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

Decided on: 10th September, 2012

+ MAC.APP. 88/2004

MADHVI DEVI @ MADHU Appellant
Through Mr. O.P. Mannie, Advocate

versus

TARA CHAND & ORS Respondents
Through None

+ MAC.APP. 122/2004

MUNICIPAL CORPORATION OF DELHI Appellant
Through None

versus

MADHVI DEVI @ MADHU & ANR. Respondents
Through Mr. O.P. Mannie, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC. APP. 88/2004 and MAC. APP.

122/2004) arise out of a common judgment dated 05.12.2003 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹2,02,000/- was awarded in favour of Madhvi Devi (Appellant in MAC. APP.88/2004) for having suffered the injuries in a motor vehicle accident which occurred on 01.12.1998.

2. For the sake of convenience, the Appellant in MAC. APP. 88/2004 shall be referred as the Claimant and the Appellant in MAC. APP. 122/2004, Municipal Corporation of Delhi, who was owner of the offending vehicle shall be referred as MCD.
3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of truck No.DL-1G-A-0683 by the First Respondent. The Claimant suffered fracture of both bones of right leg, apart from injuries on other parts of the body. She was immediately removed to Guru Teg Bahadur Hospital where she remained admitted from 01.12.1998 to 10.12.1998. The Claimant was not satisfied with the treatment in GTB Hospital. The Claimant was, therefore, admitted in Mamta Nursing Home where bone grafting was done. On account of the injuries suffered, the Claimant became permanently disabled to the extent of 40% on account of united fracture of both bones leg (R) with shortening of right leg by one inch, severe restriction of (R) ankle movement and mild restriction of (R) knee movement.
4. On appreciation of evidence, the Claims Tribunal found that the accident was caused due to rash and negligent driving of truck No. DL-1G-A-0683. It was proved that the Claimant was a housewife.

She was awarded compensation of ₹1,02,000/-towards loss of earning capacity on the notional income of ₹15,000/-.

5. The compensation awarded is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Expenditure & Conveyance	₹80,000/-
2.	Permanent Disability	₹ 1,02,000/-
3.	Pain & Suffering	₹ 10,000/-
4.	Special Diet	₹ 10,000/-
	Total	₹ 2,02,000/-

6. The learned counsel for the Appellant (Claimant) urges that the compensation awarded towards gratuitous services rendered by the family members and towards pain and suffering is on the lower side. No compensation has been awarded towards loss of amenities and attendant charges. On the other hand, the contention raised in the Cross-Appeal filed by the MCD is that the involvement of the truck No. DL-1G-A-0683 owned by it was not established and thus the MCD was not liable to pay any compensation.
7. While dealing with the issue of involvement of the truck and the negligence, the Claims Tribunal held as under:

“12. Onus to prove this issue was upon the petitioner

and in discharge of that onus the petitioner had produced and examined the aforesaid 4 witnesses in both the cases which were consolidated during the course of evidence. In his statement PW1 Satyan Prakash had produced the MLC No.B-4623/98 dated 01.12.1998 in respect of the petitioner Kalyan Singh and MLC No.B-4612/98 dated 01.12.1998 in respect of the petitioner Madhvi Devi @ Madhu from the record of GTB Hospital and photocopies of the same are Ex.PW1/A and Ex.PW1/B. On cross examination there appears no challenge to this. That being so, I find no reason to discard these facts. Accordingly, from the statement of PW1 both petitioners, Kalyan Singh and Madhvi Devi @ Madhu, have proved their respective MLC. This proves the injury sustained by both the petitioners on 01.12.1998. PW2 Sh. Kalyan Singh had deposed that on 01.12.1998 he was going to St. Stephens Hospital on a two wheeler scooter along with his wife Madhvi Devi, he was driving the scooter and Madhvi Devi was sitting on the pillion. At about 1.45 pm when his scooter reached near Pushta No.1, Sonia Vihar, one truck No.DL-1G-A-0683 came from the side of Chauhand Patti and hit his scooter from behind; that he as well as his wife fell down on right and left side respectively and both of them sustained injuries. He further deposed that his index finger of the left hand was fractured and feet of his wife was run over by the wheel of the truck, and that the accident had taken place due to the fault of the truck driver. On cross examination there appears no challenge regarding the date, time and place of the alleged accident. However, suggestion has been made to the fact that his scooter was not hit by the said truck or that it came over the stones lying on the road and as a result of that he lost balance and he and his wife fell down. PW3 Madhvi Devi @ Madhu had also deposed on certain material facts and corroborated the version of PW2 regarding the date, time, place and the manner in which the accident had taken place while she was going to St. Stephens Hospital with her husband, Kalyan Singh, on

the said two wheeler scooter. On cross examination nothing has been suggested against the manner of driving the said truck. However, it has been suggested that the scooter had fell down due to the fault of her husband or due to the rash and negligent driving of her husband. The respondents had produced and examined RW1 Sh. Tara Chand, respondent no.1, to rebut the evidence of the petitioner and in his statement he had admitted the factum of the date, time and place of driving the said truck but in his statement he has deposed that he saw the scooter of the petitioner lying fallen may be due to the mud lying on the side of pushta which was closed for traffic. The case suggested to PW2 is substantially different as suggested to PW3 and at the same time no evidence has been led in that regard to prove that the scooter was already lying fallen down. However, no reason has been extended as to why the police has falsely implicated them in the said accident that had taken place with the said truck. He has admitted that the case was registered vide the said FIR and he was arrested and the vehicle was also seized. In view of the testimony of PW2 & 3, registration of the case against respondent No.1, seizure of the said vehicle and arrest of respondent no.1. I find that the accident had taken place due to the rash and negligent driving of the said truck by respondent no.1 which resulted in injuries sustained by the petitioner on his/her person. Accordingly, I hold that the petitioners have proved sustaining injuries on their person because of the accident with truck No.DL-1G-A-0683 by the rash and negligent driving of respondent no.1 at the said date, time and place.”

8. The MCD and its driver merely denied the involvement of the truck No. DL-1G-A-0683 in the accident. But, at the same time, no reason was given for making a false statement by the Claimant and her husband PW2 Kalyan Singh and PW3 Madhvi Devi's testimony are corroborated by the registration of the criminal case

against the driver of the truck. In the absence of any explanation as to why the MCD driver was falsely implicated or in the absence of any suggestion to them in their cross-examination, I affirm the Claims Tribunal's finding that the accident was caused by the rash and negligent driving of truck No.DL-1G-A-0683 by the Respondent No.1.

9. As far as award of compensation is concerned, Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

"5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards."

10. The disability certificate Ex.PW3/D shows that the Claimant suffered shortening of his right leg by one inch and restriction of movement of right ankle and mild restriction in knee movement (R). No expert evidence was produced as to the exact impact of the disability on the Claimant's work as a housewife. In the circumstances, I would take that the Claimant's capacity to work as a housewife and render gratuitous services must be affected by only 20%. The Claims Tribunal had awarded loss of the gratuitous services on the notional income of ₹15,000/-.

11. This case is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

- (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
- (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
- (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
- (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
- (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
- (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
- (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and
- (viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) *Minimum salary of a Graduate where she is a Graduate.*
- (ii) *Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) *Minimum salary of a non-Matriculate in other cases.*
- (iv) *There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) *When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) *If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) *There shall not be any deduction towards the personal and living expenses.*
- (viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*

(ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.”*

12. The Claimant was aged 34 years. There was no evidence with regard to her educational qualification. Thus, the minimum wages of a non-matriculate has to be taken to compute the award of compensation towards loss of gratuitous services. Thus, the loss of earning capacity has to be in accordance with the percentage of loss in the gratuitous services rendered by a housewife. Thus, the loss of earning capacity comes to ₹1,02,240/- ($₹2,130/- + 25\% \times 12 \times 16 \times 20\%$).
13. The Claimant remained in GTB Hospital for ten days and then in Mamta Nursing Hospital for one month. She remained an outdoor patient. Thus, the Claimant must have not been able to carry household work for a period of six months and she would have needed an attendant to look after her during that time. I would award a compensation of ₹12,000/- ($₹2000 \times 6$) for the same.
14. Keeping in view the nature of injuries, period of hospitalization and treatment, even if the accident occurred in 1998 the compensation of ₹10,000/- towards pain and suffering is on the lower side. The same is raised to ₹25,000/-.
15. Taking into consideration the fact that there is shortening of the leg by one inch and restriction in ankle and knee movement, the Claimant would have difficulty in squatting, running and carrying out day to day activities. She is entitled to be compensated for the same. Considering that this accident took place in the year 1998, I

would make a provision of ₹25,000/- towards loss of amenities in life.

16. The Compensation awarded is recomputed as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Medical Expenditure & Conveyance	₹80,000/-	₹ 80,000/-
2.	Permanent Disability /Loss of Earning Capacity	₹ 1,02,000/-	₹ 1,02,240/-
3.	Loss of Amenities in Life	-	₹ 25,000/-
3.	Attendant Charges (₹2000 x 6)	-	₹ 12,000/-
3.	Pain & Suffering	₹ 10,000/-	₹ 25,000/-
4.	Special Diet	₹ 10,000/-	₹ 10,000/-
	Total	₹ 2,02,000/-	₹ 2,54,240/-

17. The enhanced compensation of ₹52,240/- shall carry interest @ 7.5% from the date of the filing of the Petition till its payment. The enhanced compensation awarded shall be released to the Claimant on deposit.
18. The Respondent MCD is directed to deposit the enhanced compensation of ₹52,240/- along with interest with the Registrar General of this Court within six weeks.

19. The MAC. APP. 88/2004 is allowed in above terms.
20. The MAC. APP.122/2004 is dismissed.
21. Statutory amount of ₹25,000/-, if any, deposited shall be refunded to the MCD.
22. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 10, 2012

pst