 63,200/- (already awarded on account of reimbursement of medical expenses during the time the deceased survived) comes to ₹ 7,83,360/-. The compensation shall carry interest @ 7.5% per annum from the date of filing of the petition till realization of the amount.

13. Out of the compensation awarded a sum of ₹ 2,00,000/- along with proportionate interest shall be payable to Respondent No.4; a sum of ₹ 63,200/- shall be payable to Appellant No.1 along with proportionate interest and rest of the amount along with proportionate interest (after deducting the entire compensation, if any paid) shall be payable to Appellant No.2.
14. 20% of the compensation shall be released forthwith and rest of the amount shall be held in Fixed Deposit for a period of 3 years in UCO Bank, Delhi High Court Branch.
15. By the impugned award the Tribunal granted recovery rights to the Respondent No.3 the Oriental Insurance Co. Ltd. on the

ground that there was breach of condition of the policy as the Respondent No.1's licence No.3807/MTR/96P30/6/89 Ex. P9 was fake. This finding is not challenged by Respondents No.1 & 2. In terms of the Tribunal's order Respondent No.3 shall be entitled to recover the amount of compensation paid to the Appellants and Respondent No.4.

16. The appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

DECEMBER 14, 2011
hs