

\$~A-15

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

Judgment reserved on : 22.07.2014

Judgment pronounced on : 14.10.2014

+ MAC.APP.347/2012

RAJINDER PRASAD & ANR. Appellants
Through Mr.Manish Manie, Advocate.

versus

BASUDEO ROY & ORS Respondents
Through Mr.R.C.Madan, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed by the appellants/claimants for enhancement of compensation awarded by the Award dated 24.11.2011.
2. The brief facts are that the appellants are the parents of Jamuna Prasad who died in a road accident on 03.07.2008. The appellants had filed a claim petition under Sections 160 and 140 of the Motor Vehicles Act, 1988 which was disposed of vide impugned Award dated 24.11.2011.
3. On 03.07.2008 the deceased Jamuna Prasad was driving a motorcycle with the pillion rider Sh.Vir Singh. They were hit by a truck which was said to be driven at a very high speed in a rash and negligent manner. Both riders of the motorcycle died on the spot. Two separate claim petitions were filed and have been disposed of by a common Award. The parents of Vir Singh filed an appeal being MAC APP.344/2012 which has been disposed of by a separate judgment of this court dated 30.09.2014.
4. On the pleadings of the parties the following issues were framed:-
“1.Whether deceased Jamuna Prasad and deceased Vir

Singh died because of injuries sustained in motor accident which occurred on 3.7.2008 at about 12.05 am at Main Karawal Nagar Road, B-5, Opp.Krishan Furniture, Nehru Vihar, within the jurisdiction of P.S.Y.Vihar/G.Puri involving vehicle no.Truck No.HR-12GA-0571 being driven by respondent no.1 owned by respondent no.2 and insured with respondent no.3? OPP

2. Whether petitioners are L/Rs of deceased? OPP
3. Whether petitioners are entitled to compensation, if so, to what amount and from whom?
4. Relief.”

5. We are concerned with only issue No.3 in the present case inasmuch as the said issue pertains to compensation payable to the appellants.

6. The appellants had relied upon the income tax returns of the deceased and the evidence of Anil Kumar Verma, Inspector, Income Tax Department, PW-4 who had produced the computer generated income tax returns of the deceased Sh.Jamuna Prasad for the assessment year 2007-2008. He, however, could not produce the record of the previous year. As only one income tax return was proved, the Tribunal in the impugned Award did not accept the same. The Tribunal accepted that the deceased had passed secondary examination from the National Institute of Open Schooling. The loss of dependency was hence calculated on the basis of minimum wages fixed by the Government for a matriculate which was ₹4081/- per month on the date of the accident. Based on the same and after making a deduction of 50% on account of increase in price index, the total loss of dependency was calculated at ₹4,77,477/-. A multiplier of 13 was applied. Keeping in view the age of the appellants i.e. that of appellant No.1 was taken as 52 years and of appellant No.2 was taken as 48 years, the average mean age of 50 years

was taken to compute the multiplier. The non-pecuniary damages were awarded as follows:-

- “1. Loss of estate ₹10,000/-
2. Funeral expenses ₹7,500/-
3. Love and affection ₹10,000/-”

7. Hence a total compensation of ₹5,05,000/- was awarded.

8. Learned counsel appearing for the appellant has made three submissions. He firstly submits that there was no basis to reject the income tax returns filed by the deceased inasmuch as two income tax returns were on record, namely, for the assessment years 2007-2008 and 2008-2009. Merely, because the Income Tax Department was not able to produce the record pertaining to one of the returns, was no ground to not accept the figures stated in the income tax returns. Hence he submits that income of the deceased should have been taken based on these IT returns. He secondly submits that the multiplier has to be taken in relation to the age of the deceased and not related to the age of the claimants. He relies upon judgment of the Supreme Court in the cases of *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, 2009 ACT 1298, *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*, 2012 ACJ 2002, *M.Mansoor & Anr. vs. United India Insurance Co. Ltd. & Anr.*, 2013 ACJ 2849 and the latest judgment of this High Court in the case of *Mohd. Hasnain vs. Jagram Meena, II(2014) ACC 147 (Del.)* to support the above proposition. Lastly, he submits that the compensation for loss of love and affection should be ₹1 lac and not the sum of ₹10,000/- as awarded by the Tribunal. For the said purpose, he again relies upon the judgment in the case of *M.Mansoor & Anr. vs. United India Insurance Co. Ltd. & Anr.(supra)*.

9. As far as first contention is concerned, learned counsel for the

appellant contends that two income tax returns are on record. The first one, he submits relates to the assessment year 2007-2008 which shows a return of annual income of ₹91,110/-. This return is duly signed by the Income Tax Office. The second income tax return is a photocopy for the assessment year 2008-2009 which also shows a total net income of ₹91,110/-. This return as per the stamp was filed on 01.05.2008 that is before the accident.

10. However, the submissions of the learned counsel for the appellants are not borne out from the record. The document which perpetuates to be the acknowledgment of returns for the assessment year 2008-2009 is actually for a gross income of ₹1,56,840/- with a net total income of ₹91,110/-. This was filed on 01.05.2008 before the IT authorities. This is a photocopy and is Mark A and was filed by PW-1, the mother of the deceased. The next document is an intimation sent under Section 143(1) of the Income Tax Act which pertains to the assessment year 2007-2008 which is acknowledging the net income of ₹ 91,110/- which return is also said to have been filed on 01.05.2008. This is produced by PW-3, from the Income Tax Department.

11. As per Ex.PW-3/A, which is a covering letter signed by the Income Tax Officer, he has brought the return for the assessment year 2007-2008 and has said that other than this assessment year no other return was filed in the Income Tax Office by the deceased.

12. The findings of the Tribunal that only one year's income tax return is on record is correct. Both the documents relied upon by the counsel for the Appellant i.e., Mark A (showing Assessment Year 2008-09) and document filed with Ex PW-3/A (showing Assessment Year 2007-08) were filed on 01.05.2008 with the same income. They obviously relate to the same return.

13. However, in my view, this return has been filed on 01.05.2008 whereas the accident has taken place on 03.07.2008. Income Tax Office

accepts the return. There is no reason to disbelieve the income as shown in the said return and resort to minimum wages as done by the Tribunal. Accordingly the annual income of the deceased at the time of death as per the said income returns was ₹91,110/-.

14. There is also merit in the second submission of the learned counsel for the appellant regarding the multiplier to be applied. The Supreme Court in the case of *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.(supra)* in para 17 held as follows:-

“17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

15. The aforesaid case the deceased was a bachelor aged 26 years and the Supreme Court applied the multiplier of 17.

16. The Supreme Court in case of *M. Mansoor vs. United India Insurance Co. Ltd., MANU/SC/1042* which was a case where the deceased was a bachelor of 24 years of age, the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants.

17. This High Court also in the case of *Mohd. Hasnain vs. Jagram Meena (supra)* in view of various judgments of the Apex Court held as follows:-

“23. ... Finally, in the assessment of dependency, the courts/tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.”

18. In the aforesaid case the deceased was a bachelor of 39 years.

19. In view of the above legal position, I hold that the impugned Award has wrongly taken a multiplier of 9 based upon the age of appellants No.1 and 2. Keeping in view the fact that the age of the deceased at the time of accident was 23 years of age and in view of the judgment of the Supreme Court in the case of ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.(supra)***, the applicable multiplier would be 18.

20. On the issue of love and affection, reliance may be had to the judgment of the Supreme Court in the case of ***M.Mansoor & Anr. vs. United India Insurance Co. Ltd. & Anr.(supra)***. That was the case where a bachelor of 24 years age had expired and the parents were given a total compensation of ₹1 lac for loss of love and affection of their son.

21. Reference may also be had to the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** where the Supreme Court awarded a sum of Rs.1,00,000/- on account of love and affection for the children. This has been reiterated by the Supreme Court in the recent judgment of ***Yerramma vs. G. Krishnamurthy, 2014(10) SCALE 213***.

22. Keeping in view the judgments above, I accordingly enhance the awarded amount under the head of love and affection from ₹10,000/- to ₹ 1 lac.

23. In view of my observations above, the total loss of dependency would be ₹12,29,994/- [(Rs.91,110 + 50% -1/2) x 18]. The non-pecuniary damages would be as follows:-

- “1. Loss of estate ₹10,000/-
- 2. Funeral expenses ₹7,500/-
- 3. Love and affection ₹1,00,000/-”

24. Thus a total compensation would be of ₹13,47,476/-. This would be a just and fair compensation in the facts and circumstances of this case. The

appellants would also be entitled to interest @ 6.5% per annum from the date of the filing of the petition till realisation on the enhanced compensation. Other aspects of the Award remain undisturbed.

25. As per the Award the Insurance Company respondent No.3 have been directed to pay the compensation amount. Respondent No.3 may deposit the balance compensation amount as per the above order within one month from today along with interest with the Registrar General of this High Court. In view of the fact that the accident took place on 03.07.2008, the Registrar General may release the full amount to the appellants.

26. The appeal stands disposed of.

JAYANT NATH, J

OCTOBER 14, 2014
rb