

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

% *Date of Judgment: 23.09.2011*

+ **MAC APPEAL No. 832/2010**

BADRI NATH & ANOTHER Appellants

Through: Mr. S.N. Parasar, Advocate.

Versus

SR. SECTION ENGINEER MOTOR & ANOTHER Respondents

Through: Mr.K.G. Sharma, Advocate.

AND

MAC APPEAL No. 834/2010

RAJ KUMAR AND OTHERS

.....Appellants

Through: Mr. S.N. Parasar, Advocate.

Versus

SR. SECTION ENGINEER MOTOR & ANOTHER

.....Respondents

Through: Mr.K.G. Sharma, Advocate.

AND

MAC APPEAL No. 800/2010

SURESH & OTHERS

.....Appellants

Through: Mr. S.N. Parasar, Advocate.

Versus

SR. SECTION ENGINEER MOTOR & ANOTHER

.....Respondents

Through: Mr.K.G. Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. These three appeals have arisen out of the same incident i.e. the accident occurred on 09.03.2004 at Firozshah Raod and Kasturba Gandhi Marg crossing; a TCR and a Toyota Qualis had collided with one another; there were six passengers in the TCR; five adults and one child; four persons had died and two had suffered injuries. One of the victims was a child victim. All the six petitions have been clubbed and common evidence had been led. The impugned Award dated 06.11.2009 had been passed.

2. Claim petition No. 520/2007 has been preferred by the legal representatives of the deceased baby Ganga; she was six years of age at the time of accident. Relying upon the judgment of R.K. Malik & Another Vs. Kiran Pal and Others II (2009) ACC 705, a sum of ₹2,25,000/- had been awarded under the head of pecuniary damages. Under the non-pecuniary head ₹10,000/- had been awarded as funeral expenses. This part of the Award has been impugned. Learned counsel for the appellant has placed reliance

upon a judgment of this Court reported in II (2010) ACC 9 National Insurance Company Ltd. Vs. Farzana wherein in the case of a child victim ₹ 75,000/- had been awarded for the 'pain and sufferings' and another sum of Rs.75,000/- for 'loss of future prospects'; this sum of Rs.1,50,000/- was awarded under the head of 'non-pecuniary damages'. The total awarded amount would thus in the case of a child victim come to ₹3,75,000/-. In the judgment of Farzana (Supra), the Court had placed reliance upon the parameters and guidelines laid down by R.K. Malik (Supra); the impugned Award granting a sum of ₹10,000/- under the non-pecuniary head thus suffers from an infirmity. The appellant in terms of the judgments of R.K. Malik (Supra) and Farzana (Supra) is entitled to ₹2,25,000/- under the head of pecuniary damages and a sum of ₹1,50,000/- under the head of non-pecuniary damages totaling a sum of ₹3,75,000/-. The interest quotient remains the same. The impugned Awarded is accordingly modified in Claim Petition No.520/2007.

3. Claim petition No. 506/2007 has been filed by the claimants of the victim Laxmi; she was 38 years of age at the time of accident; she had died about four months after the date of accident which was on 09.03.2004. Learned counsel for the

respondents submits that there is no nexus of the death of the victim with the injuries. Admittedly the victim remained in hospital for two months, contention of the appellant is that because of the grievous injuries sustained by her, death had resulted. These averments which were made on oath by the claimant of the deceased Laxmi i.e. in the affidavit of Sohan Lal have not been disputed; no cross-examination had been effected of Sohan Lal on this count. Death was clearly correlated to the accident. The affidavit of Sohan Lal had averred that his wife Laxmi was 38 years of age; she was doing work of knitting and stitching and was earning ₹4,000/- per month. These facts also not having been controverted, the impugned Award has clearly erred in not granting any amount to the victim of deceased Laxmi on account of 'loss of dependency'. In terms of the judgment of this Court reported in II (2010) ACC 150 Oriental Insurance Company Ltd. Vs. Pankaj Sharma & others, a sum of ₹3,000/- per month would be the correct figure for computing the income of the house-wife in the absence of any documentary evidence to the contrary. Multiplier applied of 15 in terms of the judgment of 2009 (6) Scale 129 Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr; the amount of ₹5,40,000/- is thus calculated

under the head of 'loss of dependency'. Under the non-pecuniary damages, medical bills have been reimbursed for ₹34,140/-; ₹5,000/- on account of special diet and conveyance; ₹10,000/- for 'loss of love and affection' and for funeral expenses ₹10,000/-; these amounts have not been assailed. Thus a total sum of ₹5,99,140/- is awarded in favour of the claimant; the interest quotient shall remain the same. The impugned Awarded is accordingly modified in Claim Petition No. 506/2007.

4. Claim Petition No. 512/2007 has been preferred by Suresh who is the legal representatives of deceased Daulat Rani. Daulat Rani was a house-wife; she was aged 45 years and as per the affidavit of her husband, she was doing the work of knitting and stitching and was earning ₹3,500/- per month. However in terms of the documentary proof in terms of the judgment of Apex Court reported in III (2010) ACC 313 (SC) Arun Kumar Agarwal & Anr. Vs. National Insurance Co. & Anr. a sum of ₹3,000/- per month was taken as the income of the deceased to which multiplier of 14 was applied totaling a sum of ₹5,04,000/-; deduction of 1/3rd has been effect therefrom. The petitioner is aggrieved by this fact. His contention is that no amount should have been deducted and for this proposition he has placed reliance upon Pankaj Sharma

(Supra) where also a Bench of this Court had awarded a sum of ₹5,04,000/- under the head of 'loss of dependency' to the claimant of the deceased house-wife i.e. by taking her services to be valued at ₹3,000/- per month to which multiplier of 14 was applied. This judgment of Pankaj Sharma had relied upon the ratio judgment of Lata Wadhwa Vs. State of Bihar II (2001) ACC 316. In para 4 of Pankaj Sharma (Supra) a coordinate Bench of this Court has held that in case of Lata Wadhwa (supra) no deduction was made from the value of the services of the deceased house wife and as such deduction from this amount was not permissible. Following the aforementioned ratio, deduction is disallowed. No amount has also been awarded under the head of 'loss of love and affection'. No other modification is made. A sum of ₹10,000/- is accordingly awarded under this head. The awarded amount in the aforementioned claim petition would thus come to ₹5,24,000/- which would carry interest in terms of the Award. The impugned Awarded is accordingly modified in Claim Petition No.512/2007.

5. All the three appeals are disposed of in the above terms.

INDERMEET KAUR, J.

SEPTEMBER 23, 2011

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