

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

Date of decision: 7th December, 2012

+ **MAC. APP. No.1047/2012**

SMT.KIRAN LATA & ORS. Appellants

Through: Mr.Ajay Pal Singh, Advocate.

Versus

ASHOK BHARDWAJ & ORS. Respondents

Through: Mr.K.L.Nandwani, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM. APPL No.16510/2012(Delay)

1. Issue notice to the Respondent No.3.
2. Mr. K.L.Nandwani, Advocate, appearing on behalf of Respondent No.3 accepts notice.
3. There is a delay of 592 days in re-filing the Appeal.
4. For the reasons as stated in the Application, the delay in re-filing the Appeal is condoned.
5. The Application stands disposed of.

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6. Trial Court record has already been received.
7. With the consent of the parties, the Appeal is taken up for final disposal.
8. The Appellants who were the legal representatives of the deceased Charan Singh seeks enhancement of compensation of ₹ 3,92,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in

favour of the Appellants for the death of Charan Singh in a motor vehicle accident which occurred on 12.03.2005.

9. The deceased Charan Singh was a retired PGT (Post Graduate Teacher) from the Senior Secondary School run by the Govt. of NCT of Delhi.
10. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a Guest Teacher with the Govt. Schools after his retirement. He had also assigned the duty of Chief Invigilator. The Claims Tribunal was, however, not satisfied with the proof of income at the time of the accident, therefore, took the Minimum Wages of a Graduate, that is, ₹ 3,800/- per month; deducted one-third towards personal and living expenses and applied the multiplier of 5 (as per the age of the deceased 66 years) to compute the loss of dependency as ₹ 1,52,000/-.
11. The Claims Tribunal further awarded a sum of ₹ 10,000/- towards loss of love and affection and a sum of ₹10,000/- each towards loss to estate, funeral expenses & loss of consortium.
12. The Claims Tribunal further granted a sum of ₹ 1,99,810/- as medical expenses incurred by the Respondents (Claimants) for the deceased's treatment.
13. In the absence of any Appeal by the driver, the owner or the Insurance Company, the finding on negligence has attained finality.
14. It is urged by the learned counsel for the Appellants that the compensation awarded is too meager and niggardly. The deceased was a well qualified teacher who was working as a Guest Teacher in several schools after his superannuation. The Claims Tribunal should have been

accepted the deceased's income as ₹ 20,000/- per month as claimed by the Appellants.

15. On the other hand, the learned counsel for Respondent No.3 Insurance Company urges that the compensation awarded is just and reasonable. Rather in view of the fact that only the First Appellant was financially dependent on the deceased; a deduction of 50% ought to have been made towards personal and living expenses.
16. The Claims Tribunal dealing with the quantum of compensation observed as under:-

“11. The PW-1 deposed that the deceased was taken to Monga Medical Center where MLC was prepared and thereafter he was referred to Shanti Mukund Hospital where he succumbed to injuries after 49 days of the accident. It is stated that the petitioner incurred a sum of Rs. 4 lac on the treatment of her husband.

12. It is stated that deceased was working as a Guest Teacher and Chief Invigilator in various reputed School including Government Boys Sr. Secondary School, C-Block, Krishna Nagar, Chander Nagar, Delhi-51 and was also giving home tuitions through Sharma College. He used to earn Rs. 20,000/- per month from the above sources. So far as the income of the deceased is concerned the petitioner examined 9 witnesses besides herself. The PW-2 Sh. B.D. Gupta, Lab Assistant, Govt. Boys Sr. Sec. School Chander Nagar, proved the salary particulars of deceased. He proved the fully vouched contingent bills as PW-2/A. The PW-3 Sh. Prakash Chand Meena from CBSE, Patparganj stated that he did not find any record in the name of deceased. The PW-4 Sh. Sumeer Sharma of Sharma College stated that he did not have any record to show the employment of deceased. The PW-5 Sh. Raj Kumar Gupta, Section Officer, CBSE stated that they did not have any record regarding appointment of Sh. Charan Singh and further stated that they weed out the records which are more than 2

years old. The PW-6 Sh. Devender Rajan Assistant, CBSE exhibited the appointment letter and intimation of Venue for spot evaluation for sub-examiners dt. 22.03.2003 as PW-6/A. The PW-7, Nallapubrahmaiah, Tax Assistant proved the income tax returns filed by the deceased for the assessment year 2002-03 as PW-7/A and Saral Forms for assessment year 2002-03 and 03-04 as PW-7/B and PW-7/C respectively. The PW-8 Sh. Shiv Kumar Chawla, Assistant, Legal, National Institute of Open Schooling produced two letters dt. 16.06.2004 exhibit Ex.PW-7/2 and 16.11.2004 Ex.PW-7/3. He produced a letter Ex.PW-8/2 whereby the deceased was asked to submit his bills and in the letter dt. PW-8/3, informed deceased was that he would be paid Rs. 200/- as honorarium and Rs. 50 as conveyance allowance. The PW-9, Sh. K.C. Sharma, DDO and Principal of Govt. Boys Sr. Sec. School stated that the deceased was working as a Guest Teacher at the time of his death and he worked as Guest Teacher from August 2003 to October 2004 and was paid a total sum of Rs. 20,000/-. The PW-10 Smt. Archana, Head Clerk, Govt. Boys Senior Secondary School stated that a certificate Ex.PW-10/1 was issued by DDO and further stated that she has taken confirmation report regarding the issuance of Ex.PW-10/1 from Sh. O.P. Verma on 18.09.2010.

13. I have gone through the material on record. It is clear from Ex.PW1/5 that deceased was getting pension and the wife of deceased is getting, almost same amount, as pension.

14. It has come on record that the deceased was working as a guest teacher in Govt. Boys Sr. Sec. School, Chander Nagar, Delhi. The Ex.PW-2/A shows that the deceased was paid a sum of Rs. 8800/- + 4120/- + 6360/- i.e. Rs. 19,280/- for his working as guest teacher. The PW-9 Sh. K.C. Sharma, DDO and Principal of Govt. Boys. Sr. Sec. School stated that the deceased Sh. Charan Singh was paid a sum of Rs. 20,000/- during the period August 2003 to October 2004 for the service rendered by him. From letter dt. 22.03.2003, Ex.PW6/A regarding appointment and intimation of venue for spot evaluation and for working as subexaminer and letter dt. 16.06.2004 Ex.PW8/2 clearly shows that deceased was also working as a examiner.

15. Further the PW-8 produced two letters dt. 16.06.2004 (Ex.PW-8/2) and 16.11.2004 (Ex.PW8/3) addressed to the deceased, whereby the deceased was asked to submit his bills regarding his visit. The above said documents shows that the deceased was also assigned the duties of inspection of examination centres during the exams conducted by national institute of open schooling. PW-8/2 shows that the deceased was to raise a bill for a sum of Rs. 3750/- for the inspection done by him during June 2004.

16. It is clear from the record that deceased was working and was having some income. The income tax return shows the income of the deceased from other sources to be Rs. 24892/-. It is also clear that the income tax return always does not show the exact income. The petitioners have claimed that deceased was earning Rs. 20,000/- per month from other sources but failed to substantiate their version. There is nothing on record to assess the definite income of deceased. Therefore, minimum wages can be taken into consideration. The minimum wages at the time of accident as prevailing in NCT Of Delhi was Rs. 3800/- per month.”

17. As observed by the Claims Tribunal, the Appellants produced PW-10 Smt. Archana, Head Clerk, Govt. Boys Senior Secondary School and also proved a certificate Ex. PW-10/1 issued by the DDO. The certificate issued on 13.01.2005 clearly shows that a sum of ₹ 86,103/- was paid as remuneration to the deceased for working as a Guest Teacher. It is true that the certificate was for the period upto 31.03.2004 whereas the accident took place on 12.03.2005. However, there was ample evidence to show that the deceased was working as a Guest Teacher with various schools after his superannuation and was getting a good sum as a Guest Teacher as fixed by the Govt. of NCT of Delhi from time to time. The certificate Ex. PW-10/1 shows salary of the deceased as ₹ 86,103/- in the previous year which should have been taking into consideration to award the loss of dependency.

18. The deceased left behind his widow, three sons and a daughter and all were major. The children were not financially dependent on the deceased. However, considering the fact that the deceased was aged 66 years and would not spend more than one-third of his income on himself, rest of the two-third of the income was to go to the legal representatives as loss of dependency/loss to estate. The compensation payable thus comes to ₹ 2,80,343/- [86,103/- – 2000 (income tax) x 2/3 x 5].
19. The Claims Tribunal awarded a sum of ₹10,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would enhance the compensation under this head to ₹ 25,000/-.
20. The compensation awarded is recomputed hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of dependency/loss to estate	₹ 1,52,000/-	₹ 2,80,343/-
2.	Medical expenses	₹ 1,99,810/-	₹ 1,99,810/-
3.	Loss of love and affection	₹ 10,000/-	₹25,000/-
4.	Loss to estate	₹ 10,000/-	₹10,000/-
5.	Loss of consortium	₹ 10,000/-	₹10,000/-
6.	Loss to funeral expenses	₹ 10,000/-	₹ 10,000/-

	Total Rounded off	₹ 3,91,810/- ₹ 3,92,000/-	₹ 5,35,153/-
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21. The overall compensation is enhanced by ₹3,92,000/- to ₹5,35,153/-. The enhanced compensation of ₹1,43,153/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit.
22. The Respondent No.3 Insurance Company is directed to deposit the enhanced amount of ₹1,43,153/- along with interest with the Claims Tribunal within six weeks which shall enure for the benefit of the First Appellant.
23. Fifty per cent of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest shall be released on deposit. The Appellant shall be entitled to quarterly interest on the fixed deposit.
24. The Appeal is allowed in above terms.
25. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 07, 2012

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