

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

Date of decision: 23rd April, 2012

+ **MAC. APP. 442/2007**

SUNIL KUMAR Appellant
Through: Mr. S.N. Parashar, Adv.

Versus

GOPAL SHAH & ANR. Respondents
Through: Ms. Shantha Devi Raman, Adv.
for R-2.
Mr. A.K. Soni, Adv. for R-4.

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 enhancement of compensation of ₹1,80,000/- awarded for the death of Rishabh Kumar, a student of eight years.
2. The Motor Accident Claims Tribunal (the Claims Tribunal) while awarding a compensation as stated above held that there was composite negligence on the part of the TSR driver bearing registration No.DL-1RE-6738 which was being driven in a rash and negligent manner and the stationary Truck No.HR-38-B-5445 which was parked on the left side of the road without any indication.

3. The Claims Tribunal apportioned the liability to be 75% and 25% in respect of the drivers/owner of TSR and Truck/Trolla respectively.
4. While making the Insurers of both the vehicles i.e. The National Insurance Company Limited and The Oriental Insurance Company Limited liable to pay the compensation, the Claims Tribunal granted recovery rights to Respondent No.2, The National Insurance Company Limited as the TSR driver did not possess a valid driving licence and the owner and the driver failed to produce any driving licence in spite of the service of notice under Order XII Rule 8 CPC. This finding has not been challenged either by the owner, driver or the Insurer of the TSR. The said finding having become final, I am not to go into the question of liability.
5. The question of composite negligence has not been challenged by the drivers, owners or the Insurers of the two vehicles.
6. The question of recovery rights against the Insured and against its owner Gopal Shah has also not been challenged. I am, therefore, not expected to go into this question.
7. Grant of compensation to the parents of a deceased minor studying in a school is covered by the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763, where after considering the judgments of the

Supreme Court, a compensation of ₹3,75,000/- was awarded. I extract paras 4 to 8 of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

8. Considering the latest judgment of the Supreme Court in *R.K. Malik v. Kiran Pal, 2009 (8) Scale 451*, the Appellants are

entitled to compensation of ₹3,75,000/- i.e. ₹2,25,000/- on account of loss of dependency, ₹75,000/- towards future prospects and ₹75,000/- towards non pecuniary damages.

9. The overall compensation is thus ,enhanced from ₹1,80,000/- to ₹ 3,75,000/-.
10. The enhanced compensation of ₹1,95,000/- shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of the deposit with the Registrar General of this Court within six weeks from the date of order.
11. The Respondents No.2 and 4 being joint tortfeasors are jointly and severally liable to pay the enhanced compensation. The Claims Tribunal's finding on proportion of negligence is upheld as the same is not challenged. The Insurance Companies i.e. Respondent No.2 and Respondent No.4 shall pay the compensation in the ratio of 75:25 respectively as held by the Claims Tribunal.
12. On deposit, the enhanced amount along with interest shall be released to the Appellants in the proportion as granted by the Claims Tribunal.
13. Respondent No.2, National Insurance Company Limited shall have the right to recover the enhanced compensation paid from the Respondent No.1 Gopal Shah, the owner of the TSR, as ordered by the Claims Tribunal.

14. The Appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

APRIL 23, 2012
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