

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

Date of decision: 1st November, 2012

+ **MAC. APP. 517/2009**

NAND RAM & ORS. Appellant

Through: Mr.M.K.Sinha, Advocate

versus

PREM PAL & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The learned counsel for the Appellants undertakes to file the amended memo of parties during the course of the day.
2. The Appeal is for enhancement of compensation of ₹2,91,250/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Smt.Meena, aged 39 years, who died in a motor vehicle accident, which occurred on 03.09.2007.
3. Before the Claims Tribunal, it was alleged that Smt.Meena, who was a housewife, died on account of the injuries suffered in an accident due to rash and negligent driving of vehicle No.DL-1PA-1753 by the First Respondent.
4. The Appellants tried to improve their case by stating that in addition to working as a housewife, the deceased Smt.Meena was doing tailoring work and was earning ₹ 4,000/- per month.
5. The plea with regard to gainful employment of the deceased as a tailor was rejected. The Claims Tribunal took the notional income of the

deceased Smt.Meena as ₹15,000/- per annum; deducted 1/4 towards personal living and expenses and applied a multiplier of 15 to award the loss of dependency.

6. As the case set up before the Claims Tribunal by the Appellants was that the deceased was a housewife and in the absence of any cogent evidence with regard to the deceased working as a tailor, the Claims Tribunal rightly rejected the Appellants' testimony that the deceased Smt.Meena was doing tailoring work, the Appellants were entitled to compensation for loss of gratuitous services rendered by the deceased Smt.Meena as a housewife.
7. This case is covered by a judgment of this Court in the case of *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, 2012 ACJ 721.
8. In *Master Manmeet*, this Court noticed 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. *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."*

9. An Appeal being SLP (C) No.19711/2012 filed against the above referred judgment in *ICICI Lombard General Insurance Company Limited v. Shiv Kumar & Ors.*, was dismissed by the Supreme Court by an order dated 24.07.2012.
10. There is no evidence with regard to the deceased Smt. Meena's qualification. It is stated by the learned counsel for the Appellants that she was non-matriculate. Otherwise also, on the basis of the ratio in *Master Manmeet*, the Appellants would be entitled to a compensation on the minimum wages of a non-matriculate. Minimum wages of a non-matriculate on the date of accident were ₹3709/-. The loss of dependency thus, comes to ₹8,34,525/- (3709/- + 25% x 12 x 15).
11. In addition, I award a sum of ₹25,000/- towards loss of love and affection and a sum of ₹10,000/- each towards loss to consortium and funeral expenses.
12. The overall compensation thus comes to ₹8,79,525/-.
13. The compensation stands enhanced by ₹5,88,275/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
14. The enhanced compensation shall be equally apportioned amongst the three Appellants.
15. Sixty percent of the enhanced compensation shall be held in fixed deposit for a period of three years. Rest shall be released to them on deposit.

16. The enhanced compensation shall be deposited by the Respondent Insurance Company with the Claims Tribunal within six weeks.
17. The Appeal is allowed in above terms.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 01, 2012

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