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THE HIGH COURT OF DELHI AT NEW DELHI

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MAC APPEAL No.56/2009

Date of Order: 16.09.2011

UMA HALDIA

..... Appellant

Through: Mr. O.P. Mannie, Advocate

Versus

KISHAN LAL & ORS.

..... Respondents

Through: Mr. D.K. Sharma, Advocate for
Respondent no.3

AND

MAC APPEAL No.57/2009

VIJAY MALA & ORS

..... Appellants

Through: Mr. O.P. Mannie, Advocate

Versus

KISHAN LAL & ORS.

..... Respondents

Through: Mr. D.K. Sharma, Advocate for
Respondent no.3

AND

MAC APPEAL No.58/2009

UMA HALDIA

..... Appellants

Through: Mr. O.P. Mannie, Advocate

Versus

KISHAN LAL & ORS.

..... Respondents

Through: Mr. D.K. Sharma, Advocate for
Respondent no.3

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of local papers may be allowed to see the judgment? - No
2. To be referred to the Reporter or not ? - No
3. Whether the judgment should be reported in the Digest ? - No

M.L. MEHTA, J. (Oral)

1. These three appeals arise out of the Award dated 28.03.2008 passed by learned Motor Accidents Claim Tribunal ("the Tribunal" for short) whereby four claim petitions filed under Sections 166/140 of the Motor Vehicle Act, 1988 ("the Act" for short) were disposed of by learned Tribunal. Out of those four claim petitions, one is stated to have been compromised. The grievance of the appellants herein, who have assailed the impugned award is the compensation awarded to each of them in their claim petition being insufficient on different counts.

2. The MAC Appeals No.56 of 2009 and 58 of 2009 were filed by appellant Uma Haldia, who is the mother of deceased Sandeep Haldia and mother-in-law of Priyanka, both whom died in the accident which took place between a car in which they were travelling and a bus. The said car was being driven by Veerpal Singh who also died in the said accident. The MAC Appeal No.57 of 2009 is filed by appellant Vikay Mala and other legal representatives of deceased Veerpal Singh.

3. In the impugned award, the Tribunal awarded a compensation of ₹8,56,900/- to appellant Uma Haldia on account of death of her son Sandeep Haldia. The Tribunal took the income of the deceased as his last salary of ₹8100/- per month which he was getting as sales representative from a shop. 1/3rd of his income was deducted on account of his personal living expenses. Applying a multiplier of 13, the loss of dependency was calculated as ₹8,42,400/-. The Tribunal also awarded a compensation of ₹2,000/- towards funeral expenses and

₹12,500/- on account of loss of estate and love and affection and thereby awarded total compensation of ₹8,56,900/-.

4. Learned counsel for the appellants argued on three counts, (i) the income of the deceased was taken as ₹8100/- per month without making any provisions and consideration for future prospects of the deceased; (ii) instead of 1/3rd, the deduction towards personal and living expenses of deceased ought to have been 1/4th and (iii) awarding of ₹12,500/- on account of loss of estate and love and affection was on lower side. Per contra, learned counsel for the respondent contended that the deceased was in a private job having no certainty of continued employment and salary hike and thus he being in an unstable private job, there was no scope of consideration for future prospects of increase of his income in view of law laid down by the Supreme Court in ***Sarla Verma and Others v Delhi Transport Corporation and Another*** [2009 INDIA SC 488] case. He also submitted that since the deceased was married and in due course of time, he would have raised his own family and thus under certain obligations to maintain his family and in that eventuality, the dependency of the appellant would have been considerably decreased. He submitted that instead of 1/3rd, one half of

the income of the deceased was liable to be deducted as towards his personal and living expenses.

5. There is no dispute with regard to the fact that the deceased was in an unstable private job. The learned Tribunal has rightly discussed the aspect of income of deceased including HRA which he was getting. Keeping in view the nature of his job, the last drawn salary of the deceased was rightly taken as the basis for calculating his income and the compensation that may be payable to the appellant. With regard to the plea of learned counsel for the respondent that instead of 1/3rd, one half of his income ought to have been taken towards his personal and living expenses, I do not think it appropriate to interfere with the discretion exercised by the learned Tribunal in this regard.

6. Learned Tribunal has also rightly applied the multiplier of 13 keeping in view the age of the appellant as 47. There is no illegality or infirmity in the award of the Tribunal in this regard. However, it is seen that the award of compensation of ₹12,500/- on account of loss of estate and love and affection was on lower side. The deceased being the only son of appellant, a sum of ₹50,000/- is deemed to be just and appropriate on account of loss of estate and love and affection. Consequently, while maintaining the compensation of ₹8,42,400/- on account of loss of dependency and ₹2,000/- on account of funeral

expenses, a sum of ₹50,000/- is awarded as compensation on account of loss of estate and love and affection,. As a result of this, the appellant would be entitled to additional sum of ₹37,500/-. The said amount is directed to be paid by the respondent/insurance company within 30 days from today and thereafter along with interest @7.5% per annum to the appellant.

7. Insofar as MAC Appeal 58 of 2009 is concerned which has been preferred by the appellant, compensation of ₹3,44,736/- was awarded by the Tribunal vide the impugned award. Priyanka was married and aged about 19 years. The Tribunal awarded compensation taking the minimum wages of an unskilled person as ₹3271/- per month. He deducted 1/3rd of her income towards personal living expenses and applied a multiplier of 16 and further awarded a sum of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss of estate. Learned counsel for the appellant submitted that the Tribunal has not taken into account the future prospects regarding increased minimum wages. On the other hand, learned counsel for the respondent/ insurance company submitted that the deceased was daughter-in-law of the appellant and that the appellant cannot be said to be dependent on her. He submitted that 50% of her wages ought to have been deducted towards her personal living expenses. There is no dispute that the appellant could not be said to be dependent upon her daughter-in-law, the deceased Priyanka. However, it could not be denied that the appellant was living along with his deceased son and daughter-in-law as a family member.

In such circumstances, what is to be seen as to whether the
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compensation awarded by the Tribunal was just and appropriate. In the given facts and circumstances, I do not see any illegality or perversity in the Tribunal's award awarding a compensation of ₹1,28,752/- taking the income based on minimum wages at ₹3271/- per month. However, on the other hand, I find that the compensation on account of funeral expenses @ ₹2,000/- seems to be on the lower side and in the present state of affairs, a sum of ₹15,000/- on account of funeral expenses is found to be just and reasonable. That being so, the appellant is entitled to additional sum of ₹13,000/- on account of funeral expenses, which shall be paid by respondent/ insurance company to the appellant within 30 days from today and thereafter with interest @ 7.5% per annum.

8. Insofar as MAC Appeal No.57 of 2009 is concerned, the same is preferred by Smt. Vijay Mala, widow of deceased Veerpal who was driver of the car which met with the accident. The deceased was stated to be aged about 27 years. Besides the appellant Smt. Vijay Mala, the deceased also had one minor daughter and a minor son and also parents. The deceased was stated to be working as a property dealer. The Tribunal had taken note of income tax returns of the deceased of the years 2003-04, 2004-05 and 2005-06. The income of the deceased of these years seemed to have increased from ₹70,820/- (assessment year 2003-04) to ₹1,24,550/- (assessment year 2005-06). The Tribunal had taken the last income of ₹1,24,550/- of deceased as his annual income and after making deduction of 1/3rd towards his personal and living expenses applied a multiplier of 18 and thereby arrived at a figure of ₹14,94,594/- as compensation on account of loss of dependency.

9. The learned counsel for the appellant submitted that keeping in view the income of the deceased, the future prospects of increase had to be taken into consideration and further that the award of compensation of ₹12,500/- on account of loss of estate and love and affection was on extremely lower side. He also submitted that keeping in view the number of legal heirs left by the deceased, 1/4th of his income ought to have been deducted towards his living and personal expenses. On the other hand, learned counsel for the insurance company fairly conceded that keeping in view the number of legal representatives left behind by the deceased, instead of 1/3rd of deduction towards living and personal expenses of the deceased, 1/4th thereof ought to have been deducted. He also submitted that the learned Tribunal has rightly taken note of the last income as the basis for arriving at a compensation since there was no certainty of future prospects of increase of income of deceased.

10. There is no dispute that the deceased was having a business of property dealing and this is a common knowledge that the income from this business is always fluctuating and cannot be certain every time. There is always the possibility of no income or decrease in income and also the possibility of increase in income. There is also possibility that there may be no income at all at any point of time in this business. Keeping in view the preponderance of uncertainty of life and business, the Tribunal has rightly taken last income as to be the income of the deceased for the purpose of calculating the compensation. I do not see

any infirmity or perversity in this regard. Keeping in view the number of LRs left behind by the deceased, 1/4th of his income would be deductible as towards his living and personal expenses. In this view of the matter, a sum of ₹31, 137/- would be deductible as towards his personal and living expenses being 1/4th of his income. A balance of ₹93,413/- would be the annual dependency loss of the appellants. There is no dispute with regard to the multiplier of 18 applied by the Tribunal. That being so, the annual dependency loss of appellants comes to ₹16,81,434/- (93413x18). Consequently, compensation of ₹14,94,594/- as awarded by the Tribunal on account of loss of dependency is raised to ₹16,81,434/-. The award of compensation of ₹12,500/- on account of loss of estate and love and affection is also seen to be on lower side. Keeping in view the age of deceased and the number of dependents/LRs left by the deceased a sum of ₹50,000/- is found to be just and appropriate on this account. Consequently, compensation of ₹12,500/- awarded on this count is raised to ₹50,000/-. The appellant would be entitled to enhanced amount of compensation in terms of above order within 30 days from today by respondent/ insurance company and thereafter with interest @ 7.5% per annum.

11. All the above three appeals stand disposed on above terms.

**M.L. MEHTA
(JUDGE)**

September 16, 2011
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