

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

Date of decision: 10th May, 2012

+ **FAO 137/2000**

SURESH CHAND & ANR. Appellants
Through Mr. Anuj Jain, Advocate

versus

RAM PAL YADAV & ORS. Respondent
Through Mr. Sameer Nandwani, Adv.
for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants who are the parents of deceased Manoj Kumar, a minor child of 13 years and a student of 6th standard, seek enhancement of compensation of ₹52,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for his death in a motor accident which occurred on 17.12.1994.
2. The Claims Tribunal after relying on judgment of various High Courts opined that the compensation of ₹50,000/- is just and reasonable compensation for death of a child. The Claims Tribunal added ₹2,000/- towards funeral expenses to grant an overall compensation of ₹52,000/-.
3. It is urged by the learned counsel for the Appellants that the

Appellants are entitled to compensation of ₹3,75,000/- on the basis of the Supreme Court judgment in *R.K. Malik v. Kiran Pal*, 2009 (8) Scale 451.

4. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that this accident took place in the year 1994. The compensation of ₹52,000/- was awarded on the scale and the value of rupee in the year 1994. The compensation awarded does not call for any enhancement.
5. While awarding compensation in *R.K. Malik (supra)*, the Supreme Court referred to the Second Schedule and opined that in case of a death of a child notional income of ₹15,000/- should be taken for grant of compensation apart from granting compensation towards non-pecuniary heads i.e. towards loss of love and affection and future prospects. The second schedule came on the statute book in 1994 before the date of accident in this case and nominal income as given in the second schedule has to be taken into consideration for award of loss of dependency.
6. The grant of compensation to the parents of a deceased minor studying in a school was dealt with at great length and is covered by the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763, where after considering the judgments of the Supreme Court, a compensation of ₹3,75,000/- was awarded. I extract para 4 to 8

of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/-

to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents

are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

7. Considering the latest judgment of the Supreme Court in *R.K. Malik v. Kiran Pal, 2009 (8) Scale 451*, the Appellants are entitled to compensation of ₹3,75,000/- i.e. ₹2,25,000/- on account of loss of dependency, ₹75,000/- towards future

prospects and ₹ 75,000/- towards non pecuniary damages.

8. The overall compensation is enhanced from ₹52,000/- to ₹3,75,000/-.
9. It is urged by the learned counsel for the Respondent No.3 United India Insurance Company that the Appellants were largely to be blamed for delay in disposal of the Claim Petition and this Appeal. This is refuted by the learned counsel for the Appellants who submits that the Claim Petition was dismissed in default just once and was restored on the next date of hearing before the Claims Tribunal.
10. I have perused the trial court record. Both the parties were to be equally blamed for the delay in disposal of the Claim Petition before the Claims Tribunal. However, during the pendency of the Appeal, the Appellants were negligent in not taking steps for service of the Respondents on a number of hearings. As per proceedings before the Lok Adalat dated 20.08.2006 the dispute between the parties is shown to have been settled. This is disputed by the Appellants. They say there were some talks of settlement, which did not materialize. This Court by an order dated 04.05.2012 held that infact the settlement was not reached, yet it may be noticed that since the year 2006 upto the year 2009 the Appellants were completely silent. They moved an application for restoration of the Appeal with an application for condonation of delay of 699 days.

11. In the circumstances, I would award interest @ 6% per annum from the date of filing of the Petition till the date of the award by the Claims Tribunal; and then for a period of five years at the same rate from the date of filing of the Appeal till the date of this order and thereafter till the award amount along with interest is deposited in UCO Bank, Delhi High Court, New Delhi in the name of the Appellants within six weeks.
12. The enhanced compensation of ₹3,23,000/- along with interest shall be paid to the Appellants in equal proportion.
13. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 10, 2012

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