THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC App. No. 87 of 2011

Claimant-Appellants:

1. Sri Buddha Debbarma,
S/o. Late Sachindra Debbarma.

2. Smti Mandira Debbarma,
D/o. Sri Buddha Debbarma.

3. Sri Abinash Debbarma,
S/o. Sri Buddha Debbarma.

4. Sri Bishwanath Debbarma,
S/o. Sri Buddha Debbarma.
All are residence of Rebicharan Para, P.S. Srinagar, District-West Tripura.

By Advocate :

Mr. P.S. Roy, Adv.

Respondents :

1. Sri Bitam Debnath,
S/o. Late Haradhan Debnath,
resident of Kalkalia, P.S. Bishalgarh, District-West Tripura.
(Owner of TR01C-3134 (Auto Rickshaw)

2. The National Insurance Co. Ltd.,
42, Akhaura Road, Agartala, West Tripura.
(Insurer of TR-01C-3134-Auto Rickshaw).

By Advocates :

Mr. K. Bhattacharji, Adv.
Mr. D. C. Saha, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **5th October, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 20.05.2011 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in TS(MAC) No. 489 of 2009 whereby the learned Tribunal has awarded a sum of Rs.4,10,000/- only in favour of the claimants, husband and minor children.

[2] As far as the age of the deceased is concerned, in the claim petition it was claimed that the age of the deceased at the time of accident i.e. in 2009 was 28 years. In the very same claim petition it is written that the deceased left behind 3(three) children, 2(two) of whom were minors and one was major. That means that the major was aged more than 18 years. Therefore, the age of the deceased given at 28 years cannot be accepted to be correct because the nine year old girl could not have been married and delivered a child at the age of 10 years. It is true that in the card issued by the Election Commission also similar age has been given but no reliance can be placed on the same because even according to the claimant the daughter of the deceased was born in the year 1993 and was more than 18 years at the time of the filing of the claim petition which was filed in 2009 itself. In the post mortem report the age of the deceased has been given as 35 years and therefore, I take the age of the deceased to be between 35 to 40 years.

[3] Even if the deceased is stated to be a house wife, her income has to be properly assessed.

[4] The Apex Court in ***Arun kr. Agarwal vs. National Insurance Company (AIR 2010 SC 3426)*** held as follows:

> **"24. It is not possible to quantify any amount in lieu of the service rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in**

> **lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.**
>
> **32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning / surviving spouse for the purpose of computing the compensation. Though, section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, (AIR 1994 SC 1631 : 1994 AIR SCW 1356) (supra), U.P. S.R.T.C. v. Trilok Chandra (supra), Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, (AIR 2009 SC 3104 : 2009 AIR SCW 4992) (supra) and also take guidance from the judgment in Lata Wadhwa's case, (AIR 2001 SC 3218 : 2001 AIR SCW 3086). The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."**

[5] The occurrence took place in the year 2009 and, therefore, the value of the services rendered by the deceased to her family at that time can be assessed at least at Rs.3,000/- per month. If the accident had taken place in 2015 the assessment of the income of a housewife would be much higher. What has been assessed is the contribution of the wife to the household. I have made no deduction from the amount of Rs.3000/- because the future prospects have been taken into consideration. So, the annual loss of dependency works out at Rs.36,000/-. The age of the deceased was between 35 to 40 years and as per the judgment of the Apex Court in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (AIR 2009 SC 3104)*** the appropriate multiplier would be 15 and the compensation, therefore, works out at Rs.5,40,000/- on account of loss of dependency. In addition thereto, the claimant-husband is also awarded Rs.50,000/- for loss of consortium and the minor claimants are held entitled to Rs.20,000/- for loss of the love and affection of their mother. The total compensation is, therefore, assessed at Rs.6,10,000/-.

[6] In view of the above discussions, the appeal is allowed and the award is enhanced from Rs.4,10,000/- to Rs.6,10,000/- i.e. by Rs.2,00,000/-. The insurance company has already paid the amount awarded by the learned Tribunal. It is therefore, directed to deposit the enhanced amount of Rs.2,00,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till deposit of the amount in the Registry of this Court within four months from today.

[7] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE