

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP. 457/2007

Date of Decision: 09th July, 2009

ANIL KUMAR BALUNI & ORS. Appellants

Through : Mr. Sandip Kumar, Adv.

versus

RAJESH KUMAR & ORS. Respondents

Through : Mr. Sunil Sagar and
Mr. Vishal Sehijpal, Adv. for
R-1 and 2.
Mr. Ajit K.Singh, Adv. for R-3.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,54,968/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 8th August, 2004 resulted in the death of Rekha. The deceased was aged 30 years at the time of the accident and was survived by her husband and two minor children

who filed the claim petition before the learned Tribunal.

3. Appellant No.1 appeared as PW-1 before the learned Tribunal and deposed that the deceased was giving tuitions and was earning Rs.4,500/- per month and was also working as garment checker with M/s Mari Gold Corporation. However, no documentary proof was placed on record to prove the income of the deceased. The learned Tribunal assumed the deceased to be a housewife and took the minimum wages into consideration to compute the loss of dependency.

4. The learned counsel for the appellant submits that the learned Tribunal ought to have taken the value of the services of the deceased at Rs.3,000/- per month to compute the loss of dependency. The learned counsel for the appellant has referred to and relied upon the judgment of **Lata Wadhwa vs. State of Bihar, 2001 ACJ 1735** which is recorded in para 11 of the award. The learned counsel further submits that the learned Tribunal erred in taking the minimum wages to compute the loss of dependency.

5. In para 11 of the award, the learned Tribunal has assumed the deceased to be a housewife. In that view of the matter, the learned Tribunal ought to have taken the value of the services rendered by the deceased as a housewife. Following the judgment of **Lata Wadhwa** (supra), the value of the services of the deceased as a housewife are taken to be Rs.3,000/- per month.

6. The deceased was aged 30 years at the time of the accident and, therefore, the appropriate multiplier is 17 instead of 16 applied by the learned Tribunal. Applying the multiplier of 17, the loss of dependency of the appellants is computed to be Rs.6,12,000/- (Rs.3,000 x 12 x 17).

7. The learned Tribunal has not awarded any compensation towards loss of consortium, loss of love and affection and loss of estate. Rs.2,000/- has been awarded towards funeral expenses and Rs.25,000/- has been awarded towards mental pain and agony.

8. Considering the facts and circumstances of this case, Rs.10,000/- is awarded towards loss of consortium, Rs.10,000/-

towards loss of love and affection, Rs.10,000/- towards loss of estate and the funeral expenses are enhanced from Rs.2,000/- to Rs.5,000/-. There is no separate provision to award the compensation towards mental pain and agony and, therefore, the award of Rs.25,000/- towards mental pain and agony is set aside.

9. The appellant shall be entitled to a sum of Rs.6,47,000/- (Rs.6,12,000 + Rs.10,000 + Rs.10,000+ Rs.10,000 + Rs.5,000).

10. The appeal is allowed and the award amount is enhanced from Rs.4,54,968/- to Rs.6,47,000/- along with interest @7% per annum from the date of filing of the petition till realization.

11. The enhanced amount along with interest thereon be deposited by respondent No.3 with the learned Tribunal within a period of 30 days. The appellants shall have equal share in the award amount. The share of appellant No.1 be released to him whereas the shares of appellants No.2 and 3, who are minors, be kept in fixed deposit till the date of their attaining majority.

12. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

JULY 09, 2009