

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.237/2005 & CM No.5641/2009

Reserved on : 12th May, 2009

Date of Decision: 13th August, 2009

UNION OF INDIA

..... Appellant

Through : Ms. Madhu Tewatia and
Ms. Sidhi Arora, Advs.

versus

DR. RITA PANT & ORS.

..... Respondents

Through : Mr. S.C. Dhanda, Adv.

CORAM :-

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

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.10,35,000/- has been awarded to the appellants. The appellants are seeking reduction of the award amount. The respondents have filed cross-objections to seek the enhancement of the award amount.

2. The accident dated 9th September, 1998 resulted in the death

of Ashok Pant. The deceased along with his wife was travelling in a TSR on Janpath, New Delhi when the Air Force Canter bearing No.95-D 100374P hit the TSR due to which the TSR overturned resulting in serious head injuries to the deceased. The deceased was taken to RML Hospital and thereafter shifted to AIIMS where the deceased succumbed to the injuries on 17th September, 1998. The deceased's wife also suffered injuries in the said accident.

3. The deceased was aged 48 years at the time of the accident and was survived by his widow, one minor daughter, one minor son, mother and disabled sister who filed the claim petition before the learned Tribunal.

4. The deceased graduated from Delhi University in 1972 and thereafter joined Institute of Hotel Management, Catering and Nutrition, Pusa, New Delhi in 1975 and completed the Diploma in Hotel Management. In 1983, the deceased joined Culinary Institute of America and completed a course there. The deceased worked for some time with Hotel Oberoi Intercontinental and thereafter joined Hotel Maurya Sheraton, New Delhi where he worked till

January, 1991. In January, 1991, the deceased joined Taj Group of Hotels and was posted in Japan. The deceased worked with Taj Group of Hotels till October, 1995. In October, 1995, the deceased left the job and returned to India and set up his own catering business in the name and style of Food Passions Inc., New Delhi.

5. During his lifetime, the deceased won many awards and medals. He had the unique distinction for cooking personally for the Hon'ble Giani Zail Singh, President of India, Smt. Indira Gandhi, Shri Rajiv Gandhi, King Carlos and Queen Sophia of Spain, Queen Elizabeth and Prince Philip of UK, Shri Henry Kissinger of USA and other VIPs and dignitaries.

6. Respondent No.1 appeared in the witness box as PW-1 and deposed that the deceased was earning about Rs.1,00,000/- per month. PW-1 proved the MLC, High School Certificate, Graduation Certificate, Diploma in Hotel Management and other certificates of the deceased regarding the professional qualifications as Ex.PW1/1 to Ex.PW1/13. PW1 also proved the Certificates of Commendation issued to the deceased and the certificates issued by Taj Mahal

Hotel, Maurya Sheraton Hotel as Ex.PW1/14 to Ex.PW1/34. PW-1 also produced the newspaper cuttings pertaining to the articles of the deceased, pamphlet of Welcome Group Award and the articles written by the deceased in various magazines. PW-1 deposed that the deceased worked abroad in New York, Japan, Bangkok and he represented India in different food festivals and was awarded one gold medal and one bronze medal. PW-1 further proved that the deceased was drawing ₹2,70,000/- equivalent to Rs.1,00,000/- per month from Taj Group of Hotels while posted at Japan. PW-1 further deposed that the deceased returned to India in 1995 to set up his own business in the name of Food Passions Inc., Delhi.

7. Record Clerk from RML Hospital appeared as PW-2 and proved the MLC of the deceased. PW-3 from P.S. Tuglak Road proved FIR-Ex.PW3/1. Record Clerk from Department of Forensic Medicines, AIIMS, New Delhi appeared as PW-4 and proved the post-mortem report-Ex.PW4/1.

8. The income of the deceased for a period of four and a half years from March, 1991 up to September, 1995 was ₹1,18,80,000/-

equivalent to about Rs.80,000/- per month as per Ex.PW1/21. However, the learned Tribunal did not consider the said amount on the ground that the income in foreign currency cannot be the basis of the income of the deceased in India. The learned Tribunal took into consideration the Income Tax Return of the deceased for the year 1991-92 according to which the monthly salary of the deceased was Rs.13,333.33. The learned Tribunal took the average monthly income of the deceased to be Rs.13,333.33. 1/3rd was deducted towards personal expenses of the deceased and the dependency of the appellants was taken to be Rs.8,500/-. Multiplier of 10 was applied by the learned Tribunal to compute the loss of dependency at Rs.10,20,000/-. Rs.15,000/- has been awarded by the learned Tribunal towards loss of estate and consortium and the total compensation computed is Rs.10,35,000/-

9. The only ground urged by the appellant at the hearing of this appeal is that the amount awarded by the learned Tribunal is excessive as the deceased was not employed at the time of the

accident.

10. The respondents/claimants have filed cross-objections seeking enhancement of the award amount on the ground that the deceased was earning Rs.1,00,000/- per month in his last employment with Taj Group of Hotels which should be taken into consideration for computation of compensation on the basis of his earning capacity. The second ground of challenge is that the personal expenses of the deceased be reduced from 1/3rd to 1/4th as the deceased has left behind five dependents. The third ground raised by the respondents is that the deceased was aged 48 years at the time of the accident and the appropriate multiplier is 15 whereas the learned Tribunal has applied the multiplier of 10. The fourth ground of challenge is that no compensation has been awarded towards loss of love and affection.

11. The qualification, occupation and income of the deceased has been proved by PW-1. The deceased passed Indian School Certificate Examination from St. Columbia's High School, Alexandra Place, New Delhi in 1967 (Ex.PW1/4). The deceased graduated

from Delhi University in 1972 (Ex.PW1/2). The deceased thereafter completed three year Diploma course in Hotel Management, Catering and Nutrition from Institute of Hotel Management, Catering and Nutrition, Pusa, New Delhi in 1975 (Ex.PW1/3 and Ex.PW1/5). The deceased joined Oberoi Group of Hotels in July, 1975 (Ex.PW1/9 and Ex.PW1/10). The deceased participated in Food and Beverage Training Programme in September, 1983 at the Sheraton Centre Hotel, New York (Ex.PW1/11 and Ex.PW1/12). The deceased also participated in Food Preparation and Service Management Course, New Delhi in May, 1990 (Ex.PW1/7). The deceased also completed six week advanced Culinary Arts Programme at Hyde Park, New York from Culinary Institute of America in September, 1983 (Ex.PW1/8). The deceased was awarded certificate of commendation by Maurya Sheraton Hotel and Towers in 1990 (Ex.PW1/14 and Ex.PW1/15). The deceased was awarded gold medal in a Restaurant Contest in World Food Festival in Japan in 1988 (Ex.PW1/16). The deceased was also a member of Cookery and Food Association, London (Ex.PW1/18).

The deceased was also elected as Master Craftsman Craft Guild of Chefs (Ex.PW1/13 and Ex.PW1/19). The deceased worked with Maurya Sheraton Hotels and Towers from 1977 to 1990 and held various positions and the last position was that of Chef for three years. The employer highly appreciated his services as per certificate – Ex.PW1/23. The deceased participated in Indian Food Promotion held at Royal Orchid Sheraton Hotel & Towers in Bangkok in September, 1987 (Ex.PW1/24 and Ex.PW1/25). The deceased also successfully participated in World Restaurant Show on Hot and Cold Food Display at Sopparo, Japan in 1998. Maurya Sheraton Hotel recorded the appreciation for the services of the deceased vide certificates - Ex.PW1/27 to Ex.PW1/30. The deceased was awarded a gold medal at the Restaurant Contest at International Culinary Art Contest at Sapporo, Japan in 1998. The deceased was selected for outstanding performance award for the year 1987-88 by Maurya Sheraton in October, 1988 and he was also given a performance award for the same (Ex.PW1/31). The deceased achieved the standing of Gourmet Society lecturer for

Indian Cuisine from Culinary Institute of America (Ex.PW1/32). The deceased also wrote many articles for the magazines and his work was also reported in newspapers.

12. The deceased worked with Taj Group of Hotels as Executive Chef for four and a half years from March, 1991 to September, 1995 drawing a salary of ₹1,18,80,000/- after tax deductions, which is equivalent to approximately to Rs.80,000/- per month (Ex.PW1/21). The employment agreement dated 15th September, 1990 between the deceased and Taj Group of Hotels is Ex.PW1/22. As per certificate – Ex.PW1/20, the employer was very satisfied with his work.

13. The learned counsel for the respondents/claimants submit that the deceased was earning ₹1,18,80,000/- after deduction of tax which is equivalent to Rs.80,000/- per month up to September, 1995 and he left the employment on his own to start his catering business and he would have earned more than the said amount. It is further submitted that even if the deceased would not have succeeded in his private business, he could have always gone back

to work as Executive Chef with any five star hotel and would have earned more than his last drawn salary. The learned counsel, therefore, submits that the earning capacity of the deceased be taken to be Rs.80,000/- per month.

14. The learned counsel for the claimants refers and relies upon the judgments of **Vijayalakshmi vs. Raju Shekaran, 1995 ACJ 405, DTC vs. Sudharshan Yadam, 1995 ACJ 393, Hazi Zenullah Khan vs. Nagar Mahapalika, 1994 ACJ 993, Susamma Thomas vs. Narayana Kurup, 1992 ACJ 1034, A.C. Gupta vs. New India Insurance Co., 2002 ACJ 312 and United India Insurance Co. Ltd. vs. Patricia Mahajan, (2002) 6 SCC 281** in support of the proposition that the earning capacity of the deceased should be taken on the basis of his potential to earn.

15. The earning potential of the deceased can be determined by taking into consideration his qualifications, positions held by him and the last drawn salary. The presumption as to the earning capacity of the deceased can be drawn from the aforesaid facts.

The guidance for drawing such presumption can be taken from

Section 114 of the Indian Evidence Act which is reproduced hereunder:-

“Section 114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”

16. In a recent article in GT Weekender, Gomantak Times of 14th June, 2009, it has been reported that the Executive Chef at Taj, Mumbai is paid more than the General Manager. It is further reported that there is shortage of Chefs world over and the job of Chef is highly paid. In another article titled Rude Food By Vir Sanghvi in Hindustan Times Sunday Magazine of 19th July, 2009, it is reported that top Chefs receive huge salaries. It is further reported that the restaurants Bukhara and Dum Pukht in Maurya Sheraton have been rated as world’s best restaurants which is not an accident or fluke but it emerges from the care and attention paid to the Chefs. It is further reported that the best restaurants in

metropolitan cities such as Smokehouse Grill, Olive, Aunes and Caperberry are all Chef-based restaurants. It is reported that ITC believes that great Chefs are artists and must be treated as such. Great Chefs not only master traditional recipes but invent new dishes.

17. The deceased was a very highly qualified Chef. Considering the qualifications of the deceased, namely, Graduation in Science from Delhi University, Diploma in Hotel Management, Catering and Nutrition from Institute of Hotel Management, Pusa, New Delhi and from Hotel Management School of Oberoi Hotels, the professional experience of the deceased initially with Hotel Oberoi Inter-Continental, then with Maurya Sheraton Hotel and Towers from 1977 to 1990 and thereafter as Executive Chef with Taj Group of Hotels from 1991 to October, 1995, certificates and awards won by the deceased in India and abroad and also considering that the Executive Chef is one of the highest paid officials in five star Hotels, it can be presumed that the deceased had the capacity to earn at least Rs.20,000/-. The learned Tribunal did not consider

these facts at all to determine the earning capacity of the deceased. The learned Tribunal further erred in taking into consideration the income of the deceased in 1991 to be the basis for determining the income of the deceased in 1998.

18. The income of the deceased at the time of the accident is, therefore, taken to be Rs.20,000/-. Since the deceased did not have a stable income at the time of the death, future prospects are not taken into consideration. The deceased has left behind five legal representatives and, therefore, following the judgment of the Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the personal expenses of the deceased are taken to be $\frac{1}{4}^{\text{th}}$ and the dependency of the representatives/claimants is taken to be $\frac{3}{4}^{\text{th}}$. The deceased was aged 48 years at the time of the accident and the appropriate multiplier is 13. The loss of dependency of the claimants is, therefore, computed to be Rs.23,40,000/-[(Rs.20,000 - Rs.5,000) x 12 x 13]. The learned Tribunal has awarded Rs.20,000/- towards loss of consortium and loss of estate. No amount is awarded

towards loss of love and affection. Rs.10,000/- is awarded towards loss of love and affection and Rs.5,000/- is awarded towards funeral expenses. The total compensation of the claimants is taken to be Rs.23,75,000/- (Rs.23,40,000 + Rs.20,000 + Rs.10,000 + Rs.5,000).

19. The appeal is dismissed. The cross objections are allowed and the award amount is enhanced from Rs.10,35,000/- to Rs.23,75,000/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.10,35,000/-. However, on the enhanced amount, the rate of interest shall be @7.5% from the date of filing of the petition till payment. The shares of the claimants on the enhanced award amount shall be in the same proportion as per the original award amount. The appellant is directed to deposit the award amount with the learned Tribunal within 30 days. Upon such deposit being made, the learned Tribunal is directed to release 10% of the award amount to each of the claimants. The remaining amount is directed to be kept in fixed deposit for a period of five years on

which periodical interest be paid to the claimants but no loan or withdrawal be permitted without the permission of the learned Tribunal.

J.R. MIDHA, J

AUGUST 13, 2009