

\$~18

\*

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

*Date of decision: 5<sup>th</sup> January, 2011*

+

**MAC APP. 414/2005**

D.T.C.

..... Appellant

Through: Mr. J. N. Aggarwal, Adv.

versus

SHESH NATH GIRI & ORS.

..... Respondents

Through: Mr. Kishore M. Gajaria,  
Advocate with Mr. Piyush  
Sachdeva, Advocate for R-1 to  
5.

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

**J U D G M E N T**

**G. P. MITTAL, J. (ORAL)**

1. The Appellant Delhi Transport Corporation (DTC) impugns the judgment dated 03.02.2005 passed by the Motor Accident Claims Tribunal whereby a compensation of ₹ 5,60,000/- was awarded for the death of one Ravi Kumar Giri, who was aged 23 years on the date of the accident, which took place on 06.02.2000.
2. The contentions raised on behalf of the Appellant are: -

- (i) Proof of negligence on the part of the Appellant's driver was a *sine qua non* for grant of compensation in a petition under Section 166 of the Motor Vehicles Act. There was no evidence in this regard produced during the inquiry before the Tribunal. The Tribunal's finding on this ground is erroneous.
- (ii) The quantum of compensation was excessive and exorbitant; the widow had remarried just after 5 months of the accident, she was not entitled to any compensation. If the negligence is taken to be established the multiplier should have been taken as per the age of the mother, which was 51 years on the date of the accident. There was no evidence that the father was dependant on the deceased's income. There should have been deduction of 50% towards personal living expenses of the deceased.

**CONTENTION No.(i)**

- 3. The accident took place while Paras Ram was driving DTC Bus No.DBP-6151. Respondent No.1 examined himself as PW-1. He deposed before the Tribunal that the accident was caused because of rash and negligent driving by Respondent No.1. PW-2 Jaswant Singh deposed that Ravi Kumar Giri received injuries in the road accident and was removed to DDU Hospital. He made a statement to the Police with regard to the accident. The Tribunal referred to the contents of the report under Section

173 Cr.P.C. wherein Jaswant Singh had stated that Ravi Kumar (the deceased) was ahead of him on a two wheeler scooter; when they reached near Chara Mandi Camp No.3, Rohtak Road, a Bus bearing No.DBP-6151 came from Nangloi side. It was being driven in a rash and negligent manner by its driver. It hit the scooter of deceased Ravi Kumar Giri, who suffered serious injuries. It is true that the contents of report under Section 173 Cr.P.C. cannot be said to be evidence, yet it has to be noticed that the accident took place in the wee hours of 04.02.2000. The involvement of DTC Bus and the factum of it being driven by Paras Ram (the Respondent No.1) was established before the Tribunal. In reply to para 23 of the claim petition, the Appellant (DTC) and its driver (Paras Ram) denied that the accident was caused by rash or negligent driving by the said Paras Ram. It was stated that while Paras Ram was driving the bus very carefully and cautiously on the road, a scooterist suddenly came from the left side on the main road, due to which the bus driver tried to swerve the bus on the right side and also applied brakes but the scooterist was hit near the front gate and suffered injuries.

4. In a claim petition under Section 166 of the Motor Vehicles Act negligence has to be established by preponderance of probability. The driver of the Bus preferred not to enter the witness box to prove the facts pleaded in the written statement. The testimonies of PW-1 and PW-2 coupled with the certified

copy of the report under Section 173 Cr.P.C., copy of the FIR and copy of the mechanical inspection report (Ex. PW-1/D and PW-1/E) in the absence of any rebuttal by examining the driver would be sufficient to conclude that the accident was caused on account of rashness and negligence on the part of Paras Ram the driver of the DTC Bus.

**CONTENTION No.(ii)**

5. The claim petition was filed by the deceased's parents and his two brothers (who were major); Neelam the deceased's widow was impleaded as a Respondent. In his statement recorded on 18.05.2001 Anil Giri (the Respondent No.4), deposed that Neelam had remarried Joginder a driver by profession and a resident of village Chainpur, District Chhapra, Bihar. A written statement was filed by Neelam denying the factum of re-marriage.
6. At the time of evidence Shesh Nath Giri (the deceased's father) filed an affidavit testifying that Smt. Neelam @ Leelawati remarried to one Joginder Giri of village Mala, District Saran, Bihar. He also produced a certificate Ex. PW-1/C from the *Sarpanch* of the *Gram Panchayat*. This part of Respondent's testimony was challenged by a lengthy cross-examination. The Respondent No.1 denied the suggestion that the widow (Neelam) was turned out of the in-laws house after the death of

her husband. He denied the suggestion that the certificate Ex. PW-1/C was issued at his instance.

7. It is important to note that Neelam filed an affidavit on 07.05.2002 testifying that she had not remarried. On the basis of her affidavit a large chunk of interim compensation i.e. ₹ 40,000/- along with interest @ 9% per annum was ordered to be paid to her. An application under Section 340 Cr.P.C. was moved by the Respondent No.2 (DTC) to the effect that Neelam (Respondent No.5 herein) made a false statement with regard to her remarriage. The application was resisted by Respondent No.5. An issue with regard to Respondent No.5's remarriage was framed. An Affidavit by way of evidence was filed by Neelam on 16.09.2004, but she did not appear for her cross-examination in spite of several opportunities being granted to her. Thus the Court has no other option except to believe PW-1's testimony regarding Neelam's remarriage after 5 months of the accident.
8. Although, the prospects of remarriage are not considered as a ground to deny, refuse or even reduce the award of compensation even if the widow is young. However, where a widow remarries, she is not entitled to the grant of compensation after her remarriage. In *Vijay v. Laxmi Chand Jain & Ors.*, 1995 ACJ 755, a contention made on prospect of re-marriage as a ground for reduction of compensation was rejected, but it was held that if by additional evidence, it was

proved that the widow had remarried, the same could have affected the award of compensation. In *Oriental Fire and General Insurance Co. Ltd. v. Shrimati Chandrawati*, AIR 1983 Allahabad 174, Allahabad High Court held that a widow is not entitled to compensation after she remarries. In *Nisha v. Gyanwati*, ILR (2007) 2 Delhi 53, this Court held that “*It would be appropriate if the loss of dependency is confined to the period from the date of the accident till the date of remarriage of the widow*”. Since, the widow had remarried, she would not be considered as a dependent after the date of her remarriage.

9. It is urged by the learned counsel for the Appellant that as per *Sarla Verma v. DTC*, (2009) 6 SCC 121, the father is not considered as a dependent unless there is evidence to the contrary. When the father is alive the siblings are also not dependent on their brother. It is urged that since only mother is to be considered as a dependant then 50% of the deceased's income should be considered to have been spent by the deceased towards his personal and living expenses.
10. At this juncture it would be relevant to refer to the affidavit Ex. PW-1/A filed by Shesh Nath Giri (Respondent No.1). He testified that he was the only bread earner for the family. This part of Shesh Nath Giri's testimony was not challenged in cross-examination. Thus, this case would fall in the exception and it can be held that the father was also dependant on the deceased. Since, Neelam the deceased's widow would also be

considered as a dependant till she remarried, applying *Sarla Verma* (supra) only 1/3<sup>rd</sup> of the deceased's income has to be deducted towards his personal living expenses.

11. Since, the widow remarried just after 5 months of the accident. The multiplier has to be applied as per the age of the deceased's mother. I went through the Trial Court record with the assistance of the learned counsel for the parties. No evidence is available on record to show the age of Smt. Shobha Devi (Respondent No.2, the deceased's mother). As per the postmortem report the deceased was 23 years of age on the date of accident. A photocopy of the Ration Card was produced on record by the learned counsel for the Respondent during the course of arguments. The Ration Card issued on 22.05.1997 shows the deceased's age to be 22 years and Shobha's age to be 48 years. Thus, it can be safely said that the deceased was aged 25 years at the time of accident and the deceased's mother was 51 years at that time. As per *Kerala State Road Transport Corporation v. Susamma Thomas*, (1994) 2 SCC 176 and *UP State Road Transport Corporation v. Trilok Chandra & Ors.*, (1996) 4 SCC 362, the multiplier has to be selected as per the age of the claimants or the deceased whichever is higher. Since, the deceased's mother was 51 years at the time of the accident (06.02.2000). The appropriate multiplier for computation of compensation would be '11'.

12. The deceased was non-matriculate. It was claimed that he was working as a Security Supervisor with M/s. Manohar Security Services and was getting a salary of ₹ 4,000/- per month as per salary certificate Ex. PW-1/P. The salary certificate was rejected by the Tribunal on the ground that the employer was not examined. I do not agree with the reasoning given by the Tribunal. PW-1's testimony on the factum of the deceased's income and the certificate Ex. PW-1/1 was not challenged in cross-examination by the DTC. Deceased's income, therefore, ought to have been considered as ₹ 4,000/- per month. There was no evidence that the deceased was in permanent or stable employment. The claimants were not entitled to any future prospects. After making a deduction of 1/3<sup>rd</sup> towards personal living expenses, the loss of dependency is computed as ₹ 2,666/- x 12 x 11 = ₹ 3,51,912/-. After adding notional sum of ₹ 25,000/- towards loss of love and affection, ₹ 10,000/- towards loss of estate and ₹ 5,000/- towards funeral expenses, the overall compensation comes to ₹ 3,91,912/-, which is rounded off to ₹ 3,92,000/- including the interim compensation of ₹ 50,000/- already paid. The compensation awarded shall carry interest @ 9% per annum as was awarded by the Tribunal. At the time of filing of the Appeal, execution of the award was stayed subject to deposit of the award amount along with interest. The Appellant shall be entitled to refund of ₹ 1,68,000/- deposited in the Court along with interest and the interest earned, if any, on the Fixed Deposit during the period the amount was lying

deposited in pursuance of the order of this Court. A sum of ₹ 90,000/- along with proportionate interest (including interim compensation of ₹ 40,000/- already paid to Respondent No.5 herein) shall be payable to widow (the Respondent No.5). A sum of ₹ 1,00,000/- along with proportionate interest (including interim compensation of ₹ 5,000/-) shall be payable to Respondent No.1 the deceased's father. Remaining amount of ₹ 2,02,000/- (including interim compensation of ₹ 5,000/-) along with proportionate interest shall be payable to Respondent No.2 the deceased's mother. The accident took place 14 years back. A compensation of ₹ 50,000/- and ₹ 57,500/- along with proportionate interest was paid to Respondents No.1 & 2 respectively during pendency of the Appeal. In view of the facts & circumstances, the residual compensation along with interest, if any earned during the pendency of the Appeal (on the amount deposited), shall be disbursed to Respondents No.1, 2 & 5 immediately.

13. The compensation stands reduced from ₹ 5,60,000/- to ₹ 3,92,000/-.

14. The Appeal is allowed in above terms.

**(G.P. MITTAL)**  
**JUDGE**

**JANUARY 05, 2012**

hs