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

Judgment reserved on : 22.07.2014

Judgment pronounced on : 30.09.2014

+ MAC.APP.344/2012

BABU LAL & 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 against the order of the Tribunal dated 24.11.2011 seeking enhancement of the compensation awarded on a petition filed by the appellants under section 166 and 140 of the Motor Vehicles Act, 1988.

2. The background facts are that the two petitions were heard together. The two petitioners on 3.7.2008 were going on a motorcycle. The deceased Vir Singh was on the pillion seat. The motorcycle hit a truck which was stated to be coming at a very high speed in a most rash and negligent manner. Both the riders fell on the road and died at the spot. The legal heirs have filed the present claim petition.

3. On the pleadings of the parties 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. In the present petition we are concerned with issue No.3. PW-1 has stated in her evidence that her son was 20 years of age doing private service and earning Rs.6,000/- per month. His salary certificate issued by one Ambika Cleaning Services Ex.PW-1/1 was produced. The proprietor of Ambika Cleaning Services Sh. Mohan Lal testified as PW-3. He proved the salary certificate as Ex.PW-1/1 stating that it has been issued by him and that Vir Singh, the deceased was working as a Safai Supervisor and earning ₹6,000/- per month.

6. The Tribunal in the impugned Award, however, did not accept the said testimony of PW-3 and the salary certificate Ex.PW-1/1. The said witness did not produce any other document other than the salary certificate issued by him. He was not registered with the Labour Department. Though 12 to 13 workers were working for his firm, he did not maintain any register regarding the employment or the salary of his employees and he could not tell the date since when the deceased was employed though he mentioned that he was working for 5-6 months only before the accident. PW-3 confirms that he was not an income tax assessee. As the said evidence was

not believed, the Tribunal calculated the wages based on the minimum wages fixed for an unskilled worker which at the relevant time was ₹3,633/- per month. The minimum wages were increased by 50% on account of rise of the price index and future prospects. 50% deductions were made on account of expenses on himself as the deceased was a bachelor. Based on the age of the claimants/appellants i.e. the age of appellant No.1, the father of the deceased being 59 years and appellant No.2, the mother of the deceased being 56 years and a multiplier of 9 was applied and a total loss of dependency was calculated at ₹2,94,273/-. The damages for non-pecuniary loss were calculated 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 ₹3,21,800/- was awarded.
8. Learned counsel appearing for the appellant has pointed out three aspects on which he seeks enhancement of compensation. Firstly, he submits that there are no bases to reject the salary certificate of Ambika Cleaning Services Ex.PW-1/1. He further submits that even if the same is not accepted, as per Ex.PW-1/3 the deceased was Vth class passed and minimum wages would be for a non-matriculate which were ₹3.826/- at the relevant period. He secondly submits that the multiplier has to be taken in connection with the age of the deceased and not with 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 a sum of ₹10,000/- as awarded by the Tribunal. For the said purpose, he relies upon the judgment in the case of *M.Mansoor & Anr. vs. United India Insurance Co. Ltd. & Anr.(supra)*.

9. As far as the wages are concerned, a perusal of the salary certificate i.e. Ex.PW-1/1 shows that it is on the letter head of the Ambika Cleaning Services. In my view the Tribunal has rightly not accepted the said document. PW-3, Sh. Mohan Lal in his cross-examination admits that 12 to 13 workers are working in his firm yet the firm is not registered with the Labour Department. He admits that he does not maintain any register with regard to the employment of his workers. He does not remember when Vir Singh was appointed. He further states that all payments are made by him through cheque and a total of ₹15,000/- to ₹20,000/- per month is received through cheques. How can he on this meagre figure employ 12 to 13 workers is not known. There is no reason to interfere with the Tribunal's conclusion that the document Ex.PW-1/1 cannot be relied upon to assess the wages of late Sh. Vir Singh.

10. However, there is merit in the submissions of the learned counsel for the appellant that minimum wages for a non-matriculate would be applicable as Ex.PW-1/3 is a school leaving certificate of Sh.Vir Singh which shows that he has passed Vth standard. Learned counsel for the appellants has pointed out that minimum wages for a non-matriculate is ₹3,826/-. This is not in dispute. Accordingly, in my view the wages of the deceased should have been assessed at ₹3,826/-.

11. 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.”

12. 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.”

13. 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 of 18.

14. 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. Accordingly, I enhance the awarded amount under the head of love and affection from ₹10,000/- to ₹ 1 lac.

15. In view of my observations above, the total loss of dependency would be ₹ 6,19,920/- and 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/-”

16. Thus a total compensation would be of ₹7,37,420/-. The appellants would also be entitled to interest @ 7.5% per annum from the date of the filing of the petition till realisation on the enhanced amount. Other aspects of the Award remain undisturbed.

17. 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.

18. The appeal stands disposed of.

JAYANT NATH, J

SEPTEMBER 30, 2014

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