

UNREPORTED

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

+ MAC. APP. 519/2010

ISLAM

..... Appellant

Through: Mr. O.P.Mannie, Advocate.

versus

NARENDER JEET ARORA & ANR

..... Respondents

**Through: Ms. Nanita Sharma, Advocate
for the respondent No.2.**

%

Date of Decision : May 10, 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?

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellant seeks to assail the judgment and award dated 20.02.2010, passed in MACT Case No. 104/2010, whereby the Motor Accident Claims Tribunal awarded a sum of ₹ 1,93,000/- to the appellant against the claimed amount of ₹ 15,00,000/-.

2. The facts pertinent for the decision of the present appeal are that on 24.06.2005 at about 9:30 p.m., Smt. Farzana (hereinafter referred to as “the deceased”) was travelling in a Maruti Car from Delhi to Aligarh and when the said car reached Daurau Morh under Police Station Gabhana (Aligarh), an accident took place involving truck bearing registration No. UP 14 K 9153. A criminal case was registered vide FIR No. 119/2005 under Sections 279/338/304-A IPC with Police Station Gabhana (Aligarh). A claim petition was filed by the appellant, who is the husband of the deceased under Sections 166 and 140 of the Motor Vehicles Act, 1988, which was subsequently converted to one under Section 163A of the said Act.

3. It is asserted in the claim petition that the deceased – Smt. Farzana was the wife of the appellant and was 20 years of age at the time of the accident. It was further asserted that she was self-employed and was earning ₹ 4,500/- per month. It was stated that the nikahnama, with the photographs placed on court file, shows that the marriage of the deceased with the appellant was solemnized on 09.06.2005, that is, only 15 days prior to the ill-fated accident.

4. The Claims Tribunal, on the basis of the evidence on record, noted that though the appellant had stated that the deceased was earning ₹ 4,500/- per month, there was nothing on record to bear out the aforesaid assertion of the appellant, in as much as neither any educational certificate of the deceased had been placed on record, nor any oral or documentary evidence to show that the deceased had undergone any diploma of stitching or had any other qualification whatsoever was forthcoming on the record. The Claims Tribunal further noted that since the marriage had taken place just 15 days back, it could be believed that the appellant would not be having any evidence in his possession with regard to the income of the deceased. It then went to observe that in the circumstances, the income of the deceased as claimed by the appellant could not be taken into account nor could resort be had to minimum wages as there was no proof on record that the deceased was engaged in any professional activity. The Tribunal then referred to clause 6(b) of the Second Schedule, under Section 163A of the Motor Vehicles Act, wherein the notional income for the purposes of computation of compensation on account

of the death of those who have no income prior to the accident is mentioned, as ₹ 15,000/- per annum. The Claims Tribunal, thus, assumed the income of the deceased to be in the sum of ₹ 15,000/- per annum and deducting 1/3rd therefrom towards the personal and living expenses of the deceased, assessed the annual income of the deceased to be in the sum of ₹ 10,000/- per annum. On the aforesaid basis, the learned Tribunal held the appellant to be entitled to compensation to the extent of 1,93,000/-, inclusive of non-pecuniary damages, along with interest at the rate of 8% per annum from the date of the filing of the petition.

5. Aggrieved by the aforesaid findings of the Tribunal, the present appeal has been preferred by the appellant primarily on the ground that the compensation awarded to the appellant for the loss caused to him by the untimely demise of his newly-wedded wife was a very meagre amount and the same deserved to be enhanced.

6. Mr. O.P.Mannie, the learned counsel for the appellant, at the time of the hearing of this appeal urged that the income of the deceased though stated to be ₹ 4,500/- per month in the petition, was

₹ 3,300/- per month, as testified by the husband of the deceased, PW1-Islam. No evidence to the contrary had been adduced by the Insurance Company to controvert the same. Alternatively, he contended that, following the judgment of the Supreme Court in the case of *Lata Wadhwa versus State of Bihar, 2001 ACJ 1735*, the value of the services of the deceased be taken as ₹ 3,000/- per month. The second limb of Mr. Mannie's argument is that, the deduction of 1/3rd from the notional income of the deceased towards the personal expenses of the deceased, was unjustified and unwarranted.

7. With regard to his first contention, Mr. Mannie placed reliance on the judgment of the Supreme Court in *Arun Kumar Agrawal and Another versus National Insurance Company and Others, reported in 2010 (7) Scale 242*, wherein, it is held as under:

“23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is

employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean 2 etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

25. In Lata Wadhwa v. State of Bihar (supra), this Court considered the various issues raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the

victims of fire accident which occurred on 3.3.1989 resulting in the death of 60 persons and injuries to 113. By an interim order dated 15.12.1993, this Court requested former Chief Justice of India, Shri Justice Y.V. Chandrachud to look into various issues including the amount of compensation payable to the victims. Although, the petitioners filed objection to the report submitted by Shri Justice Y.V. Chandrachud, the Court overruled the same and accepted the report. On the issue of payment of compensation to housewife, the Court observed:

"So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000 per annum in cases of some and Rs.10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000 per month and Rs.36,000 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in

life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs.36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000 instead of Rs.25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs.20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs.50,000 towards the conventional figure."

8. Mr. Mannie pointed out that the judgment of the Supreme Court in the case of ***Lata Wadhwa (supra)*** was also referred to and approved by the Supreme Court in the case of ***Municipal Corporation of Greater Bombay versus Laxman Ayer and Another, (2003) 8 SCC 731***, and has been consistently followed by this Court in a number of decisions rendered by it. He submitted that this court, in cases where there is no evidence on record to show that the deceased

housewife was engaged in any professional activity, while assessing the notional income of the deceased housewife to be in the sum of ₹ 3,000/- per month, has held that the question of appropriating 1/3rd towards the personal expenses of the deceased does not arise. Reference was made by him, in this regard, to the following decisions of this court:-

(i) U.P. State Road Transport Corporation versus Anita Verma and Others, (2007) ACJ 962.

(ii) Rahul Gupta & Ors. versus Oriental Insurance Co. Ltd. & Ors. (I) (2008) ACC 19.

(iii) Partap Singh & Ors. versus Banwari Lal & Ors., (I) (2010) ACC 935.

9. There is no manner of doubt that in the instant case, apart from the statement of PW1 – Islam, that the deceased was earning ₹ 3,300/- per month, there is no evidence on record to show that the deceased was earning anything or had any educational qualification at all. This being so, the compensation awardable to the appellant has to be worked out by treating the deceased to be a housewife and the decision of the Apex Court in the ***Lata Wadhwa case (supra)*** that a housewife contributes in large measure to the family and even on a

modest estimation the value of her multifarious services is not less than ₹ 3,000/- per month, that is, ₹ 36,000/- per annum, squarely applies. Thus, in the present case, the income of the deceased could safely be taken to be at ₹ 3,000/- per month. No deduction towards personal expenses is called for while taking the value of the services of the deceased as a housewife and the deduction made by the Claims Tribunal must be held to be unjustified.

10. There is no dispute as to the fact that the deceased was 20 years of age on the date of the accident and the appropriate multiplier for the age group of the victims between 15 to 20 years as per the Second Schedule is the multiplier of 17. Thus calculated, the compensation payable to the appellant works out to ₹ 36,000/- per annum X 17, that is, ₹ 6,12,000/-. Adding thereto non-pecuniary damages of ₹ 5,000/- towards loss of estates, ₹10,000/- towards loss of consortium, ₹ 5,000/- towards loss of love and affection and ₹ 3,000/- towards funeral charges as awarded by the Claims Tribunal, the total amount of compensation payable to the appellant works out to ₹ 6,35,000/-.

11. The award is accordingly enhanced from ₹ 1,93,000/- to ₹ 6,35,000/-. The learned Claims Tribunal has awarded interest at the rate of 8% per annum on the award amount of ₹ 1,93,000/-. The same is upheld, however on the enhanced award amount, the interest shall be payable at the rate of 7.5% per annum from the date of the filing of the petition till the date of the realisation. The enhanced award amount alongwith the interest shall be deposited by the respondent No.2 with the Registrar General of this Court within 30 days from the receipt of this order. Sixty percent of the amount so deposited shall be kept in a Fixed Deposit Receipt in the name of the Registrar General of this Court for a period of five years. No loan, advance or withdrawal shall be allowed by the Registrar General on the Fixed Deposit Receipt without the permission of the Claims Tribunal. The balance forty per cent shall be released to the appellant.

12. The appeal is allowed in the above terms. A copy of this order be given *dasti* to counsel for both the parties.

**REVA KHETRAPAL
(JUDGE)**

May 10, 2011/ak