

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

Reserved on: 12th January, 2012

Pronounced on: 5th March, 2012

+ **MAC.APP. 613/2011**

MUNICIPAL CORPORATION OF DELHI Appellant

Through: Ms. Mansi Gupta, Advocate.

versus

VIJAY & ORS Respondent

**Through: Mr. Basant Gupta, Adv. with
Mr. Sahil Aeron, Advocate for R-1 to
R-3.**

Mr. D.V. Goyal, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Municipal Corporation of Delhi impugns the judgment dated 01.03.2011 whereby a compensation of Rs. 8,58,944/- was awarded in respect of death of Smt. Tara Devi which took place on 18.07.2008.
2. The Appellant challenges the impugned judgment on the ground that the negligence on the part of Fourth Respondent Rajinder, (the driver of the offending vehicle) was not established and that the compensation awarded is exorbitant and excessive. It is urged that there was no reliable and cogent evidence that the deceased was doing the work of fabrication and stitching from

her house.

3. On negligence, the Tribunal held that a criminal case was registered against the Respondent No.4 (Respondent No.1 before the Tribunal). Contradictory pleas with regard to the negligence were taken by the Fourth Respondent and the Appellant herein. The observations of the Tribunal are extracted hereunder:-

".....The certified copies of criminal case record are placed on record by the petitioners. Police after investigation also found that accident took place due to rash and negligent driving of the offending truck by the respondent no.1. MLC of deceased, certificate of doctor and Post Mortem report point out that deceased expired due to injuries suffered in road accident. Deceased expired within 25 minutes of reaching hospital on the day of accident itself. The production of criminal case record to show the rashness and negligence of the respondent no. 1 itself is sufficient in the present proceedings and the non examination of an eye witness of the accident is not fatal to the case of the petitioners.

Respondent no. 1 has not denied the fact that he is facing trial in criminal court for causing death of deceased due to rash and negligent driving of truck in question. It is not the case of the respondents that they had lodged any complaint to any higher authority regarding alleged false implication of driver in criminal case. It is also not the case of these respondents that there was any enmity with deceased or her family members or investigation officer or knew them prior to the date of accident so possibility of false implication of respondent no. 1 in criminal case is also ruled out. The defence taken by respondent no. 2 in its written statement that deceased was hit by some unknown vehicle and deceased expired due to her own

negligence is not proved as its witness R2W1 has not stated anything in this regard in his statement given in court. Accordingly it can be said from this conduct of the respondent no. 2 that it had also taken a false and misleading defence in its written statement.

The site plan of the accident as prepared by the police shows that accident took place at the crossing. Respondent no. 1 has not taken any defence in his written statement that accident took place due to any negligence of the deceased in crossing the road nor he had denied his rashness or negligence specifically. Respondent no. 1 has also not taken any plea that deceased was crossing the road in running condition nor it is his defence that accident took place with some other unknown vehicle which is the defence of his employer i.e. respondent no. 2. Thus virtually both respondents are taking contradictory defences. The heavy vehicles should take extra care at the crossings and its driver must know that people cross the roads at such crossing so the vehicle should pass such crossing at dead slow speed but it appears that respondent no. 1 had not taken such precautions at the time of accident. Respondent no. 1 was caught at the spot of accident and was compelled to take the deceased to hospital. Truck being driven by him was seized by the police from the spot which was later on got released on superdari by respondent no. 2 from court.

FIR was registered at the instance of one independent eye witness who was present near the chowk. No suggestion was given to PW-1 that accident took place due to any kind of negligence of the deceased....."

4. Mere registration of a criminal case may not be enough for proof of negligence even on the preponderance of probability yet in view of the observations made by the Claims Tribunal

coupled with the fact that the fourth Respondent i.e. the driver of the offending vehicle did not enter the witness box to prove the manner of the accident, it can be inferred that there was culpable negligence on the part of the fourth Respondent in causing the accident.

5. As far as quantum of compensation is concerned, it was claimed before the Claims Tribunal that the deceased Tara Devi used to do fabrication and stitching work at her home and was earning ₹ 7,000/- per month.
6. The Claims Tribunal, in the absence of any evidence as to the deceased's income took the minimum wages of a skilled worker, added 50% towards indexation and on adopting the multiplier of '16', computed the loss of dependency as ₹ 7,78,944/-.
7. The Respondents No. 1 to 3 did not lead any evidence except a bald statement of her husband Vijay Kumar that Tara Devi was doing stitching and fabrication work. Some persons who got any garment stitched or fabricated from the deceased could have been produced by the Respondents. It was admitted that the deceased did not possess any diploma in stitching and fabrication from any Polytechnic. The mere statement of Respondent No.1 that Tara Devi was engaged in fabrication and stitching work was not enough to return the finding that the deceased was a skilled worker.

8. On the basis of the material adduced, it can be assumed that the deceased Tara Devi was only a housewife.
9. This case is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012. 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."*

10. In this case, the income of the deceased for gratuitous services in the absence of any evidence regarding her educational qualification shall be taken as the minimum wages of a non-Matriculate. The deceased was 34 years of age on the date of the accident. Thus, the multiplier of '15' can be adopted to compute the loss of dependency.
11. The loss of dependency hence, works out as ₹ 9,18,225/- (4081/- + 25% x 12 x 15).
12. The Claims Tribunal awarded a sum of ₹ 50,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be

adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head from ₹ 50,000/- to ₹ 25,000/- only.

13. The Claims Tribunal granted ₹ 10,000/- towards funeral expenses, ₹ 10,000/- towards loss of consortium and ₹ 10,000/- towards loss of estate.
14. The overall compensation comes to ₹9,73,225/- (₹ 9,18,225/- + 55,000/-) whereas the Claims Tribunal has awarded a compensation of ₹ 8,58,944/-.
15. There is no Cross Appeal or Cross Objections by the Respondents No.1 to 3 (the Claimants).
16. The Appeal is devoid of any merit. The same is accordingly dismissed.
17. No costs.
18. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 05, 2012

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