

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

+ MAC.APP. 492/2011

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Date of decision: 08th May, 2014

NATIONAL INSURANCE CO. LTD. Appellants

Through: Mr.Sonia Sharma, adv.

versus

SUKRITI DEVI & ORS. Respondents

Through: Mr.Sanjiv Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. The appellant has assailed the order the learned Tribunal dated 17th February, 2011 whereby the tribunal has awarded a compensation of Rs. 18,34,800/-.

2. The brief facts are that on 23.09.2009 deceased Manoj Singh was coming on his scooter and when he reached at Punjabi Bagh Flyover, near Railway Line, Punjabi Bagh, one blue line bus bearing registration no. DL 1PB 1685 being driven by its driver respondent no.6 in rash and negligent manner came in a very fast speed and hit against the scooter and as a result the deceased came under the tyre of the offending vehicle and died at the spot. He

was 31 years of age with sound health. He was married having two children, wife and parents and was earning Rs.7800/- per month and was the sole bread earner of the family. After considering all the facts and circumstances of the case, the tribunal has awarded the compensation as under:

1.	Compensation for loss of dependency	Rs.16,84,800/-
2.	Compensation for loss of consortium	Rs. 10,000/-
3.	Compensation for loss of estate	Rs. 10,000/-
4.	Compensation for funeral expenses	Rs. 5,000/-
5.	Compensation for loss of love and affection	Rs. 1,25,000
		Rs.18,34,800/-
	Less interim compensation (-)	Rs. 50,000/-
		Rs.17,84,800

3. The appellant has not challenged the findings of the tribunal that the accident was the result of the rash and negligent driving of the offending vehicle i.e. the blue line bus. The finding of the learned tribunal to this effect has thus attained the finality.

4. The only challenge in the appeal is that the tribunal has

wrongly calculated the income of the deceased at Rs.7800/- per month. It is contended that there was no documentary evidence on record to prove the income. The documents produced on record were manipulated and fabricated. The claimants have produced on record the vouchers of payment of salary allegedly signed by the deceased, however, the signature of the deceased on each of the vouchers is different meaning thereby that these vouchers have been manipulated. It was further argued that the statement of account Ex.PW1/1 to Ex.PW1/6 show that the deceased was getting salary of Rs.5300/- per month till 7th May, 2009 and that all of a sudden the salary was increased to Rs.7800/- and this clearly creates doubt regarding the genuiness of these vouchers. There is no other document on record besides these vouchers. It is contended that in these circumstances the tribunal ought to have taken Rs.5300/- per month as the salary of the deceased while calculating the loss of dependency.

5. It is contended on behalf of the LRs of the deceased that the contention of the insurance company before the tribunal was that the deceased was not in employment of M/s A.G.Exports, a

partnership firm. It is further contended that the insurance company did not cross examine the owner of the M/s A.G.Exports who has been examined by the claimant as PW1 on the point that the last drawn of deceased was not Rs.7800/- per month.

6. I have given the careful consideration to the findings of the tribunal on this point and has gone through the record. The Tribunal has elaborately discussed the evidence produced on record in order to arrive to the conclusion that the last drawn salary of the deceased Rs.78,00/- per months. The relevant portion of the findings of the Tribunal is reproduced as under:

“10. The petitioner in her affidavit Ex.PW3/4 has deposed that the deceased was doing private job and was permanently employed with M/s A.G.Exports, A-110, Phase IV, Udyog Vihar, Gurgaon, Haryana and was earning Rs.7800/- per month. In order to prove the earning capacity of deceased, PW1 Amit Gupta was examined by petitioner who has deposed that he was partner of M/s A.G.Exports engaged in business of fabrics supply. He further deposed that they were having two workers at their concern, one of them was Manoj Singh (deceased) who was working with them for last 6-7 years and was drawing salary of Rs.7800/- per month; after his death in a bus accident his salary for the month of September, 2009 was given to his wife Sukriti. He further clarified that they had never issued any salary certificate to their employees but have been showing the salary paid to their employees in their account books. The salary paid to the employees through voucher and was duly signed by the workers. He

has placed on record the cash voucher w.e.f. April, 2009 to September, 2009 Ex.PW1/1 to Ex.PW1/6. It is deposed by him that all these vouchers were duly signed by Manoj Singh at point X except the voucher Ex.PW1/6 which was signed by his wife. In his cross-examination on behalf of insurance company, he has stated that because of small business they had not issued appointment letter to their workers . He has also stated in cross examination that he can produce the cash vouchers even for the previous period if necessary. He has also clarified that amount of Rs. 7800/- in cash voucher was the salary amount and did not include the conveyance and other allowances . He has deposed in his cross examination that he had been showing the payment to the workers in his Income Tax returns regularly and could submit the proof in that regard . He further deposed that investigator of insurance company inquired from them about the deceased and they had told them that Manoj Singh was working with them and was paid salary. In further cross-examination, he has placed on record a copy of profit and loss account for the year 2008-2009, Ex. PW1/7 along with staff ledger account for the year 2008-09 Ex. PW1/8 . He further clarified that he had filed Income Tax returns regarding these documents Ex. PW1/7 and Ex. PW1/8 and the documents have been audited which means that same has been shown in the income tax returns. In his further cross-examination on 16.11.2010, he has deposed that deceased Manoj Singh was a permanent employee with M/s A.G Exports , a partnership firm and he was working with them for the last 6 years .

11. Ld. counsel for insurance company had argued that the proof of payment of salary and vouchers in that regard has been manipulated and fabricated in order to benefit the LRs of the deceased. Ld. Counsel for petitioner on the other hand has submitted that there is nothing in the cross-examination of PW1 Amit Gupta which may show that the record produced by him was not a record prepared by him in ordinary course of business and was false and

fabricated. Accordingly, seeing the testimony of PW1 Amit Gupta , I am satisfied that the deposition made by him was natural , trustworthy and straightforward. There is nothing in his cross-examination so as to conclude that his deposition has been assailed especially with regard to the payment of salary of deceased through voucher Ex. PW1/1 to Ex. PW1/6 . The said payment has been duly authenticated and audited by ledger accounts and profit and loss account placed on record by PW1 Amit Gupta. Nothing was suggested to PW1 Amit Gupta on behalf of insurance company that the said official record was not prepared in ordinary course of business of M/s A.G Exports where deceased was employed as a permanent employee. On the basis of evidence led by petitioner as discussed above , it is established that at the time of death deceased was earning Rs. 7800/- per month from his salary working with M/s A.G Exports and his service with them was permanent service.

12. Deceased Manoj Singh was employee of M/s A.G Exports stands established from the deposition of PW1 as deceased was working with them for last 6 years and nothing was suggested to PW1 Amit Gupta in cross-examination on behalf of insurance company that the said deceased was not a permanent employee with them and was not working for the last 6 years.”

7. I have also carefully gone through the evidence produced before the Tribunal and it is apparent that the stand of the appellant has no merit and the tribunal has correctly reached to the conclusion that the last drawn wages of the deceased were Rs.7800/- per month.

8. The contention of the appellant that because the signatures of the deceased differs on each and every voucher, the vouchers are not genuine has no force. The insurance company had the opportunity for getting the disputed signatures of deceased on vouchers examined by the handwriting expert. The court at this stage cannot presume that the vouchers do not bear the signatures of the deceased. Neither the tribunal nor this court has any admitted signatures of the deceased for comparison with his disputed signature on vouchers. The other contention of the appellant that the deceased was not employed with M/s. A.G.Export stands rebutted by the various documents produced on record including documents Ex.PW1/1 to Ex.PW1/6. I find no reason to differ with the findings of learned tribunal on this point.

9. The appellant has also prayed for reduction in the amount of Rs.1,25,000/- granted towards loss of love and affection.

10. It is argued on behalf of the claimants that the deceased has left behind five dependants and the compensation for loss of love and affection has to be given to all the dependants of the deceased and court has actually awarded a sum of Rs.25,000/- for each of the

dependants of the deceased and so it is not on a higher side.

11. There is no dispute to the fact that the deceased has left behind five dependants. Grant of Rs.25,000/- to each of the dependant of the deceased towards loss of love and affection cannot be said to be towards higher side. The contention of the appellant, therefore, has no force in it.

12. For the reasons discussed above, the appeal fails and it is dismissed.

DEEPA SHARMA, J

MAY 08, 2014

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