

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

Date of decision: 31st August, 2012

+ **MAC APP. 505/2011**

DELHI JAL BOARD Appellant
Through: Mr. C.S. Parashar, Adv. with
Mr. Sachin Sharma, Adv.
versus

MEENA ARORA & ORS. Respondents
Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv.

+ **MAC APP. 534/2011**

MEENA ARORA & ORS. Appellant
Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv.

Versus

SANJAY KUMAR & ORS. ... Respondents
Through: Mr. C.S. Parashar, Adv. with
Mr. Sachin Sharma, Adv. for R-2.

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 arise out of a common judgment dated 08.03.2011 whereby a compensation of ₹25,51,102/- was awarded in favour of the legal representatives of the deceased Ashok Arora, who died in a motor vehicle accident which occurred on 17.11.2008.

2. MAC APP 505/2011 has been filed by the Appellant Delhi Jal Board (DJB) who says that the compensation is exorbitant and excessive. It is stated that the deceased's income of ₹2,29,193/- should not have been believed as the Income Tax Return for the Assessment Year 2008-09 was filed after the date of accident. Whereas MAC APP 534/2011 has been filed by the legal representatives of the deceased on the ground that the compensation awarded is too meager and low.
3. It is stated that the deceased was in settled business in the name and style of M/s. A.M. Metal Manufactures and was entitled to an addition of 30%. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
4. For the sake of convenience, the owner of the offending vehicle Delhi Jal Board shall be referred to as 'DJB' and the legal heirs of the deceased shall be referred to as the Claimants.
5. The only dispute is with regard to the deceased's income. It was proved on record that the deceased was carrying out business in the name and style of M/s. A.M. Metal Manufacturers. The Claimants proved on record the ITRs for the Assessment Year 2006-07, 2007-08 and 2008-09 for ₹1,92,847/-, ₹2,15,000/- and ₹2,29,193/- respectively. The ITRs for the Assessment Year 2006-07 and 2007-08 were filed before the date of death. These two ITRs show that there was gradual increase in the deceased's income. Thus, there was nothing unusual about the marginal increase in the income for the Assessment Year 2008-09. It is well settled that income of the deceased at the time of the accident has to be considered to award compensation towards loss of dependency. The

Claims Tribunal, therefore, rightly assessed the compensation on the basis of the income for the AY 2008-09.

6. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.*, (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have

also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

7. Thus, relying on *Santosh Devi* I am of the view that even in the absence of any evidence with regard to the deceased's future prospects, the Claimants were entitled to an addition of 30% towards the inflation.

8. The deceased was a self employed person in settled business. He was aged 48 years at the time of the accident. Thus, the Claimants are entitled to an addition of 30% towards inflation/future prospects.
9. The loss of dependency thus comes to ₹28,66,996/- (2,29,193/- - Rs.3,000/- (income tax) + 30% x 3/4 x 13).
10. It is urged by the learned counsel for the DJB that the compensation of ₹1,50,000/- awarded towards loss of consortium is exorbitant and excessive.
11. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 the Supreme Court laid down that a notional sum of ₹5,000/- to ₹10,000/- should be awarded towards loss of consortium where the deceased leaves behind a spouse. A compensation of ₹1,50,000/- was definitely excessive and exorbitant. The same is reduced to ₹10,000/-.
12. I would make a provision of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses. The overall compensation thus comes to ₹ 29,21,996/-.
13. The compensation stands enhanced by ₹3,70,894/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
14. 10% of the compensation awarded shall be payable to each of the Claimants No.2 to 5. Rest 60% shall enure for the benefit of the First Claimant, the deceased's widow.

15. Delhi Jal Board is directed to deposit the enhanced compensation along with interest in the name of the claimants in UCO Bank, Delhi High Court, New Delhi within six weeks.
16. The compensation already deposited shall be released in terms of the order passed by the Claims Tribunal.
17. 50% of the enhanced compensation awarded to the Claimants No.2 to 5 shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.
18. 80% of the enhanced compensation awarded to the First Claimant shall be held in fixed deposit for a period of two years, four years, six years and eight years in equal proportion and rest 20% shall be released on deposit.
19. The statutory deposit of ₹25,000/-, if any, shall be refunded to the DJB.
20. Both the Appeals are disposed of in above terms.
21. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 31, 2012

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