

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

Date of decision: 6th July, 2012

+ **FAO 200/2001**

SHRI SITA RAM & ORS. Appellants
Through: Mr. M.K.Sinha, Adv.

versus

CHANAN SINGH & ORS Respondents
Through: Mr. K.L. Nandwani, Adv.
for R-3.

+ **FAO 201/2001**

RAKESH Appellant
Through: Mr. M.K.Sinha, Adv.

versus

CHANAN SINGH & ORS Respondents
Through: Mr. K.L. Nandwani, Adv.
for R-3.

+ **FAO 204/2001**

RASHMI & ORS. Appellants
Through: Mr. M.K.Sinha, Adv.

versus

CHANAN SINGH & ORS Respondents
Through: Mr. K.L. 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. These three Appeals (FAO 200/2001, FAO 201/2001 and FAO 204/2001) arise out of a judgment dated 16.12.2000 whereby five Claim Petitions bearing Suit No.518/95, 549/95, 550/95, 554/95 and 555/95 were decided. These Appeals emanate from Suit No.518/95, 549/95 and 555/95.
2. On 13.05.1995 at about 3:00 A.M., the deceased (Deepak Mittal) was ferrying his wife Rashmi, his sister-in-law Ruchika (wife's sister), his son Master Vishesh Mittal and his brother-in-law Rajesh in his motor car to *Vaishno Devi*. According to the Appellants, the Maruti car was being driven at a normal speed and had reached near Rajpura when a truck No.DL-1G-1033 being driven in a rash and negligent manner came from the opposite side and hit the car. The car along with its occupants was dragged to a considerable distance. All the occupants suffered serious injuries which proved fatal in case of Ms. Ruchika and Deepak Mittal. Appellant Rajesh suffered serious multiple injuries on his body including fracture of his right leg. It was claimed that the injured Rajesh was operated upon in Sunder Lal Jain Hospital and a rod was inserted to give support to the bone.
3. FAO No.200/2001 arises out of Suit No.518/1995 which relates to the death of Ruchika Aggarwal; FAO No.201/2001 filed by injured Rajesh challenges the quantum of compensation in Suit No.555/1995; whereas FAO No.204/2001 arising out of Suit

No.549/1995 relates to the death of Deepak Mittal, who suffered fatal injuries in the accident and was driving the ill fated Maruti Car.

4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the truck by the First Respondent (Chanan Singh). In the absence of any Appeal by the driver, owner or the insurer (United India Insurance Company Limited), the finding on negligence has become final between the parties.
5. In FAO No.200/2001 it was claimed during inquiry before the Claims Tribunal that Ms. Ruchika Aggarwal was an exceptionally bright student. She scored 89% marks in 12th standard from CBSE. At the time of the accident she was a student of B.Com (Hons.) and was simultaneously pursuing CA. The Claims Tribunal found that the deceased was not employed at the time of the accident. She was dependent upon her parents for her livelihood. In due course, she was to be married and thus there was no loss of dependency to the parents. A consolidated compensation of ₹1,00,000/- was awarded to the parents.
6. In case of FAO No.204/2001 concerning the death of Deepak Mittal. It was claimed that the deceased was in business as he used to deal in cables in Bhagirath Place, Chandni Chowk, New Delhi. In the year 1991 he started the business dealing in metals

in the name and style of M/s. Aggarwal Metals. It was stated that he was also dealing in shares and had an income of ₹25,000/- per annum. The Claims Tribunal found that only one Income Tax Return (ITR) for the year 1989-90 Ex.P-Z3 was proved which showed his income to be ₹25,130/-. The Claims Tribunal thus assessed the deceased Deepak Mittal's income to be ₹25,000/- per annum, added 50% towards future prospects on the basis of *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176*, and applied the multiplier of '14' to compute the loss of dependency as ₹3,50,000/-.

7. In FAO No.201/2001 relating to the injuries suffered by Appellant Rajesh. The Claims Tribunal held that the Appellant had proved the bills for receiving medical treatment in Sunder Lal Jain Hospital and for the purchase of medicines to the extent of ₹54,430/-. Apart from awarding the said amount of ₹54,430/-, the Claims Tribunal awarded a sum of ₹10,000/- towards pain and suffering and a sum of ₹5,000/- towards special diet to compute the overall compensation of ₹67,430/-.
8. Feeling aggrieved, the Appellants have filed these Appeals.

FAO 200/2001

9. Deceased Ruchika Aggarwal was an exceptionally bright student pursuing B.Com (Hons.) from a prestigious College in Delhi University and simultaneously doing CA. It is urged by

the learned counsel for the Appellant that the potential income of a student undergoing a professional course should have been taken into consideration while awarding the compensation towards loss of dependency. Reliance is placed on *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors.*, MAC APP. 359/2008, decided on 23.11.2009 and *Ramesh Chand Joshi v. New India Assurance Company* MAC APP.212-213/2006 decided on 20.01.2010.

10. On the other hand, the judgment is supported by the learned counsel for the Insurance Company on the ground that since deceased Ruchika Aggarwal was to get married in due course, the parents could not have been considered as dependents on the deceased.
11. Sita Ram, the deceased's father examined himself as PW-1 and deposed that the deceased was aged 19½ years at the time of her death. She passed out 12th standard from CBSE, scoring 89% marks, got admission in B.Com (Hons.) in Laxmi Bai College in Delhi University and simultaneously pursued CA. He deposed that Ruchika had a very bright future and wished to be a brilliant CA. This part of PW-1's testimony was not challenged in cross-examination. There are catena of judgments in support of the proposition that potential income of a student pursuing a professional course should be taken into consideration to award loss of dependency.

12. In the case of *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.
13. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008*, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of ₹ 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of ₹ 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ₹ 16,000/- per month to ₹ 25,000/- per month. Thus, the average monthly income of the deceased was taken as ₹ 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ₹ 21,36,000/-.
14. In *Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006* decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineering (DCE) as ₹38,333/- per month.
15. The arguments raised on behalf of the Appellant that the

deceased Ruchika would have married and would not have supported her parents, reflects only gender bias. Now the daughters take care of their parents even better than their male siblings. The photocopy of the Ruchika's mark sheet placed on the Claims Tribunal's record supports PW-1's testimony that she scored 89% marks in 12th standard. It may be noticed that in the year 1989, the student scoring 89% and above marks were in the top bracket. In any case, PW-1's testimony that she was pursuing B.Com (Hons.) and simultaneously doing CA was not challenged in cross-examination.

16. In view of the judgment in *Haji Zainullah Khan (supra)*, *Ganga Devi (supra)*, *Ramesh Chand Joshi (supra)* and *Meenu Tognatta & Anr. v. National Insurance Co. Ltd. & Ors*, MAC APP.238/2012 decided on 20.04.2012 it is no longer *res integra* that the legal representatives are entitled to compensation taking the potential income of a deceased student pursuing the professional course.
17. Since the deceased was at the threshold of her professional career, it would be difficult to assess her exact potential earnings. The question of assessing the potential income of a student has vexed the Courts time and again. Thus, normally, the Claims Tribunal and the Courts take into account the salary fixed in Govt. service as per the qualification which the deceased might be pursuing.

18. A Division Bench of Andhra Pradesh High Court in *B.Ramulamma & Ors. v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar & Anr.*, 2011 ACJ 1702, held that it was very difficult to determine the income of a student who was not allowed to complete his course. It was observed that it was appropriate and reasonable to take the salary at the entry level fixed by the Govt. for such jobs.
19. A CA has a great potential in the corporate world. I would say that she would have earned at least the salary of a Gazetted Officer in the Govt. which was about ₹ 5200/- in the year 1995. In case of a bachelor, deduction of 50% is to be made towards the personal and living expenses and the multiplier relevant to the age of the Claimant or the deceased, whichever is higher is to be applied. Sita Ram, the deceased's father was aged 55 years on the date of the accident. I take the age of the parents to be between 51-55 years. On applying the multiplier of '11', the loss of dependency comes to ₹3,43,200/-.
20. I further award a sum of ₹25,000/- towards loss of love and affection and ₹5,000/- each towards loss to estate and funeral expenses.
21. The overall compensation is thus enhanced from ₹1,00,000/- to ₹3,78,200/-.
22. The enhanced compensation of ₹2,78,200/- shall carry interest @ 12% per annum from the date of filing of the Petition till the

date of the award passed by the Claims Tribunal i.e. 16.12.2000. The interest rate have fallen since the beginning of this century. Thus, the Appellants would be entitled to interest @ 7.5% per annum from 17.12.2000 till the date of payment.

23. Respondent Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks with UCO Bank, Delhi High Court, New Delhi.
24. The compensation shall be payable to the Appellant Sita Ram and Gayatri Devi in equal proportion. Since this accident took place 17 years back, 50% of the enhanced compensation along with proportionate interest shall be released to them immediately and rest shall be held in fixed deposit for a period of one year.
25. The Appeal is allowed in above terms.
26. Pending Applications stand disposed of.

FAO 204/2001

27. As stated above, the deceased's Deepak Mittal's income was claimed to be ₹25,000/- per month by PW-2 Smt. Rashmi, the deceased's wife, the compensation was awarded by taking the said income.
28. It is urged by the learned counsel for the Appellants that the compensation awarded is too meager. It is contended that Smt.

Rashmi, the deceased's widow could lay her hand on only two ITRs i.e. for Assessment Year 1989-90 and 1990-91. In the year 1989-90, the income of ₹25,130/- was returned and income tax of ₹1789/- was paid and in the Assessment year i.e. 1990-91, an income tax of ₹4324/- was paid, as shown in the ITRs.

29. Learned counsel urges that Rashmi being a housewife was unable to get documents with regard to the ITRs for the subsequent years. It was, however, proved that the deceased was into several businesses which was reflected from the several telephone connections in the name of the deceased whose monthly rental itself ran into thousands. (Ex.P-13 to P-19).
30. On the other hand, it is urged by the learned counsel for the Insurance Company that in the absence of any documentary evidence with regard to the deceased's income in the relevant year, the Claims Tribunal was justified in assuming his income to be ₹25,000/-.
31. As stated above, it was evident from the ITRs filed for the Assessment year 1989-90 and 1990-91 that the deceased was an Income Tax Assessee. He had five telephone connections in his name functioning at different places. Documents Exs. P-Z and P-Z1 show that the deceased's firm was being assessed to Sales Tax and he was given notice in connection with the same to appear before the Sales Tax Officer on 02.08.1994.

32. In the circumstances, although it would be difficult to say that the deceased was having an income of ₹25,000/- as claimed by PW-2. Taking into consideration that the deceased was managing two businesses and owned a Maruti Car in the name of his wife (who was a housewife), I would assess his income to be at least ₹40,000 per annum and on making addition towards future prospects as was done by the Claims Tribunal, would take his average income to be ₹60,000/- per annum and compute the loss of dependency as ₹6,80,000- ($40,000/- + 50\% \times 2/3 \times 17$).
33. On making a provision of ₹25,000/- towards loss of love and affection and ₹10,000/- towards loss of consortium and ₹5,000/- each towards loss to estate and funeral expenses, the overall compensation comes to ₹7,25,000/-.
34. The compensation is thus enhanced from ₹3,50,000/- to ₹7,25,000/-.
35. The enhanced compensation of ₹3,75,000/- shall carry interest @ 12% per annum from the date of filing of the Petition till the date of the award passed by the Claims Tribunal i.e. 16.12.2000. The interest rate have fallen since the beginning of this century. Thus, the Appellants would be entitled to interest @ 7.5% per annum from 17.12.2000 till the date of payment.
36. The Respondent Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks

with UCO Bank, Delhi High Court, New Delhi.

37. 20% each of the enhanced compensation along with proportionate interest shall be payable to Vishesh Mittal, Ram Kishan and Kanta Kumari. Rest 40% along with proportionate interest shall be payable to the Appellant Rashmi, the deceased's widow.
38. 50% of the enhanced compensation along with proportionate interest be released immediately on deposit. Rest 50% be held in fixed deposit; in case of Ram Kishan and Kanta Kumari for a period of one year and in case of Rashmi and Vishesh for a period of three years.
39. The Appeal is allowed in above terms.
40. Pending Applications stand disposed of.

FAO 201/2001

41. Appellant Rajesh suffered serious injuries. Unfortunately, all his treatment papers were not proved on record. Documents Ex.PW-2/1 to Ex.PW-2/17 are some of the bills issued by Sunder Lal Jain Hospital towards his admission in private ward, (Room No.102), which show that the Appellant Rajesh remained admitted in Sunder Lal Jain Hospital from 14.05.1995 to 22.05.1995 (eight days). During this time, he was operated upon by Dr. K.N.Jain along with Dr. Kalla. He remained under treatment of Dr. S.Bhasin, Dr. B.K. Aggarwal, Dr. A.K. Singh

and Dr. R.M. Dhamija. The Appellant's photograph showing his condition with the multiple injuries on his face and the condition of the right leg after the operation has been proved as Ex.PW-2/18. The Claims Tribunal held that the Appellant proved bills for an amount of ₹52,430/-. In addition, the Appellant would have taken physiotherapy to be able to walk and remove the stiffness in the leg.

42. It is urged by the learned counsel for the Appellant that he (the Appellant) still suffers from pain as the implant is still there in his right thigh. It is submitted that he was entitled to be compensated for future treatment. It is contended that the compensation awarded towards pain and suffering was low. No compensation was awarded towards conveyance.
43. Unfortunately, no evidence was produced by the Appellant with regard to his future treatment or his condition after he recovered from the injuries. After making some provision for taking physiotherapy, I would award a sum of ₹60,000/- towards the treatment as against ₹52,430/-, awarded by the Claims Tribunal.
44. It is difficult to measure in terms of money the pain and suffering which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent

by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.

45. Considering the period of hospitalization and the treatment received, I increase the compensation towards pain and suffering from ₹10,000/- to ₹20,000/-.
46. No provision has been made for compensation towards conveyance charges. The Appellant was totally immobile on account of surgery of his right leg. Considering the nature of injuries and the visits to the hospital, I award a sum of ₹5,000/- towards conveyance charges. A sum of ₹5,000/- awarded towards special diet is maintained.
47. Thus, overall compensation is enhanced from ₹67,430/- to ₹90,000/-.
48. The enhanced compensation of ₹22,570/- shall carry interest @ 12% per annum from the date of filing of the Petition till the date of the award passed by the Claims Tribunal i.e. 16.12.2000 and @ 7.5% per annum from 17.12.2000 till the date of payment.
49. Respondent Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks

with UCO Bank, Delhi High Court, New Delhi.

50. Since this accident took place 17 years back, the enhanced compensation along with interest shall be released to the Appellant immediately on deposit.
51. The Appeal is allowed in above terms.
52. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 06, 2012

vk