

\$~

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

%

Judgment delivered on: 21st February, 2014

+

MAC.APP. No.1238/2012

SMT. MEENA & ORS.

..... Appellants

Represented by: Mr. O.P. Mannie, Advocate

Versus

SH. SOMVIR & ANR.

..... Respondents

Represented by: Mr. Shadab Khan,
Advocate for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is preferred against the impugned award dated 14.08.2010 whereby the learned Tribunal has granted compensation for a sum of Rs.11,48,176/- with interest at the rate of 7.5% *per annum* from the date of filing the petition till realization of the amount.

2. Vide the present appeal, the appellants/claimants are seeking enhancement of the compensation amount as noted above.

3. Brief facts of the case are that on 14.05.2010 at about 1.30 PM when Sh. Gaffar Khan, @ Gabru @ Mullah along with one Rakesh Kumar was coming to Delhi in Tempo from Dabai (U.P.) and when they reached Sadak Pusta, Village Jatpura (U.P.), a bus bearing No. U.P. 14 U 9739, being driven by driver Somvir at a very fast speed in rash and negligent manner came from the

wrong side and hit the Tempo. As a result of which, the deceased was seriously injured and succumbed to the injuries received in the accident.

4. Learned counsel appearing on behalf of the appellants/ claimants has argued that the deceased was a driver and earning his livelihood by driving the Tempo, which met with an accident with the offending vehicle. The claimants have failed to prove the salary of the deceased. However, despite the fact that the deceased was a driver, while calculating the loss of dependency, as per the Minimum Wages Act, 1948, the learned Tribunal has assessed his monthly salary as Rs.5,278/- applicable to an unskilled workman at the relevant time.

5. Learned counsel submitted that keeping in view the election identity cards Ex.PW1/1 of the deceased and Ex.PW1/2 of the appellant No.1/claimant and the post-mortem report Ex.PW2/5, the age of the deceased, in any manner, was less than 40 years and the learned Tribunal while granting compensation has also considered the age of the deceased as 31 years, however, erred in adding only 30% of the actual income of the deceased towards future prospects instead of 50% as per the settled law.

6. To strengthen his arguments, learned counsel for the appellants/claimants has relied upon the dictum of ***Rajesh & Ors. Vs. Rajbir Singh, 2013 (6) SCALE 563***, wherein the Full Bench of the Apex Court has held as under:-

*“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an*

addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.*

7. Learned counsel further argued that the learned Tribunal has granted very less amount towards non-pecuniary benefits such as only Rs.10,000/- each for loss of consortium and funeral expenses. He submitted that in the case of **Rajesh & Ors. (Supra)**, the Full Bench of the Apex Court has granted a sum of Rs.1,00,000/- for loss of consortium and Rs.25,000/- for funeral expenses.

8. PW1, Smt. Meena, wife of the deceased has deposed in her evidence by way of affidavit that the deceased was employed as a driver and was earning Rs.10,000/- per month. However, the respondents did not cross-examine her on this issue to prove that the deceased was not employed as a driver.

9. Undisputedly, accident in question took place due to head-on-collision between the two vehicles, one of which was Tempo driven by the deceased himself and the offending vehicle was a bus bearing registration No. U.P.14-U-9739. The respondent No.2/Corporation did not repudiate this fact and the case has been that the accident had taken place between the two vehicles. Therefore, there was no occasion before the learned Tribunal not to rely upon the statement of PW1, i.e., widow of the deceased that deceased was working

as a driver. Thus, the salary of the deceased is considered as Rs.6,448/- as per minimum wages applicable on skilled persons.

10. Keeping in view the age of the deceased 31 years and the aforesaid dictum of ***Rajesh & Ors. (Supra)***, the future prospects is enhanced from 30% to 50%

11. The deceased left behind six dependants, i.e., young widow, two minor sons, two minor daughters and an aged mother. Due to the untimely death of the deceased in a road accident, the minor children could not get love, affection and care of their father and young wife lost her all pleasure of association of her husband. It has also affected their socio-economic status as he was the only bread earner in the family and their future hopes have been jeopardised.

12. Keeping in view the facts and circumstances of the case, I am of the considered opinion that the claimants are entitled for enhancement of compensation from Rs.10,000/- to Rs.1,00,000/- for loss of consortium and from Rs.10,000/- to Rs.25,000/- for funeral expenses.

13. Consequently, the compensation amount comes as under:-

Sr. no.	Heads of Compensation	Calculation as per MACT	Calculation as per this Court
i.	Loss of dependency	Rs.10,18,176/-	Rs.13,92,768/-
ii.	Loss of Love and affection	Rs.1,00,000/-	Rs.1,00,000/-
iii.	For funeral expenses	Rs. 10,000/-	Rs. 25,000/-
iv.	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-
v.	Loss of consortium	Rs. 10,000/-	Rs.1,00,000/-

	Total	Rs.11,48,176/-	Rs.16,27,768/-
--	--------------	----------------	----------------

Thus, the compensation amount is assessed for Rs.16,27,768/-.

14. Resultantly, the enhanced compensation comes to Rs.4,79,592/- (Rs.16,27,768 - Rs.11,48,176), which shall carry interest at the rate of 7.5% *per annum* from the date of filing the claim petition till realization of the amount.

15. Accordingly, the respondent No.2/Corporation is directed to deposit the enhanced compensation amount with up-to-date interest accrued thereon with the Registrar General of this Court within a period of five weeks from today.

16. On deposit, the Registrar General is directed to release the same in favour of the respondents/claimants proportionately in terms of the impugned award dated 14.08.2012 passed by the learned Tribunal on taking necessary steps by them.

17. In view of the above, the instant appeal is allowed.

SURESH KAIT, J.

FEBRUARY 21, 2014

sb/jg