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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 3rd August, 2012

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MAC. APP. No.180/2008

OM PRAKASH & ANR

..... Appellants

Through:

Mr. Vikas Mahajan with
Mr. Vishal Mahajan, Advocates

Versus

JASBIR SINGH & ORS.

..... Respondents

Through:

Ms. Manjusha Wadhwa, Advocate
for the Respondent No.2.
Mr. Ashwani Kumar Sood, Advocate
for the Respondent No.3.

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MAC. APP. No.844/2012

GURVINDER SINGH

..... Appellant

Through:

Mr. Ashwani Kumar Sood

Versus

OM PRAKASH & ORS.

..... Respondents

Through:

Mr. Vikas Mahajan with
Mr. Vishal Mahajan, Advocates

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC. APP. 180/2008 and MAC. APP.844/2012) arise out of a common judgment dated 09.02.2005 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of Rs.1,80,000/- was awarded

for the death of a minor child aged 15 years and eight months at the time of the accident which occurred on 31.08.1995.

2. In the Claim Petition, it was stated that the deceased was aged 17 years and was earning Rs.2,500/- to 3,000/- per month. The age of the deceased's child was claimed to be 17 years. But his date of birth was stated as 31.12.1979. Thus, he was aged only 15 years and eight months at the time of the accident. The Claims Tribunal while computing the loss of dependency relied on *Khazan Singh & Anr. v. Basheer Ahmed & Ors*, 2002 VIII AD(Delhi) 576 and *Putamma v. D.V. Krishnappa*, 2000 ACJ 103. Paras 17 and 18 of the judgment are extracted hereunder:

“17. As the deceased was 15 years and 8 months of age at the time of the accident, I place my reliance on the Judgment of our own Hon'ble High Court reported as Khazan Singh & Anr. v. Basheer Ahmed & Ors, 2002 VIII AD(Delhi) 576 relying upon the Judgment of Putamma v. D.V. Krishnappa, 2000 ACJ 103 granted a sum of Rs.1,50,000/- in the case of a 14 years old child and held that:

“In view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of a deceased child is capable of assessment on estimated basis nor the financial loss suffered by his

parents is capable of mathematical computation.

However, this does not mean that in the case of the death of a young child, the parents are to be left high and dry. Every parent has reasonable expectations of financial and moral support from his child and in due course normally he gets it also and as such, compensation has to be awarded to the parents towards the loss of companionship, mental agony and loss of expectations of financial and moral support.”

18. In view of the judgment, I award a consolidated sum of Rs.1,80,000/- to the petitioners on account of death of Rajinder Kumar. This amount includes the amount of Rs.50,000/- awarded to the petitioners vide interim order dated 10.12.2003. Thus, the petitioners are held entitled to receive the net amount of Rs.1,30,000/-, which the respondents are jointly and severally liable to pay to the petitioners.”

3. This Court in *National Insurance Company Limited v. Farzana & Ors.* MAC APP. 13/2007 decided on 14th July, 2009 relied on *Manju Devi v. Musafir Paswan*, VII (2005) SLT 257, *R.K. Malik & Ors. v. Kiran Pal & Ors.* AIR 2009 SC 2506 and opined that in case of death of a child a notional income of ₹ 15,000/- is to be taken and applying the multiplier of 15 the loss of dependency was held to be ₹ 2,25,000/-. The Claimants were further held to be entitled for a sum of ₹ 75,000/- towards future prospects and ₹ 75,000/- towards non-pecuniary damages. The present case is squarely covered by the judgment in *National Insurance Company Limited v. Farzana & Ors.*

4. Similarly, in a later judgment passed by a learned Single Judge of this Court in *Ami Chand & Ors. v. Jai Prakash & Ors.*, 2011 IX AD(Delhi) 111 relying upon the judgments in *R.K. Malik v. Kiran Pal* (2009) 14 SCC 1 and *Lata Wadhwa v. State of Bihar* (2001) 8 SCC 197 granted a sum of Rs.2,25,000/- towards loss of dependency, Rs.75,000/- towards future prospects and Rs.75,000/- towards non pecuniary damages.
5. I would follow the same and hold that the Appellants are entitled to an overall compensation of Rs.3,75,000/-.
6. The plea of the Cross-Objector Gurvinder Singh, owner of the offending vehicle (MAC. APP. 844/2012) is that he has been fastened with the liability to pay the interest from 09.01.1997 to 15.09.2003 on the ground that the Insurance Company was impleaded on 16.09.2003.
7. I have before me the record of the Trial Court. The record reveals that the Appellants themselves were to be blamed for the delay in impleadment of the Insurance Company. A perusal of the Trial Court record shows that the Appellants impleaded Master Goods Carrier as the owner and the Petition was dismissed against him by the Claims Tribunal by an order dated 09.07.1999. The order dated 09.04.2000 and 15.11.2000 show that the Appellants were burdened with cost for not taking steps for service of the Respondents. It was after a great delay that on 05.09.2002 Gurvinder Singh (Cross-Objector) was impleaded as owner of the offending vehicle. Nothing has been placed on record that the Cross-Objector had any knowledge of the accident or was

aware of the proceedings pending before the Claims Tribunal. In this view of the matter, Gurvinder Singh, owner of the vehicle should not have been fastened with the liability to pay the interest from the date of filing of the Petition. The owner immediately disclosed the insurance particulars. The Insurance Company is, therefore, liable to indemnify the insured.

8. The Cross-Objections are also allowed and it is held that the Appellants are entitled to interest on the award amount @ 9% per annum only from 05.09.2002, the date the owner was impleaded, till the date of the judgment.
9. There was a delay of more than two years in filing the Appeal. The Appellants would be entitled to interest @ 7.5% per annum on the enhanced amount of compensation, that is, Rs.1,95,000/- from the date of the Appeal till the date of payment. The enhanced amount along with interest shall be deposited with the Claims Tribunal within 30 days and shall be shared equally between the Appellants. 50% of the enhanced amount shall be held in Fixed Deposit for a period of two years. Rest of the amount shall be released on deposit.
10. Both the Appeals are disposed of in above terms.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 03, 2012

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