

REPORTED

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

+ MAC. APP. 436/2010

SUBODH KUMAR AND ANR. Appellants
Through: Mr. Rajnish K. Jha, Advocate

versus

MOHD. ARIF AND ORS. Respondents
Through: Ms. Gurkirat Kaur and
Ms. Sukanya, Advocates for the
respondent No.3

% Date of Decision : July 19, 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. The present appeal has been preferred by the appellants against the judgment and award of the Motor Accident Claims Tribunal dated 15.04.2010 seeking enhancement of the awarded amount.

2. The facts relevant for the decision of the present appeal are that on 03.03.2009, Shri Saurabh Jain (hereinafter referred to as “the deceased”) along with his friend Gaurav Jain was going to attend his C.A. class at Shah Auditorium on motorcycle bearing No.HR13 B-3423, which was registered in the name of Gaurav Jain and was being driven by the latter with the deceased as the pillion rider. At about 7.00 a.m., when they reached near Tis Hazari at the crossing towards Rajpura Road, all of a sudden the offending tempo Tata-407 bearing No.DL-1L-B-0254 came from behind and hit the rear side of the motorcycle with great force. The deceased sustained fatal injuries and though removed to the Trauma Centre was declared brought dead. A case bearing FIR No.60/09 was registered at Police Station Kashmere Gate under Sections 279/337/304A IPC against the respondent No.1, the driver of the said offending tempo.

3. A claim petition was filed by the appellants, who are the parents of the deceased, under Sections 166 and 140 of the Motor Vehicles Act, 1988 claiming compensation for the untimely demise of their son. In the said claim petition, the factum of accident was not

disputed by the respondent No.1, who was the driver of the offending vehicle, and the respondent No.2, the owner thereof, though it was denied that the accident was caused due to the rash and negligent driving of the respondent No.1. The respondent No.3, M/s. Oriental Insurance Company Ltd. admitted that the offending tempo Tata-407 was insured with it in the name of the respondent No.2 and that the accident had occurred during the period of validity of the insurance policy issued by it.

4. The Claims Tribunal after appraisal of the evidence on record, held the respondents No.1 and 2 liable to pay compensation to the appellants in the sum of ₹ 8,27,000/- with interest @ 7.5% per annum from the date of the filing of the petition, i.e., 09.04.2009 till the date of dispatch of the notice to the claimants and their counsel intimating the deposit of the award amount. Feeling aggrieved by the inadequacy of the amount of compensation, the appellants preferred the present appeal against the judgment and award of the Tribunal dated 15.04.2010.

5. The principal ground urged by Mr. Rajnish K. Jha., the learned counsel for the appellants at the time of the hearing of this appeal was that the income of the deceased for the purpose of computation of compensation payable to the appellants be taken to be ₹ 50,000/- per month, keeping in mind the fact that the deceased would have earned the said amount within a year of his death, had he remained alive. It is submitted that the deceased was 22 years of age at the time of the accident and was a student of M. Com. and in the final year of Chartered Accountancy, working as an Article Trainee with M/s. GSA & Associates. It was further submitted that he had received several offer letters from various companies, like M/s. Bajaj Ajay & Co. and M/s. GSA & Associates, offering him a sum of ₹ 3 lakhs per annum as salary on completion of C.A. final year. Reference was made by the learned counsel to the testimony of PW-1 Shri Subodh Kumar, the father of the deceased, who proved on record the educational certificates and mark-sheets of the deceased of his 10th and 12th class and B. Com.(H), collectively marked as Ex.PW-1/3, as well as the certificates of the deceased regarding his PEE Part-I

examination and PEE Part-II examination and the mark-sheet and admit card thereof as Ex.PW-1/4, the copies of the registration letters, acknowledgment letters for payment of fee, eligibility certificates for PEE-II and confirmation of Registration of Articleship-cum-Final year course of C.A., and the letter issued by the Institute of Chartered Accountants of India collectively marked as Ex.PW-1/5. Reference was also made by the learned counsel for the appellants to the certificate issued by M/s. GSA & Associates Ex.PW-1/6 and the professional certificate issued by Topper's Classes Pvt. Ltd. as Ex.PW-1/7. The learned counsel submitted that all the aforesaid documents showed that the deceased had a brilliant academic record and would have most certainly cleared his final year C.A. to earn a sum of ₹ 3 lakhs per annum, as evidenced by the offers held out to him by M/s. GSA & Associates and M/s. Bajaj Ajay & Co.

6. In support of his contention that the anticipated income of the deceased was ₹ 3 lakhs per annum as evidenced by the offer letters issued by M/s. GSA & Associates and M/s. Bajaj Ajay & Co., the

learned counsel for the appellants relied upon the following precedents:

- (i) ***Oriental Insurance Co. Ltd. vs. Deo Patodi and Ors., 2009 ACJ 2359.***
- (ii) ***Shakti Devi vs. New India Assurance Co. Ltd. and Anr., 2011 ACJ 15.***
- (iii) ***Archana Jha vs. Oriental Insurance Co. Ltd. and Ors., 2009 ACJ 1690.***
- (iv) ***Veerpal Pawar & Anr. vs. Sushil Kumar & Ors., MAC. APP. No.571/2009 decided on 25.11.2009.***
- (v) ***Arvind Kumar Mishra vs. New India Assurance Co. Ltd. and Anr., JT 2010 (10) SC 254.***

7. Another contention raised by the learned counsel for the appellants was that the multiplier adopted by the Tribunal for the purpose of ascertainment of loss of dependency of the appellants was the multiplier of 11. According to him, keeping in view the age of the mother of the deceased, the multiplier of 13 ought to have been applied to the multiplicand constituting the annual loss of dependency

of the appellants. It was pointed out by him that the election card as well as the ration card of the appellants was on record, which clearly showed that the mother of the deceased was around 46-47 years of age on the date of the accident, and for the age group of the victims between 46 years to 50 years, the appropriate multiplier in consonance with the judgment of the Hon'ble Supreme Court in ***Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121***, would be the multiplier of 13.

8. Ms. Gurkirat Kaur, the learned counsel for the respondent No.3—Insurance Company, in reply, submitted that the learned Tribunal had rightly assessed the income of the deceased in the sum of ₹ 12,000/- per month and there was no warrant for assuming that the deceased would have completed his Chartered Accountancy and earned a sum of ₹ 50,000/- per month, as was sought to be urged by the learned counsel for the appellants. She sought to support the award in its entirety.

9. A look first at the manner in which the learned Tribunal assessed the loss of dependency of the appellants. The learned

Tribunal, after referring to the document Ex.PW-1/5, viz., the letter issued by the Institute of Chartered Accountants of India (comprising five pages) and the testimony of PW-3, Shri Sateyendra Singh Bisht from the said Institute, who produced the record (Ex.PW-3/1) pertaining to the Article Registration No.CRO-0152992 of the deceased Saurabh Jain, which showed that he was enrolled for Articleship-cum-Final course of C.A. on 05.09.2007 under Mr. Arun Kumar Aggarwal, Chartered Accountant (after having cleared his PE-I & II examination in November, 2005 and May, 2007 respectively), held that the aforesaid documents established that the deceased was pursuing the professional course of Chartered Accountancy.

10. The learned Tribunal then referred to the testimony of PW-4 Shri Virender Bhatia, Senior Accountant, M/s. GSA & Associates, Malviya Nagar and the statement made by him that the deceased was working as an Article Trainee on a stipend of ₹ 5,670/- at the time of the accident, but observed that the offer letter dated 05.01.2009 purportedly issued by M/s. GSA & Associates to the deceased, which had been brought on record collectively as Ex.PW-1/6, “*as per PW-4*

was not a document which was admitted by the said representative of the Company". The Tribunal further observed that the offer letter issued by M/s. Bajaj Ajay & Co. dated 15.12.2008 though admitted by PW-5 Shri Ayush Garg (partner of M/s. Bajaj Ajay & Co.), but no acceptance letter had been given by the deceased. Thus, the said offer letter at best remained "a contingent offer letter, which would come into effect only if the deceased completed his final year C.A., for the completion of which obviously there was yet time".

11. The Tribunal thereafter proceeded to assess the "mean income" of the deceased to be ₹ 12,000/- per month, on the basis that since the deceased was getting a stipend of ₹ 5,670/- per month, he would definitely have secured a job where he would have got a salary of at least double the amount which he was getting as stipend. Deducting 50% towards the personal and living expenses of the deceased, the Tribunal thus assessed the annual loss of dependency of the appellants to be ₹ 6,000/- x 12 = ₹ 72,000/- per annum. To this multiplicand, constituting the annual loss of dependency, the Tribunal applied the multiplier of 11, and held that the compensation payable

to the appellants for the loss of dependency worked out to ₹ 7,92,000/- (i.e., ₹ 72,000/- x 11). This pecuniary compensation was sought to be augmented by the Tribunal by awarding a sum of ₹ 35,000/- towards non-pecuniary damages and funeral expenses, in all, a sum of ₹ 8,27,000/- with interest thereon was awarded to the appellants.

12. It may be noted at this juncture that though the mark-sheets of the deceased showed that he had secured good if not excellent marks, the Tribunal held that from the assessment of the mark-sheets “*the academic record of the deceased was nowhere near excellence*”.

13. For the purpose of assessing what would constitute just and fair compensation to the legal representatives of the deceased in a particular case, in my opinion, no rigid or inflexible formulae can be laid down. What is just and fair in one case may be highly unjust and unfair in another case. A single fact or circumstance may make all the difference in applying the yardstick of “just and fair”. Then again, the case must be viewed as a cumulative whole keeping in mind the entire factual background, the family background of the

deceased, the academic qualifications of the deceased, his social status, his marital status, his academic record and capabilities and a host of other circumstances which are incapable of being enumerated.

14. In the instant case, it is an admitted fact that the deceased was a student of C.A. Final year, and if not a student of academic brilliance and excellence was at the very least a student with a good academic record, who had sailed through all his examinations till the C.A. Final year examination securing good marks. It is also an admitted fact that at the time of the accident the deceased was working as an Article Trainee with M/s. GSA & Associates and was drawing a stipend of ₹ 5,670/- per month. No doubt, PW-4, the authorized representative of M/s. GSA & Associates, in the course of his cross-examination, stated that the first two pages of document Ex. PW-1/6, though issued by their firm under the signatures of one of the partners of the firm, had been issued after the death of the deceased, but admittedly the third page of document Ex.PW-1/6 was issued on 5th January, 2009, i.e., much prior to the date of the accident which took place on

03.03.2009. The said document, which is on the record of the learned Tribunal, reads as follows:

**“GSA & Associates
CHARTERED ACCOUNTANTS**

5th January 2009

***To,
Saurabh Jain
S/o Sh. Subodh Kumar Jain
Sut Ki Mandi
Kasganj
Uttar Pradesh***

Sub: OFFER LETTER

Dear Saurabh,

We are pleased to put on record appreciating your outstanding performance on CA article training served with us over a past period of Fifteen months wherein you had worked with commitment and due diligence on the work assigned to you.

Further it is informed that after completion of your Chartered Accountancy course we express our willingness to appoint you as a audit manager in our firm with the salary of 3 Lacs per annum subject to our terms and conditions.

***Shubha Arya
(Partner)***

***GSA & Associates
Chartered Accounts”***

15. From the aforesaid, it is clear that the anticipated earnings of the deceased after completion of his Chartered Accountancy Final year were ₹ 25,000/- per month. This is also borne out by the offer letter dated 15.12.2008 issued by M/s. Bajaj Ajay & Co., much prior to the date of death of the deceased. This offer letter was unequivocally admitted in evidence by PW-5 Shri Ayush Garg, partner of M/s. Bajaj Ajay & Co., Lajpat Nagar, New Delhi. The said Company had uncontrovertibly held out an offer of ₹ 3 lakhs per annum to the deceased on his completing his final year of Chartered Accountancy. The deceased, as stated above, had sailed through his entire academic career without break and there was no reason to suppose that he would not have cleared his final year Chartered Accountancy examinations. Had this been the case, there would have been no occasion for the aforesaid offer letters to have been issued to him by the two companies mentioned hereinabove. Even otherwise, judicial notice may be taken of the fact that the earning capacity of a Chartered Accountant in Government service after the Sixth Pay

Commission is in the range of ₹ 50,000/- per month and there is, therefore, no reason to assume that a Chartered Accountant in private service would not draw even half of the said amount. I, therefore, see no justification for the Tribunal to have brushed aside even the offer letter of M/s. Bajaj Ajay & Co. by terming it to be “a contingent offer letter” and by stating that it was uncertain whether the said offer would have subsisted by the time the deceased completed his Chartered Accountancy and, therefore, no assessment on the basis thereof could be made at this juncture.

16. Accordingly, keeping in view the fact that the deceased was on the verge of qualifying as a full-fledged Chartered Accountant and already had with him offer letters from two Companies with one of which he was working as an Article Trainee, extending an offer of a salary of ₹ 3,00,000/- per annum to him, the income of the deceased for the purpose of ascertainment of loss of dependency of the appellants is taken to be in the sum of ₹ 3,00,000/- per annum.

17. I am fortified in coming to the above conclusion by the judgment in ***Oriental Insurance Company Ltd. vs. Deo Pataudi 2009***

(8) *SCALE 194*, in which case the deceased aged 22 years was a student having a brilliant career and offer of employment from a US based Company at the time of accident. The learned Tribunal took his earning capacity to be ₹ 18,000/- per month. The High Court in appeal upheld the earning capacity of the deceased at ₹ 18,000/- per month. The Hon'ble Supreme Court enhanced the earning capacity of the deceased from ₹ 18,000/- to ₹ 25,000/- per month.

18. Relying upon the aforesaid judgment of the Hon'ble Supreme Court, in a recent decision rendered in *Ramesh Chand Joshi & Anr. vs. New India Assurance Co. Ltd. & Anr.*, MAC. APP. No.212-13/2006 on 20th January, 2010, a learned Single Judge of this Court in the case of a first year student of Bachelor of Engineering (Bio-Technology), in Delhi College of Engineering, aged 19 years at the time of the accident, held, on the basis of the placement records provided by the college, that the earning capacity of the deceased after completing the graduation course would have been ₹ 4.6 lakhs per annum, i.e., ₹ 38,333/- per month.

19. Adverting next to the contention of the learned counsel for the appellants with regard to the suitable multiplier to be adopted in the instant case, indisputably the age of the mother of the deceased was 46-47 years on the date of the accident. As noticed above, the appropriate multiplier for the age group of persons between 46 years and 50 years of age, as laid down by the Hon'ble Supreme Court in the case of *Sarla Verma's case (supra)* is the multiplier of 13. There was, therefore, in my view, no justification for the Tribunal to have adopted the multiplier of 11 in the present case.

20. In view of the foregoing, it has become necessary to undertake the exercise of re-computing the compensation payable to the appellants. On the basis that the annual income of the deceased would have been ₹ 3 lacs per annum, the income of the deceased after deducting 30% towards the income tax payable by him comes to ₹ 2,10,000/- per annum. Deducting one-half therefrom towards the personal expenses and maintenance of the deceased who was a bachelor, the income of the deceased for the purpose of loss of dependency of the appellants comes to ₹ 1,05,000/- per annum. This

multiplicand must be augmented by the use of an appropriate multiplier, which has already been adjudged to be the multiplier of 13. Thus calculated, the loss of dependency of the appellants works out to ₹ 1,05,000/- X 13 = 13,65,000/-. Apart from the aforesaid pecuniary damages, the appellants are held entitled to the non-pecuniary damages of ₹ 35,000/-, as awarded by the Tribunal, in all, a sum of ₹ 14,00,000/- with interest at the rate of 7.5% as awarded by the Tribunal.

21. The Insurance Company shall deposit the enhanced amount of compensation with interest thereon with the learned Tribunal within 30 days of the receipt of this order.

22. The appeal is accordingly allowed.

23. The records of the Tribunal be sent back forthwith.

REVA KHETRAPAL
(JUDGE)

July 19, 2011
km/sk