

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

Date of decision: 27th September, 2012

+ **MAC.APP. 291/2012**

RAHUL Appellant
Through: Mr. Manish Maini, Adv.

versus

MANISH KUMAR & ORS. Respondents
Through: Mr. Pankaj Seth, 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. Appellant Rahul impugns a judgment dated 26.11.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 (the Act) preferred by the Appellant was dismissed on the ground that the Appellant was unable to establish his relationship with deceased Smt. Pooja.
2. During inquiry before the Claims Tribunal, it was averred that the Appellant got married to Pooja on 22.04.2008. While the Appellant and the deceased along with Appellant's younger brother were proceeding in an Indica car No. DL-3CW-7555; the car was struck by a truck No.HR-38-BG-5196 driven by the first Respondent in a rash and negligent manner.

3. The compensation of ₹20 lacs was claimed for the loss of gratuitous services rendered by a housewife.
4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the truck No.HR-38-BG-5196 by Respondent No.1 and decided issue No.1 in favour of the Appellant.
5. The Claims Tribunal further held that although Respondent No.3 disputed its liability on the ground that the driver did not possess a valid and effective driving licence at the time of the accident, the Claims Tribunal opined that the third Respondent failed to adduce any evidence to prove the breach of the terms and conditions of the policy. Since the Appellant failed to prove that the deceased Pooja was his wife, the Claim Petition was dismissed.
6. It is urged by the learned counsel for the Appellant that that Appellant placed on record certified copy of the criminal record including the FIR in which the manner of the accident and the relationship with the deceased was mentioned. It was also stated that they were just married. The Appellant placed on record original bills issued by the Fortis Hospital in the name of the deceased and also the payment receipts. Along with the Appeal, a number of photographs of the wedding have also been filed. An Application for additional evidence has also been moved to prove the photographs.
7. In view of the unchallenged averments with regard to the relationship, coupled with the FIR, death certificate (which shows Appellant's name as deceased's Pooja husband) and the bills issued by Fortis Escorts Hospital

(Exs.PW-1/8 to PW-1/17), there is no manner of doubt that the Appellant was deceased Pooja's husband. Thus, there is no need of proving the photographs placed on record.

8. The issue of payment of compensation for the loss of gratuitous services rendered by a housewife is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, 2012 ACJ 721. 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.”*

9. Since the Appellant was just married to the deceased and died just on the next day of the wedding, I would not make an addition of 25% as mentioned in sub-Para (iv) above. The loss of gratuitous services rendered thus comes to ₹4,13,208/- (3826/- x 1/2 x 12 x 18).
10. The Appellant is further entitled to a sum of ₹25,000/- towards loss of love and affection, ₹10,000/- each towards loss of consortium and funeral expenses.
11. The deceased Pooja remained under treatment for 17 days before she succumbed to the injuries suffered in the accident. The Appellant in his evidence claimed that he spent a sum of ₹1,00,000/- towards her (Pooja's) treatment. He proved bills Exs.PW-1/8 to PW-1/17 which totals up to ₹58,850/-. It is not stated that some receipts were misplaced. I award the said amount towards medical treatment and award a sum of ₹5,000/- towards conveyance charges.
12. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Gratuitous Services	₹4,13,208/-
2.	Loss of Love and Affection	₹ 25,000/-
3.	Loss of Consortium	₹ 10,000/-
4.	Funeral Expenses	₹ 10,000/-

5.	Medical Bills	₹58,850/-
6.	Conveyance Charges	₹ 5,000/-
	Total	₹ 5,22,058/-

13. The compensation of ₹5,22,058/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
14. Respondent No.3 the New India Assurance Company Limited is directed to deposit the compensation awarded along with interest with UCO Bank, Delhi High Court, New Delhi within six weeks.
15. Fifty percent of the compensation along with proportionate interest shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.
16. The Appeal is allowed in above terms.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 27, 2012

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