

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

Reserved on: 8th December, 2011
Pronounced on: 19th December, 2011

+ **MAC.APP. 342/2009**

ORIENTAL INSURANCE CO. LTD. Appellant
Through Ms. Manjusha Wadhwa, Advocate
Ms. Angana Goswami, Advocate

versus

SARVESH & ORS. Respondents
Through Mr. Varun Kumar, Advocate for
Respondents No.1 & 4(widow and
daughter)
Mr. R.K. Bachchan, Advocate for
Respondents No.2 & 3

AND

+ **MAC.APP. 358/2009**

RAM PAL SINGH & ANR. Appellants
Through Mr. R.K. Bachchan, Advocate

versus

ROSHAN LAL & ORS. Respondents
Through Ms. Manjusha Wadhwa, Advocate
with Ms. Angana Goswami, Advocate
for R-3 Insurance Company.
Mr. Varun Kumar, Advocate for
Respondents No.4 & 5(widow and
daughter)

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

J U D G M E N T

G. P. MITTAL, J.

1. These are two cross Appeals arising out of the award dated 19.03.2009 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby a compensation of ₹19,17,232/- was awarded by the Tribunal.
2. MAC APP. No.342/2009 filed by the Insurance Company is for reduction of the compensation on the ground that the multiplier was wrongly applied; the future prospects were considered without any evidence and the income tax was not deducted.
3. MAC APP. No.358/2009 is by deceased Vijay Kumar's parents who say that the deceased's widow namely Sarvesh re-married after one year of the accident. The Appellants being aged parents are entitled to a larger share than a sum of ₹ 1,00,000/- each awarded by the Tribunal.
4. In the case of *Kerala State Road Transport Corporation v. Susamma Thomas*, (1994) 2 SCC 176, it was held that the multiplier should be selected according to the age of the deceased or the Claimant whichever is lower. In other words, the Court has to accept the higher age whether of the dependent or the victim. While using the multiplier method for award of compensation, the entire amount as per the multiplier is awarded to the Claimants. Thus, if the Claimants are old and

the deceased is young the dependency would end earlier (according to the age of the Claimants). Similarly, where the Claimants are young but the deceased is old, the deceased would not be able to provide for the maintenance of the Claimants during the entire life time of the Claimants.

5. The main Claimant in this case is the minor child who was aged about three months on the date of the accident and the deceased's mother who was 55 years on the date of the accident.
6. As per *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, it was held that the deceased's father was not to be considered as a dependent unless there is evidence to the contrary. In this case no evidence was led by the Claimants to show that the deceased's father was financially dependent on him. It is admitted that Smt. Sarvesh the deceased's widow re-married after one year of the accident.
7. 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 All. 174, the 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*”.

8. Therefore, Respondent No.1 Smt. Sarvesh would be entitled to compensation only till the date of her re-marriage from the date of the accident.
9. The deceased was in settled business working as a Contractor and running his concern M/s. Matangi Engineering. He was being assessed to income tax as per the Income Tax Return Ex.PW-1/D. He filed the return of his income of ₹ 1,05,124/-. For the assessment year 2006-2007 there was no liability to pay income tax upto the income of ₹ 1,00,000/- and the rate of tax was 10% on an income above ₹ 1,00,000/- and below ₹ 1,35,000/-. Thus, the deceased was liable to pay income tax of ₹ 500/- only. I would, therefore, ignore the same for the purpose of calculation of dependency.
10. The deceased was in settled business and paying the income tax. The Tribunal was, therefore, right in granting 50% of the income towards the future prospects.

11. The average age of Baby Ritu and the deceased's mother comes to $\frac{1}{4}$ (3 months) + $\frac{55}{2} = 28$ years which was also the age of the deceased. The appropriate multiplier relevant to the deceased's age as per *Sarla Verma (supra)* is 17. The Tribunal gave the multiplier of 18 which was not justified. The loss of dependency, on applying a multiplier of 17 comes to ₹ 17,87,108/- (i.e. ₹ 1,05,124/- + 52,562 (50%) – $\frac{1}{3}^{\text{rd}}$ x 17).
12. Respondents No.1 to 4 (in MAC APP. 342/2009) are also entitled to a sum of ₹ 10,000/- towards loss of estates, ₹ 10,000/- towards funeral expenses and ₹ 25,000/- towards loss of love and affection.
13. After adding the notional amount under conventional heads, the total compensation works out as ₹ 18,32,108/-. The awarded compensation is reduced from ₹ 19,17,232/- to ₹ 18,32,108/-.
14. The excess amount deposited shall be refunded to the Insurance Company along with interest earned on the FDR of this amount, if any.
15. The Appeal filed by the Appellant Insurance Company being MAC APP.342/2009 is allowed in above terms.
16. As far as apportionment is concerned, as stated above Respondent Smt. Sarvesh got re-married just after one year of the accident. A sum of ₹ 2,00,000/- was rightly awarded to the

widow Smt. Sarvesh (Respondent No.4) in MAC APP.358/2009.

17. After deducting interim compensation of ₹ 50,000/- already paid, the awarded compensation shall be apportioned as under:-
 - (i) ₹ 2,00,000/- along with proportionate interest to Smt. Sarvesh (widow of the deceased Vijay Kumar)
 - (ii) ₹ 1,00,000/- along with proportionate interest to Shri Ram Pal Singh (father of the deceased Vijay Kumar).
 - (iii) ₹ 5,00,000/- along with proportionate interest to Smt. Kamla Devi (mother of the deceased Vijay Kumar).
 - (iv) Balance award amount with proportionate interest be paid to the minor daughter Baby Ritu.
18. The amount awarded to Smt. Sarvesh and father Shri Ram Pal Singh shall be released forthwith, if not, already released. Out of sum of ₹ 5,00,000/- with interest awarded to mother Smt. Kamla Devi, a sum of ₹ 1,00,000/- along with proportionate interest shall be released to her immediately. The remaining amount awarded to her along with proportionate interest shall be converted into two FDRs in equal amount for one year and three years.
19. The amount awarded to Respondent No.5 Baby Ritu shall be held in FDR till she attains the age of 21 years or till her

marriage, whichever is later. If any amount is needed for her higher education, her mother Smt. Sarvesh shall be entitled to apply to the Tribunal for release of the amount for that purpose.

20. The appeal filed by the parents of the deceased being MAC APP.358/2009 is disposed of in above terms.
21. Pending applications also stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 19, 2011
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