

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

Date of decision: 4th May, 2012

+ **MAC.APP.293/2006**

GUGGAN SINGH & ANR.

Through

..... Appellants

Mr. J.N. Aggarwal, Advocate
with Mr. Sarvesh Rai, Adv.

versus

SUSHILA SOLANKI & ORS.

Through

..... Respondents

Mr. Gurbaksh Singh, Adv. with
Ms. Meenakshi Sharma, Adv.
Respondents No.1 & 2 in
person.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹12,62,000/- awarded for the death of M.S.Solanki who died in a motor accident which occurred on 12.08.1990.
2. By the impugned judgment dated 25.01.2006, the Motor Accident Claims Tribunal (the Claims Tribunal) held that the accident was caused on account of the rash and negligent driving of the DTC bus No.DHP-3438 which was being driven by the First Appellant in a rash and negligent manner. The bus was owned by DTC, the Second Appellant.

3. The deceased M.S. Solanki was working as a Section Officer in UPSC; he was aged about 34 years and was getting a salary of ₹3358/-. Evidence was led to prove that the deceased would have been promoted as Under Secretary in the scale of 10,000-325-10,200/- and his gross salary w.e.f. 01.01.2005 would have been ₹23,100/-. The Claims Tribunal after holding that the accident was caused by the rash and negligent driving of the DTC bus by the First Appellant, doubled the deceased's income, adopted the multiplier of '17' to compute the loss of dependency as ₹12,32,160/-. The Claims Tribunal awarded a sum of ₹25,000/- towards Loss of Love and Affection and ₹5,000/- towards Funeral Expenses to award the overall compensation of ₹12,62,000/-.
4. Following contentions are raised on behalf of the Appellant:-
 - (i) The deceased himself was negligent and hit against the bus which was taking a turn towards Vasant Vihar. In any case, there was contributory negligence on the part of the deceased.
 - (ii) The multiplier of '17' was on the higher side. As per *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the appropriate multiplier was '16'.
5. The Claims Tribunal erred in adding 50% of the projected income in the year 2005 to compute the loss of dependency as it

is well settled that the actual income of the deceased on the date of the accident is to be taken into consideration to determine the financial loss to the dependents. At the most, the Claims Tribunal should have made an addition of 50% towards future prospects as the deceased was aged 34 years.

NEGLIGENCE:-

6. The Claims Tribunal discussed the issue of negligence as under:-

“Factum of accident and death of deceased in that accident is not disputed. According to the respondents accident had taken place because of rash and negligent driving of deceased and not because that of respondent No.1. Petitioner No.1 in order to prove rash and negligent driving of respondent No.1 stated that deceased was driving scooter at a normal speed following rules and regulations, when the scooter reached at the T-point of Satya Niketan near Gurudawara a DTC bus no. DHP3438 hit the scooter from back in a very fast speed. Bus was driven by Gugan Dass in a very fast and negligent manner in violation of traffic rules. Bus had dragged the scooter and deceased for about 10ft. Respondent No1. Was not able to control the bus as it was at a high speed. She has been cross examined on behalf of respondents. In her cross examination, she has stated that bus came to a very high speed driven by respondent No.1 and hit the scooter from back side and dragged it for about 10 paces. Front portion of bus had hit the scooter. Deceased was driving scooter at a slow speed.

It is correct that in the petition, it is mentioned that bus had hit the scooter from the front side while petitioner no.1 in her statement stated that scooter was

hit by the bus from back side. It is worth important to mention here that accident had taken place in the year 1990. Statement of petitioner was recorded in 1996. Her cross examination was conducted in 1998. Such discrepancies are bound to appear when the statement of a witness will be recorded after a long time. Courts cannot expect a parrot like repetition of version of accident from a witness when the statement of witness recorded after such a long time.

I have also perused site plan prepared by IO. It is correct that he has shown scooter in the middle of verge. Petitioner No.1 in her statement specifically stated that after the accident bus had dragged scooter for about 10ft./paces. Thus, position of scooter in the site plan does not indicate the correct spot where the accident had occurred. Bus is a very heavy vehicle in comparison to scooter it may or may not possible that damage should occur on the front side of bus because of impact.

Respondent No.1 was convicted by Magistrate but acquitted by Id. Appellant Court. In a civil case, the rule is preponderance of probability and in a criminal case the rule is of proof beyond doubt. It is not necessary to consider these niceties, doubt or suspicion should weigh with the Tribunals. Reference is placed on UOI & ANR. Vs. M/s. SARSWATI AIR 1996 GAUHATI 31 AND N.K.V. BROS. (P) LTD. VS. M.K. AMMAL AND ORS. AIR 1980 SC1354.

It is settled law that acquittal of driver in a criminal case has no relevancy so far as the claim of the petitioner before the Tribunals is concerned. The reference is placed on NKV BROS. (P) LTD. VS. M.K.AMMAL AND ORS. AIR 1980 SC1354, DELHI TRANSPORT CORPORATION VS. HARBANS KAUR AND ORS. 1983 ACJ 110 AND SHABIR AHMED AND ANR. VS. M.P.R.S.T.C. AND ORS. 1984 ACJ 525.”

7. Certified copy of the site plan prepared in the criminal case was

proved as Ex.PW-7/B. It is admitted case of the parties that the accident took place on the inter section of the Ring Road. The two wheeler driven by the deceased was proceeding from the Safdarjung Hospital towards Dhaula Kuan whereas the DTC bus was coming from Dhaula Kuan and was to take a turn on the right side towards Satya Niketan. While taking a right turn on Ring Road (which admittedly has a very heavy traffic), the First Appellant was required to be extra cautious and to see that the road is clear and there is no moving vehicle on the other carriage way i.e. from Safdarjung Hospital towards Dhaula Kuan. It is well settled that in a claim petition negligence is required to be proved on the touchstone of preponderance of probability. (*Kusum Lata & Ors. v. Satbir & Ors.*, 2011 (3) SCC 646; *Bimla Devi and Ors. v. Himachal Road Transport Corporation & Ors.*, (2009) 13 SC 530; and *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635).

8. In my view, the Respondents (the Claimants) successfully proved the same. The finding reached by the Claims Tribunal on the issue of negligence cannot be faulted.

QUANTUM OF COMPENSATION:-

9. It is admitted that on the date of the accident the deceased was aged 34 years and was getting a salary of ₹3558/-. (Salary Slip Ex.PW-2/3). The Claimants were entitled to the addition of 50% in the actual salary of the deceased on the date of the

accident which is inconsonance with *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. In order to achieve uniformity, the Courts do not consider the future projected salary on account of imponderables. The Claims Tribunal erred in accepting the projected salary of the deceased as per the Certificate Ex.PW-2/4. Similarly, the appropriate multiplier at the age of 34 was '16' as against '17' adopted by the Claims Tribunal.

10. It is urged by the learned counsel for the Claimants that the deceased's father was aged about 70 years on the date of the accident. The number of dependents were therefore four i.e. widow, minor daughter, mother and father. Nothing was brought on record to show that he was getting any pension. In any case, a father aged 70 years, in the absence of any evidence to the contrary, would be considered as a dependent on his son. The required deduction towards the personal and living expenses was to be one-fourth as per *Sarla Verma (supra)* as against one-third taken by the Claims Tribunal.
11. The Claims Tribunal made a deduction of one third towards liability of income tax. An income beyond ₹22,000/- was taxable in the Assessment Year 1991-92. I would take a sum of ₹558/- towards the liability of income tax. Thus, the loss of dependency would come to ₹ 6,04,800/- (₹3358/- - 558/- (income tax) x $\frac{3}{4}$ x 12 + 50% x 16).

12. On adding a notional sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses, the overall compensation comes to ₹6,59,800/-.
13. The compensation awarded shall earn interest @ 7.5% per annum as granted by the Claims Tribunal.
14. The compensation of ₹40,000/- each along with proportionate interest shall be payable to Respondents No.3 and 4. A sum of ₹2,20,000/- along with proportionate interest shall be payable to Respondent No.2. and the rest of the compensation of ₹3,59,800/- along with the proportionate interest shall enure for the benefit of the First Respondent.
15. The excess amount of ₹6,02,200/- along with the proportionate interest and the interest accrued, if any, during the pending of the Appeal shall be refunded to the Second Appellant DTC.
16. This accident took place in the year 1990. The Respondents No.1 and 2 were present in person at the time of hearing of the Appeal. It was stated that Respondent No.2 was pursuing BDS (third year) from some College in Ghaziabad and the First Respondent was working as a Teacher in Primary School. It was stated by Respondents No. 1 and 2 that they had to raise loan for the higher studies of the Second Respondent. Otherwise also, in terms of the order passed by the Claims Tribunal, the amount was liable to be released to the

Respondents immediately.

17. In the facts and circumstances, it is directed that the amount awarded to each of the Respondents No.1 to 4 shall be released to them immediately.
18. The Appeal is allowed in above terms.
19. The statutory deposit of ₹25,000/- shall also be refunded to the Appellant.

(G.P. MITTAL)
JUDGE

MAY 04, 2012
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