

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

**+ MAC.A. 442/2005**

*% Judgment reserved on: 7<sup>th</sup> May, 2013*  
*Judgment delivered on: 23<sup>rd</sup> May, 2013*

**DTC AND ANR.**

**..... Appellant**

**Through: Mr. J.N. Aggarwal, Adv.**

**versus**

**RAJESHWARI SHANKAR AND ORS.**

**..... Respondents**

**Through: Mr. Siddharth Yadav, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Instant appeal has been preferred against the impugned judgment dated 06.12.2004 passed by the Ld. Tribunal whereby appellant/DTC was directed to pay a sum of Rs.16,93,000/- (Rs.17,43,000 – Rs.50,000/- Paid towards interim compensation) with interest @ 9% per annum from the date of filing of the petition till realization.

2. Mr. J.N. Aggarwal, Ld. Counsel appearing on behalf of the appellant has argued that no witness was produced by the respondents / claimants to prove negligence of the driver of offending vehicle in question.

3. If the negligence has not been proved, the appellant is not liable to pay any compensation.

4. On the second issue, Ld. Counsel for the appellants has argued that Id. Tribunal has considered the salary certificate of the deceased produced by the employer (Ex.PW3/1), wherein the total salary is mentioned as Rs.9,200/- per month inclusive of conveyance allowance.

5. Ld. Counsel further submitted that Ld. Tribunal has not deducted the conveyance allowance from the salary and has considered Rs.9,000/- per month without any basis. He further submitted that conveyance allowance should have been deducted while calculating the monthly income of the deceased.

6. Mr. Aggarwal further submitted that as per the dictum of *Sarla Verma v. DTC and Ors. 2009 (6) SCC 121* and multiplier of 16 has been wrongly applied by the Id. Tribunal, whereas keeping in view the age of the deceased, the multiplier should have been 15.

7. It is submitted that on 01.03.2000 respondent no. 2 Sh. Khazan Singh was performing his duty with bus no. DEP-9802 as a Driver. He was driving his bus very carefully, cautiously on the correct side of the road. At about 08.10 hours, the bus reached near B Block Vikaspuri, near Kothi No. C-7, when a scooterist came rashly and negligently from behind and hit against back side of the DTC bus. The bus driver stopped the bus and came to know that the scooterist was hit by another vehicle as a result of which he lost control on the scooter and hit the scooter with the bus. The scooterist fell down and received accidental injuries due to his own fault and negligence and of the other vehicle who ran away from the spot after hitting the scooterist.

8. On the other hand, Ld. Counsel for respondents / claimants submitted that constable Sayed Azad has proved his statement recorded under Section 161 Cr. P.C. as Ex.PX-8, wherein it is stated that Driver Khajan Singh admitted that the accident had taken place due to his negligence. Apart from that, the FIR, site plan and charge sheet of the case proved that the accident took place with the offending vehicle in question. Ld. Counsel further submitted that even from the mechanical inspection, the damage has been shown on the rear side of the scooter, which proves that the bus hit the scooter from the back side.

9. Ld. Counsel further submitted that PW3 Bimal Kanti Nath, Assistant-cum-Manager of the Gramophone Company of India, where the deceased was also working has proved that deceased was receiving a salary of Rs.9,200/- per month, whereas the ld. Tribunal has considered only Rs.9,000/- per month. Ld. Counsel further submits that about the bifurcation of the salary, the appellant has not put any question to the aforesaid witness as to how much was the actual salary and what were the deductions from that.

10. He further submitted that ld. Tribunal has to grant just compensation by considering all the facts, but it failed to grant any compensation on account of loss of love and affection, loss of consortium and loss of estate.

11. To strengthen his arguments, Ld. Counsel further submitted that on the above mentioned heads, this Court has power to grant compensation as the present case is under the welfare legislation. Further submits that case of *Sarla Verma (Supra)* is of 2009, whereas

the accident took place in the year 2000 and has been decided on the basis of *Sarla Dixit v. Balwant Yadav, 1996 III AD SC 13*.

12. Ld. Counsel for the respondents has relied upon a case of *Saroj Bala & Another v. First Secretary, USSR Embassy & Ors. 2003 V AD (Delhi) 391* wherein it is held as under:

*“It is contended by learned counsel for the appellants that there was nothing on record to disbelieve the testimony of PW-5 and PW-6 and the Tribunal has based its findings only on the assumptions and presumptions. I have carefully considered the arguments of the parties and I am in agreement with learned counsel for the appellants that the Tribunal has gone wrong in holding that the accident was not caused due to the rash and negligent driving of the embassy vehicle by its driver. Police investigating file was produced before the Tribunal. As per the D.D. entry, a message was received on telephone about the accident that a car after hitting the motorcycle had run away from the spot. Even in the FIR, it is mentioned that when the Investigating Officer reached the spot, the car with which the accident had taken place was not found to be available. It was only subsequently that the First Secretary of the USSR Embassy informed the police about his being involved in the accident. The site plan prepared by the police at the spot does not in any manner indicate that the motorcyclist had gone on the wrong side and had hit the embassy car. Once it is admitted that the embassy car was involved in the accident, it was for the driver of the car to prove as to how the accident had taken place. No witness on behalf of the owner or the driver appeared in the witness box to prove as to how the accident took place and in the absence of any evidence being produced on behalf of the owner or the driver of the car, in my opinion, the Tribunal has clearly erred in holding that*

*the accident was caused because of the motorcyclist having gone on the wrong side. After it was admitted that the accident had taken place between the car and the motorcycle, the burden of proof that the accident was not caused because of the rash and negligent driving by the driver of the car was entirely upon him. Even assuming that PW-5 and PW-6 were not eye witnesses, the only eye witness of the accident was the driver of the embassy car who has admittedly not appeared before the Tribunal. Moreover, the driver of the car after the accident fled away from the spot. If he was not guilty of the accident, there was no reason for him to run away from the spot. The fact that the car had been removed from the scene clearly show that the driver of the car tried to destroy the evidence which might have proved his guilt. In these circumstances, in my opinion, the Tribunal ought to have drawn an adverse inference against the owner and driver of the embassy car and ought to have held that the accident was caused entirely due to the rash and negligent driving by the driver of the car. Taking all this into consideration, I have no hesitation in holding that the accident was caused entirely due to the rash and negligent driving of the embassy car by its driver.”*

13. Further relied upon a case of ***Oriental insurance Company Ltd. v. Premlata Shukla & Ors. III (2007) ACC 54 (SC)*** wherein it is held as under:-

*“However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied*

*thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.*

*14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.*

*15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In Hukam Singh (supra), the law was correctly been laid down by the Punjab and Haryana High Court stating:*

*8. Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Partap had produced only his former deposition and gave no evidence in Court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The Trial Court had discussed the evidence of Ram Partap in the light of the report Exhibit D.1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of*

*inadmissible evidence either. No doubt the procedure adopted by the trial Court in letting in a certified copy of the previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in Court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would indeed be permitting them both to appropriate and reprobate."*

14. In rejoinder, Ld. Counsel for the appellant submitted that the ld. Tribunal, while computing compensation amount, has granted an amount of Rs.15,000/- towards conventional ceremony, therefore, it would not be proper to grant any compensation towards love and affection and loss of estate.

15. I have heard Ld. Counsels for the parties.

16. An Accounts Executive of Gramophone Company of India limited met with an accident on 01.03.2000 and sustained fatal injuries. The respondents/claimants being the legal representatives of the deceased filed a petition Under Section 166 and 144 of the Motor

Vehicles Act, 1988. Thereafter, on the basis of the pleadings and materials on record, the Ld. Tribunal framed issues with respect to the negligence, compensation and relief. Based on the evidence on record, the Ld. Tribunal came to a finding that the appellant no. 2 was negligent; and fastened the liability upon the appellant no.1 being the owner of the vehicle. Hence, appellants are aggrieved.

17. No doubt, in a petition Under Section 166 of Motor Vehicle Act, 1988, the aspect of negligence has to be proved by the claimants. In order to prove the negligence, the respondents / claimants have produced the copy of First Information Report which is registered Under Section 279/304A IPC. Significantly, the FIR has been registered on 01.03.2000, i.e., on the date of accident and the same has been culminated into the acquittal of appellant no.2. Moreover, in the criminal proceedings, the appreciation of evidence is based on the concept of 'beyond reasonable doubt'. The Motor Vehicle Act, 1988 being a welfare legislation, the appreciation of evidence and assessment is not regulated by technicalities. However, acquittal in the criminal case will not vitiate the proceedings under the Motor Vehicle Act, 1988. Therefore, the Ld. Tribunal has rightly appreciated the evidence on the basis of records and concluded that the negligence has been proved.

18. Secondly, the appellant is aggrieved with the assessment of compensation. It is significant to note that the assessment of compensation is based on the income of deceased. In order to prove the income, the respondents/claimants have examined the

representative of the employer as PW3 and produced the records pertaining to the same as Ex.PW3/1. It is important to note the relevant extracts from the records, as follows:-

*“You will be entitled to the following Salary / perquisites:-*

- i) Basic Salary : Rs.5,500/- per month*
- ii) Personal Pay : Rs.1,200/- per month*
- iii) Special Allowance : Rs.600/- per month*
- iv) HRA : Rs.900/- per month*
- v) Conveyance Allowance : Rs.800/- per month*
- vi) LTA : Rs.4,500/- per annum  
(Taxability of LTA shall be as per Income Tax rules and shall be paid as per company policy)*
- vii) Medical (Domiciliary): Rs.5,500/- per annum  
(To be reimbursed against proper supporting documents and taxed as per Income Tax Rules)*

*(Medical (Domiciliary) or LTA maybe claimed under either head in accordance with Income Tax rules from the quantum applicable to each employee. This quantum, as given above, is the sum of one month's Basic salary as applicable, in your case and LTA as currently applicable to your grade.)*

- viii) Hospitalization Benefit for yourself, your spouse and two dependent children upto Rs.7,500/- (Rupees Seven Thousand Five Hundred only) per annum in accordance with Company rules.”*

19. The perusal of the above extract shows that an amount of Rs 800/- was allotted on account of conveyance allowance and the same has been falling under the category of personal expenses. The amount granted under the category of personal expenses shall not be taken into

consideration for ascertaining the just compensation. Therefore, the amount on account of conveyance allowance is deducted for assessing the monthly income of deceased. Thus, the monthly income of the deceased is calculated for Rs.8,400/- (Rs.9,200/-800) whereas Ld. Tribunal has wrongly assessed the monthly income of the deceased for Rs.9000/-.

20. On assessing the proper multiplicand, the Ld. Tribunal has rightly added 50% for future prospects and deducted  $\frac{1}{3}^{\text{rd}}$  as the personal expenses of deceased. However, monthly income of deceased is the basic unit of the multiplicand, therefore, the loss of income on account of future prospects would be Rs. 4,200/- (Rs.8,400x50%). Thus, the monthly income is Rs.12,600/- (Rs.8,400 + Rs.4,200)

21. The deduction on account of personal expenses is related to the number of dependants. It is not disputed that the deceased had left three dependents: wife, son and mother. Therefore, the standardised deduction would be  $\frac{1}{3}^{\text{rd}}$ , i.e., Rs.4,200/-(Rs.12,600 x  $\frac{1}{3}$ )

22. There is no dispute regarding the date of birth of the deceased, i.e., 13.04.1965. The date of accident is 01.03.2000. Since the deceased did not reach at the age of 36, Ld. Tribunal has rightly applied the multiplier as 16. Resultantly, the compensation on account of loss of dependency comes to Rs.16,12,800/- (Rs.8,400x12x16)

23. Importantly, the Ld. Tribunal has not assessed the compensation on account of non- pecuniary damages such as love and affection, loss of consortium. With respect to the non pecuniary heads, recently, the

Apex Court in *Rajesh and Ors. v. Rajbir Singh and Ors.* 2013 (6)

*Scale 563 has held as under:*

*“The ratio of a decision of this court on a legal issue is a precedent. But an observation made by this court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi (Supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma’s case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, ‘consortium’ is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse’s affection, comfort, solace, companionship, society, assistance, protection care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss,*

*it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.*

24. In view of above, the claimants respondents are entitled for compensation on account of love and affection and loss of consortium for Rs 1,00,000/- each.

25. I note, Ld. Tribunal has not granted any compensation on account of loss of Estate. The accident cases are being under the welfare legislation. I, therefore, grant a sum of Rs.10,000/- for loss of Estate.

26. Therefore, the total compensation amount comes to Rs.18,22,800/-

27. Accordingly, the award of compensation is modified and enhanced for Rs.79,800/- (Rs.18,22,800 – Rs.17,43,000)

28. The respondents/ claimants are entitled for the enhanced compensation amount along with 9% interest from the date of filing of the petition till the payment.

29. The appellant is directed to deposit the enhanced amount with the Registrar General of this Court within four weeks from the date of receipt of this order.

30. The Registrar General of this Court is further directed to release the enhanced amount to the respondents / claimants as per the ratio of the award.

31. In pursuance of order dated 23.05.2005 and 06.04.2009, the appellant has deposited the entire award amount with the Ld.Tribunal. Therefore, the Ld. Tribunal is directed to release the balance award amount in favour of respondents/claimants as per the order dated 06.04.2009 passed by this Court.

32. The appeal is disposed of in above terms

33. No order as to costs.

34. The Registry of this Court is directed to release the statutory amount in favour of the appellant/DTC.

**SURESH KAIT, J.**

**MAY 23, 2013**

*Jg/RS*