

\$~R-177

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

Decided on: 8th September, 2017

+ MAC.APP. 96/2010

SUKHPALI & ANR.

..... Appellants

Through: Mr. Nitinjaya Chaudhary, Advocate

versus

DELHI TRANSPORT CORPORATION & ORS.

..... Respondents

Through: Mr. Sarfaraz Khan, Advocate for R-1.
Ms. Harsh Lata, Advocate for
Ms. Shantha Devi Raman, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 21.09.2005, a motor vehicular accident took place due to negligent driving of motor vehicle bearing registration No.DL-1PB-1113 (DTC bus), admittedly insured against third party risk with the second respondent for the period in question. It resulted in injuries being suffered by one Mohinder Singh and Narender Singh, the latter dying in the consequence. Two accident claim cases, including one (Suit No.417/2006) by the appellants herein, came to be instituted, the other being for and on behalf of Mohinder Singh (the injured person), both seeking compensation. The tribunal clubbed the two cases and

after inquiry, by judgment dated 19.09.2009, accepted the claim for compensation on the principle of fault liability. The finding about negligence on the part of the driver of the offending vehicle has attained finality as it was not challenged. In the case of death of Narender Singh, presented by his parents (the appellants), he being a bachelor, the tribunal awarded total compensation in the sum of Rs.4,87,721/-, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of dependency	4,22,721/-
2.	Love and affection	50,000/-
3.	Funeral Expenses	5,000/-
4.	Loss of Estate	10,000/-
	Total	4,87,721/-

2. It appears the claimants had pleaded that the deceased was an earning hand as a coach in tennis, his income being proved by income tax return (ITR) for the assessment year 2005-2006 and proved in the evidence as Ex.PW-1/51. The tribunal, however, declined to accept the said evidence for the reason the endorsement of its receipt in the income tax office was blurred as the year of submission was not legible. This, in the opinion of this court, was not a correct approach. Some further probe could have been made. Given the testimony of the witness who proved this document, this court finds the document to be actionable evidence which cannot be ignored. The income tax return

reveals total income from business of profession to be in the sum of Rs.1,02,660/- on which there was no tax liability.

3. The claimants while pressing for re-computation of loss of dependency also plead for the element of future prospects of increase to be added.

4. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

5. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalita Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful

employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

6. Since there was no regular employment in which the deceased was engaged, there being no other clear proof of progressive rise in income, the ITR referred to above being the solitary document submitted in this regard, no case is made out for any element of future prospects to be added.

7. Since the deceased was a bachelor, the tribunal correctly deducted fifty per cent (50%) towards personal and living expenses and having regard to the age of the mother, correctly applied the multiplier of 13.

8. The compensation on account of loss of dependency is, thus, re-computed as $(1,02,660/- \div 2 \times 13)$ Rs.6,67,290/- rounded off to Rs.6,68,000/-.

9. It is noted that the accident had occurred in 2005. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the award under the non-pecuniary heads are found to be inadequate. Therefore, the same are revised. The award of Rs.1 lakh on account of loss of love and affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(6,68,000/- + 1,50,000/-)$ Rs.8,18,000/- (Rupees Eight Lakhs & Eighteen Thousand Only).

10. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

11. The second respondent (insurer) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants in terms of the impugned award.

12. The appeal is disposed of in above terms.

13. *Dasti.*

SEPTEMBER 08, 2017

vk

R.K.GAUBA, J.