

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

Date of decision: 1st May, 2012

+ **MAC.APP. 544/2010**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION

..... Appellant

Through Ms. Garima Prashad with
Mr. Pradeep Kumar, Advocates

versus

MASTER NEERAJ

..... Respondent

Through Mr. S.K. Vashisth, Advocate

+ **MAC.APP. 574/2010**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION

..... Appellant

Through Ms. Garima Prashad with
Mr. Pradeep Kumar, Advocates

versus

LOKI RAM & ANR

..... Respondent

Through Mr. S.K. Vashisth, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. MAC APP.544/2010 and MAC APP.574/2010 arise out of a common judgment 06.05.2010 whereby a compensation of ₹ 5,24,000/- was awarded in the Claim Petition No.287/2010 (in

MAC APP.544/2010) and a compensation of ₹5,21,181/- was awarded in the Claim Petition No.286/2010 (in MAC APP.574/2010).

2. A minor child Master Neeraj lost his parents and Loki Ram, a senior citizen aged 80 years lost his son Narottam Prasad Sharma and his daughter-in-law Smt. Indresh Sharma in a motor accident which took place on 23.01.2008.
3. By the impugned judgment, the Claims Tribunal while relying on the testimony of PW-2 Mukesh Kumar Sharma, an eye witness to the accident, coupled with the registration of a criminal case against the driver of the U.P. State Roadways Bus No.UP-53-AT-0152 held that the accident was caused on account of the rash and negligent driving of its bus driver.
4. It was claimed that deceased Narottam Prasad Sharma was working as a *Purohit and astrologer* and was earning ₹4,000/- per month. The Claims Tribunal in the absence of any evidence as to the deceased's income took the minimum wages of an unskilled worker in February, 2008 i.e. ₹3633/- per month, made addition of 30% towards future prospects, deducted one-third towards his personal and living expenses and computed the loss of dependency as ₹4,91,181/-.
5. Similarly, in Claim Petition No.287/2010, the Claims Tribunal relied on the judgment in *Lata Wadhwa & Ors. v. State of Bihar & Ors., (2001) 8 SCC 197* and awarded a compensation of

₹5,04,000/- towards the loss of dependency on account of the gratuitous services rendered by the deceased housewife.

6. The following contentions are raised on behalf of the Appellant UPSRTC:-

(i) There was no negligence on the part of UPSRTC bus driver. In any case, since it was a head on collision, there was contributory negligence on the part of deceased Narottam Parsad Sharma.

(ii) In MAC APP.544/2010, there was just one dependent i.e. the deceased's (Smt. Indresh Sharma) son. The value of the gratuitous services rendered by his mother could not have been taken to be ₹3,000/- per month.

NEGLIGENCE:-

7. In order to prove negligence on the part of the UPSRTC bus driver, the Claims Tribunal examined PW-2 Mahesh Kumar Sharma. His testimony that the bus No. UP-53-AT-0152 was coming from the side of Sikeda and was being driven in a rash and negligent manner by its driver, could not be impeached in his cross-examination. The Claims Tribunal, therefore, opined that PW-2's testimony coupled with the registration of a criminal case against the driver was sufficient to establish negligence on the part of the bus driver. Keshav Prasad Saroj (Respondent No.1), who was the driver of the UP State Road

Transport Corporation bus although appeared in the witness box as R1W1 but he was not produced for his cross-examination therefore, his evidence cannot be taken into consideration. It has to be borne in mind that the negligence in a Claim Petition under Section 166 of the Motor Vehicles Act has to be proved on the touchstone of preponderance of probability which was successfully done by the Claimants.

MAC APP.544/2010

8. As stated earlier, the Claims Tribunal took the value of the gratuitous services rendered by a housewife to be ₹36,000/- per annum on the basis of the judgment in *Lata Wadhwa & Ors (supra)*.
9. This court analyzed the law for grant of compensation in case of death of a house wife 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*

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(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 the absence of any evidence as to the qualification of Smt. Indresh Sharma, the minimum wages of a non-Matriculate

would be applicable in this case for grant of compensation. On the formula as adopted in *Master Manmeet Singh (supra)*, the loss of dependency would come to ₹7,16,578/- (3709/- + 15% x 12 x 14) as against the sum of ₹5,04,000/- awarded by the Claims Tribunal.

11. The compensation of ₹5,24,000/- awarded by the Claims Tribunal in Suit No.287/2010 cannot be said to be excessive.
12. The Appeal is devoid of any merit; the same is accordingly dismissed with costs assessed at ₹10,000/-.

MAC APP.574/2010

13. In this case, as stated earlier the loss of dependency as assessed by the Claims Tribunal is ₹4,91,181/- and an overall compensation of ₹5,21,181.60 was awarded with an interest @ 8% per annum.
14. The contentions raised on behalf of the Appellant are:
 - (i) There was no evidence that Loki Ram, the deceased's father was financially dependent on him. Thus, there should have been a deduction of 50% towards the personal and living expenses.
 - (ii) There was no evidence that the deceased Narottam Prasad Sharma had bright future prospects; addition of 30% towards future prospects was not justified.

15. During evidence, it was established that the First Respondent (Loki Ram) was aged 80 years on the date of the accident. In the absence of any evidence to the contrary, a father aged 80 years shall be treated as a dependent on the son. Otherwise also, Narottam Prasad Sharma (the deceased) died along with his wife in the same accident leaving Master Neeraj, a minor child high and dry, to be looked after only by an aged and infirm grandfather. The Claims Tribunal was fully justified in making the deduction of 1/3rd towards the personal and living expenses.
16. As far as grant of future prospects are concerned, in *Bijoy Kumar Dugav v. Bidya Dhar Dutta & Ors.* 2006(3) SCC 242, the Supreme Court held that the Claimants have to prove that the deceased had same merit, qualification or opportunities which would have led to an improvement in his income or had bright future prospects. In the absence of any such evidence, increase on account of future prospects cannot be granted. Thus, the compensation payable on account of loss of dependency would come to ₹ 3,77,832/- instead of ₹4,91,181/-.
17. It may be noted that a compensation of just ₹10,000/- was awarded towards loss of love and affection, which was on the lower side. 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 enhance the compensation under this head to ₹ 25,000/-.

18. On adding notional sum of ₹45,000/- (i.e. ₹25,000/- towards loss of love and affection, ₹10,000/- each towards funeral expenses and loss to estate), the total compensation comes to ₹ 4,22,832/-.
19. There is a difference of just about ₹98,000/- between the compensation awarded by the Tribunal and the compensation awarded by this Court. However, considering the peculiar facts of this case where the claimants are a minor son and an aged and infirm father of the deceased and taking into consideration the fact that in the connected Petition, the compensation payable as stated earlier would have been more than what had been granted by the Claims Tribunal, I am not inclined to interfere in the impugned judgment passed by the Claims Tribunal. Consequently, the Appeal is dismissed.

(G.P. MITTAL)
JUDGE

MAY 01, 2012
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