

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

Reserved on: 25th July, 2012
Pronounced on: 16th August, 2012

+ MAC. APP. 321/2004

KISHAN LAL & ORS. Appellants
Through: Mr. O.P. Mannie, Advocate
versus

ABDUL REHMAN & ORS. Respondents
Through: Ms. Garima Prasad with
Mr. Pradeep Kumar, Advocates

+ MAC. APP. 322/2004

GURCHARAN ARORA & ORS. Appellants
Through: Mr. O.P. Mannie, Advocate
versus

ABDUL REHMAN & ORS. Respondents
Through: Ms. Garima Prasad with
Mr. Pradeep Kumar, Advocates

+ MAC. APP. 323/2004

KULVINDER KAUR & ORS. Appellants
Through: Mr. O.P. Mannie, Advocate
versus

ABDUL REHMAN & ORS. Respondents
Through: Ms. Garima Prasad with
Mr. Pradeep Kumar, Advocates

+ **MAC. APP. 324/2004**

PARVINDER SINGH & ORS. Appellants

Through: Mr. O.P. Mannie, Advocate

versus

ABDUL REHMAN & ORS. Respondents

Through: Ms. Garima Prasad with
Mr. Pradeep Kumar, Advocates

WITH

+ **MAC. APP. 325/2004**

IQBAL SINGH & ORS. Appellants

Through: Mr. O.P. Mannie, Advocate

versus

ABDUL REHMAN & ORS. Respondents

Through: Ms. Garima Prasad with
Mr. Pradeep Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These five Appeals (MAC.APP.321/2004, MAC. APP.322/2004, MAC.APP.323/2004, MAC. APP.324/2004 and MAC. APP.325/2004) for enhancement of compensation arise out of a judgment dated 31.03.2004 passed by the Motor

Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of Rs.2,63,064/-, Rs.2,63,064/-, Rs.2,16,552/-, Rs.3,12,832/- and Rs.4,35,000/- respectively was granted for the death of Dulari, Sushma Rani Arora, Sardar Mohan Singh, Pushpa @ Pushpender Kaur and Kaushalya Devi respectively. MAC. Appeals No.180/2005, 187/2005, 192/2005, 267/2005 and 182/2005 were preferred by the Respondent U.P. State Road Transport Corporation(UPSRTC) challenging the judgment on the ground that negligence on the part of the driver was not proved and that the compensation awarded was exorbitant and excessive. All the Appeals were dismissed by a common judgment dated 23.03.2007 passed by a Learned Single Judge of this Court. It is stated by the learned counsel for the Respondent that an Special Leave Petition (SLP) preferred against the judgment dated 23.03.2007 was dismissed by the Supreme Court.

2. Admittedly, all these Appeals were preferred before disposal of the Appeals by UPSRTC. It would have been appropriate to decide these Appeals along with the Appeals filed by UPSRTC. It appears that the pendency of these Appeals was not brought to the notice of the Learned Single Judge. Nonetheless, it is my obligation now to dispose of the Appeals.
3. Since Appeals filed by the UPSRTC have been dismissed, the finding on negligence has attained finality.

4. Before coming to the respective contentions of the parties, it would be appropriate to extract the age of the deceased, the multiplier adopted, number of dependents, deductions made etc. in each of the Appeal.

M AC AP P.	Suit No.	Name of deceas ed	Age of deceas ed	Multipl ier	Deducti on	Depende nts	Award (in Rs.)
321 /04	115/9 9	Dulari	37	16	1/3	Husband, 2 children	26306 4/-
322 /04	116/9 9	Sushm a Rani	45	13	1/3	5 Children	26306 4/-
323 /04	120/9 9	Sardar Mohan Singh	49	13	1/3	Wife, 2 children, mother	21655 2/-
324 /04	412/0 0	Pushpa	49	13	1/3	3 Children	31283 2/-
325 /04	117/9 9	Kausha lya Devi	57	8	1/2	3 Children	43500 0/-

5. During the hearing of the Appeals, following contentions are raised on behalf of the Appellants:
- (i) While awarding loss of dependency, future prospects of the deceased were not taken into consideration.
 - (ii) Deceased Dulari, Sushma Rani, Pushpa @ Pushpender Kaur and Kaushalya Devi were also rendering household services. No compensation was awarded towards loss of gratuitous services to the legal representatives.
 - (iii) Considering the number of dependents, deduction made towards personal and living expenses was on higher side.
6. Per contra, the learned counsel for the Respondent (UPSRTC) argues that the compensation in these cases was awarded in the year 2004 as per the law applicable at the relevant time which was just and reasonable. *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 was pronounced only on 15.04.2009; it would not be applicable to these cases to award compensation.
7. It is true that *Sarla Verma* was decided on 15.04.2009, yet it was not made applicable prospectively. Any judgment of the Supreme Court would be binding on all the Courts on the day the matter is heard. Thus, the contentions raised on behalf of

the UPSRTC is without any substance. The Appeals shall be decided as per the law prevalent on the date of the decision.

MAC. APP. 321/2004

8. This Appeal relates to the death of Dulari. As per the postmortem report, she was aged 38 years. During inquiry before the Claims Tribunal, it was claimed that the deceased was earning Rs.4,000/- per month by pursuing the job of stitching and knitting. The Appellants who are the husband and two sons of the deceased were unable to prove the deceased's occupation and her income by any cogent evidence. The Claims Tribunal took minimum wages of an unskilled worker, deducted 1/3rd towards personal and living expenses and applied a multiplier of 16 to compute the loss of dependency. In the Claim Petition, it was not pleaded that the deceased was carrying any household work. No evidence was led in this behalf. Thus, the Appellants are not entitled to any compensation on account of alleged loss of gratuitous household services rendered by the deceased. They are entitled to compensation only on the basis of minimum wages of an unskilled worker, i.e. Rs.1937/-.
9. In *Rakhi v. Satish Kumar & Ors.*, (MAC APP. 390/2011), this Court noticed the Supreme Court judgments 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 and relying on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 it was held that even in the absence of any evidence with regard to future prospects an addition of 30% in the income can be provided for in case of persons getting fixed salary or self employed persons, to compute the loss of dependency. Applying *Santosh Devi and Sarla Verma*, the loss of dependency comes to Rs.3,02,172/- (Rs.1937 + 30% x 2/3 x 12 x 15). I would make a provision of ₹15,000 towards loss of love and affection, Rs.5,000/- each towards loss of consortium, loss to estate and funeral expenses.

10. The overall compensation thus comes to Rs.3,32,172/-.
11. Thus, there is an enhancement of Rs.69,108/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The enhanced compensation along with interest which shall be shared equally amongst the three Appellants.
12. The Respondent (UPSRTC) is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks and shall be released to the Appellants on deposit.
13. The Appeal is allowed in above terms.
14. Pending Applications stand disposed of.

MAC. APP. 322/2004

15. This Appeal relates to the death of Sushma Rani who was aged 50 years as per the post mortem report. It was claimed that she was working as a Technical Assistant in Sharma Nursing Home and was getting a salary of Rs.5,000/- per month. No cogent evidence was produced with regard to the deceased's employment, her qualifications or income. She had five dependents including two married daughters and two unmarried daughters. PW3's testimony that she was rendering household services was not challenged in the cross-examination. The Claims Tribunal awarded her the compensation on the basis of minimum wages of a matriculate which was not permissible in the absence of any evidence with regard to the deceased's educational qualifications. Thus, the loss of dependency was to be computed on the basis of minimum wages of an unskilled worker, which comes to Rs.2,61,882/- (Rs.1937 + 30% x 2/3 x 12 x 13).
16. Since it has been accepted that the deceased was gainfully employed, a lumpsum compensation of Rs.25,000/- is granted towards loss of gratuitous services rendered as a housewife. In addition, the Appellants are granted a sum of Rs.15,000/- towards loss of love and affection, Rs.5,000/- each towards loss to estate and funeral expenses.
17. The overall compensation thus comes to Rs.3,11,882/-.

18. Thus, there is an enhancement of Rs.48,818/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The enhanced compensation along with interest shall be shared equally amongst the Appellants.
19. The Respondent (UPSRTC) is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks and which shall be released to the Appellants on deposit.
20. The Appeal is allowed in above terms.
21. Pending Applications stand disposed of.

MAC.APP.323/2004

22. This Appeal relates to the death of Sardar Mohan Singh.
23. During inquiry before the Claims Tribunal, it was claimed that the deceased was earning Rs.10,000/- per month as a transporter. The deceased was not paying any Income Tax. Any income beyond Rs.50,000/- was taxable in the A.Y. 1999-2000. Apart from the oral statement of the deceased's wife, there was no evidence with regard to the deceased's income or his profession/business. The Claims Tribunal, therefore, accepted the deceased's income to be Rs.1937/- per month, deducted 1/3rd towards personal and living expenses and applied a multiplier of 13.

24. The deceased was survived by a widow, a son, a daughter and a widowed mother. In the cross-examination, PW7 Kulvinder Kaur admitted that the deceased's son was working and earning. The number of dependents were, therefore, three. Since the deceased's age was accepted as 49 years, the Appellants are entitled to an addition of 30% on account of inflation as stated earlier. The loss of dependency thus comes to Rs.2,61,882/- (Rs.1937 + 30% x 2/3 x 12 x 13). In addition, the Appellants would be entitled to a sum of Rs.15,000/- towards loss of love and affection, Rs.5,000/- each towards loss of consortium, loss to estate and funeral expenses.
25. The overall compensation comes to Rs.2,91,882/-.
26. Thus, there is an enhancement of Rs.75,330/- in the compensation awarded. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The enhanced compensation shall enure for the benefit of the deceased's widow and widowed mother i.e. Appellant s No.1 and 4 and shall be equally shared by them.
27. The Respondent (UPSRTC) is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks and shall be released to the Appellants on deposit.
28. The Appeal is allowed in above terms.

29. Pending Applications stand disposed of.

MAC.APP.324/2004

30. This Appeal relates to the death of Pushpa @ Pushpender Kaur.

31. During inquiry before the Claims Tribunal, it was claimed that the deceased was aged 49 years and was earning Rs.3,000/- per month by doing private tuition. The deceased was survived by one son and two daughters. The Claims Tribunal in the absence of any cogent evidence with regard to the deceased's employment and income, took her income as per the minimum wages of an unskilled worker. The Claims Tribunal awarded Rs.2,01,552/- towards loss of dependency, Rs.15,000/- towards loss of love and affection and funeral expenses and Rs.96,280/- as expenditure on medical treatment.

32. No evidence was led that the deceased was doing any household work. In view of the reasons stated earlier while dealing with MAC. APP. 321/2004, the loss of dependency comes to Rs.2,61,882/-(Rs.1937/- + 30% x 12 x 2/3 x 13). The Appellants would be entitled to Rs.15,000/- towards loss of love and affection and Rs.5,000/- each towards loss to estate and funeral expenses. The award of compensation of Rs.96,280/- towards medical treatment is maintained.

33. The overall compensation comes to Rs. 3,83,162/-.

34. Thus, there is an enhancement of Rs.70,330/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The enhanced compensation along with interest shall be shared equally amongst the Appellants.
35. The Respondent (UPSRTC) is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks and shall be released to the Appellants on deposit.
36. The Appeal is allowed in above terms.
37. Pending Applications stand disposed of.

MAC. APP. 325/2004

38. This Appeal relates to the death of Kaushalya Devi who was aged 57 years and was in business. She was survived by two sons and one daughter. Evidence was produced to show that they were between 25 to 39 years. All were married and settled in their lives.
39. The Claims Tribunal deducted 50% towards personal and living expenses and applied a multiplier of 8 to compute the loss of dependency as Rs.4,20,000/-. As per the Division Bench judgment of Karnataka High Court in *A. Manavalagan v. A. Krishnamurthy & Ors.*, 2005 ACJ 1992 and by a learned Single Judge in *Keith Rowe v. Prashant Sagar & Ors.*, (MAC APP.

No.601/2007) decided on 15.01.2001, the Appellants were really entitled to loss to estate and not any compensation towards loss of dependency. The loss to estate in such circumstances would be just $1/3^{\text{rd}}$ of the deceased's income which comes to Rs.3,15,000/- (Rs.1,05,000/- x $1/3$ x 9). On addition of Rs.15,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses, the overall compensation thus comes to Rs.3,30,000/-. Thus, there is no case for enhancement of compensation.

40. The Appeal is dismissed.

41. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012
pst