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

Decided on: 18th September, 2012

+ **FAO 316/2000**

SMT.KIRANO DEVI & ANR Appellants
Through **Mr.Rajnish K.Jha, Advocate, Advocate**

versus

THE STATE (NCT OF DELHI) & ORS Respondents
Through **Mr. Ram N.Sharma, Advocate for R-4**

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 legal heirs of deceased Om Bir Singh, impugn a judgment dated 24th April, 2000 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) preferred by the Appellants was dismissed for want of proof of negligence on the part of the driver of Bus No.DL-1P-2273.
2. During the inquiry before the Claims Tribunal, the Appellants examined Raj Kumar PW-3 in order to prove the involvement of Bus No.DL-1P-2273 and

the negligence on the part of its driver, the First Respondent. He testified that on 8th September, 1993 he was going to Nand Nagri for purchasing some goods. When he reached at Gagan Cinema Chowk, he saw that a red line Bus No.DL-1P-2273 being driven in a rash and negligent manner came from Wazirabad side, Mandoli Road and hit its front side against a cyclist. He testified that the driver of the offending bus fled away from the spot. The said cyclist was his relation. The Police reached the spot and removed the injured (Om Bir Singh) to GTB Hospital. He deposed that he informed the police about the manner of the accident. He went to inform the family members of the deceased. He also went to the Hospital after one hour.

3. The Claims Tribunal observed that PW-3's name was not mentioned in the FIR and he was not cited as an eye witness. This was not sufficient to discredit the Appellants' case, particularly, in the absence of any rebuttal from Respondents No.2 and 3 (the driver and the owner of the offending vehicle). PW-3's testimony is corroborated by registration of a criminal case being FIR No.358/1993, dated 8th September, 1993 recorded in Police Station Nand Nagri. The attested copy of the Site Plan filed along with the Claim Petition clearly shows that the accident took place in the middle of the road. The First Respondent ought to have taken care in overtaking the cyclist when he noticed him going ahead.
4. It is well settled that in a Claim Petition under Section 166 of the Act, negligence is required to be proved on the touchstone of preponderance of probability. In this case a reference is made by the Supreme Court in *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13

SC 530, where the Supreme Court held that in a Petition under Section 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and a holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

5. Thus, the culpable negligence on the part of Respondent No.2 was sufficiently established to make him liable to pay the compensation. Respondent No.3 Surender Pal Singh being owner of the Bus would be liable to pay compensation and Respondent No.4 Oriental Insurance Company being the Insurer of the offending vehicle would be liable to indemnify Respondent No.3, as Respondent No.4 has not alleged any breach of the terms of policy.
6. Now I turn to the quantum of compensation.
7. The Appellants alleged that deceased Om Bir Singh was working with an Electrical Contractor and was earning about ₹2,000/- per month. PW-1 Smt. Kirano Devi, corroborated the averments made in the Petition and stated that the deceased used to give her ₹1,500/- to ₹1,800/- per month for household expenses. The Appellants also produced Sh. Rama Kant Sharma PW-2, the deceased's employer who testified that the deceased was being paid salary of

₹2,000/- to ₹2,500/- per month. PW-2 was cross-examined. In his cross-examination PW-2 could not produce any record with regard to the deceased's income or his employment with him. He deposed that he himself was earning ₹5,000/- to ₹8,000/- per month. He admitted that he was not paying any income tax. If it is assumed that he was earning ₹5,000/- to ₹8,000/- per month, he was liable to pay income tax as any income beyond ₹28,000/- per month was taxable in the Assessment Year 1993-94. In the absence of any cogent evidence with regard to the deceased's employment with PW-2 and his salary, I am not inclined to believe that he was working with PW-2 and was getting a salary of ₹2,000/- per month.

8. In the circumstances, I would take assistance of minimum wages fixed by the Govt. of NCT of Delhi under the Minimum Wages Act for a skilled worker to compute the loss of dependency.
9. Respondent No.4 the deceased's widow remarried after Om Bir's death. She did not come forward to claim any compensation. Thus, she would not be entitled to any compensation.
10. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors*, (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in

the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this

context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

11. Since Appellant No.2 is an infant child, the multiplier would be '18' according to the age of the deceased. The deduction towards personal and living expenses would be one-third keeping in view of the number of the dependants. The loss of dependency thus comes to ₹2,48,601/- ($1328 + 30\% \times \frac{2}{3} \times 12 \times 18$).
12. Keeping in view that this accident took place in the year 1993, the Appellants would be further entitled to a sum of ₹15,000/- towards loss of love and affection and ₹5,000/- each towards funeral expenses and loss to estate. The overall compensation comes to ₹2,73,601/-.
13. The Appellants would be entitled to interest @ 7.5% per annum from the date of filing of the Petition till its payment.

14. Respondent No.4 Oriental Insurance Company Limited is directed to deposit the compensation in UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
15. Forty percent of the compensation shall be paid to the First Appellant and rest 60% shall go to the Second Appellant.
16. Since this accident took place almost 19 years ago, 50% of the compensation awarded to the First Appellant shall be held in fixed deposit for a period of two years, and rest shall be released to her on deposit.
17. In case of the Second Appellant, 70% of the compensation shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest shall be released on deposit.
18. The Appeal is allowed in above terms.
19. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 18, 2012

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