

UNREPORTED

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

+ **MAC. APP. 451/2009**

HIRA DEVI (DECEASED) THROUGH LRs Appellants
Through: **Mr. O.P. Mannie, Advocate**

versus

NARAYAN DUTT & ORS. Respondents
Through: **Mr. Rajesh Kumar, Advocate**
for Mr. Rajiv Narain, Advocate
for the respondent No.3

% **Date of Decision : February 22, 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 (ORAL)

: REVA KHETRAPAL, J.

1. This appeal is directed against the judgment of the Motor Accident Claims Tribunal, Delhi dated 04.05.2009 in Suit No.419/2008, whereby a sum of ₹ 1,16,000/- with interest @ 7.5%

per annum from the date of the filing of the petition till its realization was awarded to the appellant by the learned Tribunal against the claimed amount of ₹ 20,00,000/-.

2. The facts relevant for the decision of the present appeal are that on 19.09.2007 at 10.30 a.m., Shri Kake (hereinafter referred to as “the deceased”) along with his brother Shri Khairati Lal was crossing the road outside Gate Mall Godown Railway Station, Subzi Mandi, when a truck bearing registration No.HR-38-D-6633 came from the side of Mall Godown Gate at a high speed, in a rash and negligent manner, driven by its driver Shri Narayan Dutt, the respondent No.1 and hit the deceased, as a result of which the deceased fell down and was crushed under the wheels of the said truck. A criminal case was registered against driver of the truck, Shri Narayan Dutt, the respondent No.1 under Sections 279/304A IPC bearing FIR No.418/2007 with Police Station Subzi Mandi, Delhi.

3. There is no dispute as to the fact that the deceased was a bachelor aged 27 years and was unmarried at the time of the accident. The appellant, who was his mother, was his sole surviving legal heir

and on the date of the accident was 64 years of age as per the ration card Ex. PW-2/1. There is also no dispute as to the fact that the deceased was a motor mechanic engaged in the job of denting and painting. Although PW-2 Smt. Hira Devi, the mother of the deceased, testified that the income of the deceased was ₹ 6,000/- per month, there being no evidence on record with regard to the income of the deceased, the learned Tribunal proceeded on the basis that the deceased was an unskilled workman and taking the aid of the Minimum Wage Index, assessed the income of the deceased on the date of the accident to be in the sum of ₹ 3,516/- per month. The deceased, being a bachelor, the Tribunal then proceeded to deduct one half of the income of the deceased towards his own living expenses, and thereby assessed the loss of dependency of the appellant to be ₹ 1,758/- per month, i.e., ₹ 21,096/- per annum. Since the appellant Hira Devi was 64 years of age on the date of the accident while the deceased was 27 years of age, the Tribunal applied the multiplier of 5 to the annual income of the deceased on the basis that it would be the age of the appellant which would determine the multiplier in the

instant case, and thus computed the total loss of dependency of the appellant to be ₹ 21,096/- x 5 = ₹ 1,05,480/-, which it rounded off to ₹ 1,06,000/-. The learned Tribunal then proceeded to award a sum of ₹ 5,000 /- to the appellant on account of funeral expenses of the deceased and a further sum of ₹ 5,000/- on account of loss of estate; and after adding these non-pecuniary losses awarded a total compensation of ₹ 1,16,000/- to the appellant, including the amount of the interim award of ₹ 50,000 /-, with interest at the rate of 7.5% per annum from the date of the filing of the petition, i.e., 03.10.2007 till the date of realization.

4. Mr. O.P. Mannie, the learned counsel for the appellant seeks to assail the award of the Tribunal principally on three grounds. The first ground relates to the multiplier adopted by the Tribunal, which, according to the counsel, should have been the multiplier of 7 instead of the multiplier of 5, keeping in view the fact that on the date of the accident the age of the appellant/claimant was 64 years. The second ground sought to be urged by the learned counsel for the appellant is that the Tribunal, while taking the minimum wages of an unskilled

workman on the date of the accident to be the income of the deceased, grossly erred in not taking into account the increase in minimum wages. Thirdly, the learned counsel urged that the Tribunal while awarding non-pecuniary compensation had failed to award anything towards the loss of love and affection occasioned to the appellant by the death of her young son.

5. Adverting first to the aspect of increase in minimum wages, there is no denying the fact that in a catena of judgments rendered by this Court, judicial notice has been taken of the increase in minimum wages to meet the increase in price index and the inflation rate. Different Benches of this Court have held that while computing the income of the deceased for the purpose of ascertaining the loss of dependency of his legal representatives, the increase in minimum wages cannot be ignored. In all these decisions, the Court has taken the view that the minimum wages get doubled over the period of 10 years, and held that taking into account the increase in minimum wages is not akin to taking into account the future prospects of the deceased. It may be noted that in the following amongst other

decisions this Court has taken a view that it is legitimate for the Court while computing the income of the deceased to take into account the fact that the minimum wages get doubled over a period of 10 years and this aspect has no nexus to the future progression of the deceased/victim in his chosen job or vocation:

- 1. Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182;*
- 2. National Insurance Company Ltd. vs. Renu Devi, III (2008) ACC 134;*
- 3. UPSRTC vs. Munni Devi, IV (2009) ACC 879;*
- 4. Shanti Devi & Ors. vs. Ghasiya Khachhap & Ors., ILR (2010) Delhi 412;*
- 5. ICICI Lombard General Insurance Co. Ltd. vs. Bimla & Ors., MAC APP. No. 625/2009 decided on 28th April, 2010; and*
- 6. New India Assurance Co. Ltd. vs. Sujata & Ors., MAC APP. No. 19/2011 decided on 21st January, 2011.*

6. It may also be mentioned that it is the governmental policy to increase the rate of minimum wages after the passage of every few years to meet the escalation in the cost of living, and there does not, therefore, appear to be any justifiable reason as to why the aforesaid

policy should be given a complete go-by by the Courts, while calculating the income of the deceased for the purpose of computing the loss of dependency of his legal representatives. This is all the more so as the Motor Vehicles Act is designed to be a beneficial piece of legislation, and is meant to enure to the benefit of the destitute and hapless in cases where more often than not the bread-winner of the family dies unexpectedly in a motor vehicular accident or a person is crippled for the duration of his entire life.

7. Thus, taking into account the eventual increase in minimum wages and by adding 50% thereto, the income of the deceased for the purpose of computation of the loss of dependency of the appellant works out to be ₹ 5,274/- per month, i.e., ₹ 3,516/- per month plus ₹ 1,758/- per month, being 50% of ₹ 3,516/- = ₹ 5,274/-. The deceased, being a bachelor, one-half of this income is required to be deducted towards his personal living expenses, and thus the loss of dependency of the appellant works out to ₹ 2,637/- per month, i.e., ₹ 31,644/- per annum. In accordance with settled principles, this multiplicand must be augmented by applying an appropriate

multiplier in accordance with the age of the appellant. With a view to guide the Tribunals as well as the Courts in the choice of multiplier, the Hon'ble Supreme Court has laid down a table of multipliers according to the age group of the deceased in paragraph 21 of its judgment rendered in the case of *Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, which, though reproduced by the learned Tribunal in its judgment, was not adhered to by the Tribunal while choosing the multiplier in the instant case. A bare glance at this table shows that for the age group of persons between 61 to 65 years of age, the multiplier applicable should be the multiplier of 7. Adopting this multiplier, the total loss of dependency of the appellant works out to ₹ 31,644/- per annum x 7 = ₹ 2,21,508/- in all. Adding the non-pecuniary damages of ₹ 10,000/- to this figure towards the funeral expenses of the deceased and loss of estate and a further sum of ₹ 5,000/- towards loss of love and affection, the total compensation payable to the appellant works out to ₹ 2,36,508/-, including the sum of ₹ 50,000/- awarded to the appellant as interim compensation. Thus, the appellants are held entitled to an enhanced

amount of ₹ 2,36,508/-, which is rounded off to ₹ 2,36,510/- (inclusive of the interim award) with interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of realization.

The appeal is allowed in the aforesaid terms.

**REVA KHETRAPAL
(JUDGE)**

February 22, 2011
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