

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 116/1998

Date of reserve: 3rd February, 2009

Date of decision: 31st March , 2009

SUMITRA & ORS Appellants
Through : Mr. Amarjit Singh, Adv.

versus

UP STATE ROADWAYS TPT.CORPN.
& ANR Respondents
Through : Ms. Garima Prashad and
Ms. Suchita Sharma, Adv.

CORAM :-

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

1. The appellants have challenged the award of the learned Tribunal whereby the compensation of Rs.1,58,500/- was awarded to them. The appellants seek enhancement of the award amount.

2. On 25th December, 1993 at about 7:45 pm, the deceased was going on his two wheeler scooter No.DL-5S-7028. His employee, Lakhan Ram Chaurasia was sitting on the pillion. When the scooter

reached in front of Ram Singh Hospital near Krishna Nagar, a U.P. Roadways Bus hit him from behind due to which the deceased was thrown on one side and his employee, Lakhan Ram was thrown on the other side. The deceased succumbed to the injuries suffered in the accident.

3. The appellant was a young boy aged 22 years. At the time of his death, he was unmarried and was survived by his mother and four sisters out of which two sisters were unmarried at the time of the accident. The father of the deceased had already pre-deceased him and, therefore, the entire burden of maintaining the family was on the deceased.

4. In the claim petition before the Tribunal, it was contended that the deceased was the sole proprietor of M/s Arora Tent and Electric Store and he was earning Rs.6,000/- per month.

5. The learned Tribunal computed the compensation payable to the appellants by taking the income of the deceased at Rs.1,500/- in parity with an unskilled labourer out of which Rs.500/- was deducted

as the amount that the deceased would have spent on himself and the dependency of the appellants was computed at Rs.1,000/- per month on which after applying the multiplier of 12, the loss of dependency was assessed at Rs.1,44,000/-. Rs.10,000/- has been awarded to appellant No.1 for love and affection, Rs.2,000/- for funeral expenses and Rs.2,500/- for loss of estate.

6. The appellant has challenged the impugned award of the Learned Tribunal mainly on three grounds. The first ground of challenge is that the deceased was running the business of tent and electric store and was earning Rs.6,000/- per month but the Learned Tribunal erred in drawing the parity with an unskilled labourer and taking his income as Rs.1,500/- per month. The second ground is that the Second Schedule of the Motor Vehicles Act provides the multiplier of 17 taking the age of the deceased but the Learned Tribunal erred in applying the lower multiplier of 12. The third ground is that very low amount of Rs.10,000/- has been awarded for love and affection and Rs.2,500/- for loss of estate .

7. With respect to the income of the deceased, the appellants examined three witnesses. Appellant No.1 appeared as PW-3 and deposed that the deceased was running the business of tent and electric shop and was earning Rs.6,000/- per month. She further deposed that the deceased used to give whole amount of Rs.6,000/- to her for household expenses after keeping his pocket money and other expenses of the shop. She further deposed that the deceased was her only son and the only earning hand in the family and her two daughters were married whereas the other two daughters were of marriageable age. She stated that her husband had already expired and the shop was closed down after the death of the deceased. The appellant further stated that the business of tent and electric store was earlier being carried on by her husband and after his death, the deceased was doing the business. The witness stated in cross-examination that the deceased was having three employees out of which one employee was sitting on the pillion of the scooter along with the deceased. In cross-examination, she admitted that

the deceased was not paying Income Tax. She further admitted that she has not filed any document or any account books of the shop to prove the income of the deceased.

8. The appellants produced two more witnesses to corroborate the statement of PW-3. PW-1, Mr. Sanjay Chadha is running the business of photography opposite to the shop of the deceased. He stated that the income of the deceased was Rs.6,000/- to Rs.6,500/-. PW-1 took the photographs of the U.P. Roadways Bus and the scooter. He also exhibited the photographs of the deceased as Ex.PW1/K1 to PW1/K3. PW-2, Vijay Arora is the neighbour of the appellants. He also corroborated the statement of the deceased with respect to the income of Rs.6,000/-.

9. I have perused the evidence on record. Ex.PW1/K1 to Ex.PW1/K3 are the photographs of the deceased who was smart and handsome young boy. He was matriculate. It has been proved by PW-1, PW-2 and PW-3 that the deceased was running the business of tent and electric store in the name of 'M/s. Arora Tent and

Electric Store' in Lal Quarter Market, Krishna Nagar, East Delhi which is a prominent market in the East Delhi. The business was earlier being carried on by the father of the deceased and after his death, the deceased carried on the business. It has also come in evidence that the business was closed down after the death of the deceased as there was no other male member in the family of the deceased. The deceased was survived by his mother who is not educated and four sisters, out of which two were unmarried at the time of his death. It has also come in evidence that the deceased had three employees out of which one was sitting on the pillion with him at the time of his death.

10. Appellant No.1 has categorically stated in the witness box that the deceased used to give her Rs.6,000/- for household expenses after keeping his pocket money and other expenses. PW – 2 as well as PW-3 also corroborated the statement of PW-1 with respect to the business as well the income of the deceased. It is well known that the profit is very high in the business of tent and electric store.

The learned Tribunal, therefore, clearly erred in drawing the parity of young, educated, smart and handsome boy running his own business with an unskilled labourer. I find the analogy to be irrational and unjustified.

11. The Learned counsel for the respondent submits that the deceased was not paying Income Tax and, therefore, the income of the deceased cannot be taken to be more than the maximum non-taxable limit. On the other hand, the counsel for the appellant submits that non-payment of Income Tax may invite violation of Income Tax law but cannot be a ground for denying just compensation to the appellant. The learned counsel for the appellant refers to and relies upon the Division Bench Judgment of the Allahabad High Court in **Oriental Insurance Company Limited vs. Bhupender Kaur, 2004 ACJ 1130**. In that case, the deceased was not paying the Income Tax. However, the Court held that it would not nullify the statement of the wife of the deceased that she was actually receiving Rs.10,000/- to Rs.12,000/- per month from the

deceased. The ratio of the above case is applicable to the present case. The learned counsel for the respondent refers to and relies upon the judgment in the case of **Bijoy Kumar Duggal Vs. Bidhyadhar Dutta – 2006 (3) SCC** where the appeal for enhancement was dismissed in the absence of documentary proof of the income.

12. Considering the evidence on record, I am of the view that there is sufficient evidence on record that the deceased was carrying on the business of tent and electric store in the prominent market of East Delhi, he had three employees and he used to give Rs.6,000/- to his mother for household expenses. I, therefore, take the income of the deceased to be Rs.3,000/- at the time of his death. This income would have increased with the passage of time and computing future prospects as per the principle laid down by the Apex Court in the case of **Sarla Dixit vs. Balwant Yadav, 1996 SCC 1274**, the average income of the deceased would have been $\text{Rs.3,000/-} + \text{Rs.6,000/-} \text{ divided by } 2 = \text{Rs.4,500/-}$. Out of this, the

appellant would have spent 1/3rd on himself and the loss of dependency on the appellants is computed at Rs.3,000/- per month.

13. The Learned Tribunal has applied the multiplier of 12 without giving any reason. The deceased was aged 22 years and his mother was aged 44 years at the time of the death of the deceased. Taking the age of the mother, Second Schedule provides the multiplier of

15. The counsel for the appellant refers to and relies upon the judgment of the Apex Court in the case of **U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors. – (1996)**

4 SCC 362 where the Apex Court has held that maximum multiplier could go up to 18 and Second Schedule be used as a guide in determination of compensation. Learned counsel for the appellant also refer to the Division Bench Judgment of this Court in the case of **Rattan Lal Mehta vs. Rajinder Kapoor, 1996 ACJ 372** where it has been held that it is open to Courts/Tribunals to apply table in the Second Schedule in respect of accidents which occurred prior to the 1994 amendment of the Motor Vehicle Act. The learned

counsel for the respondent refers to and relies upon the judgments in the cases of **Managing Director, TNSTC vs. K.I.Bindu, [(2005) 8 SCC 473]**, **U.P. State Road Transport Corporation vs. Krishna Bala, [(2006) 6 SCC 249]** and **New India Assurance Co. Ltd. vs. Kalpana, [(2007) 3 SCC 538]** in which multiplier lower than one provided in the Second Schedule of Motor Vehicles Act, 1988 has been adopted to compute the compensation.

14. In the present case, the Second Schedule provides the multiplier of 15 according to the age of the mother of the deceased. However, considering the recent judgments of the Hon'ble Supreme Court where the lower multiplier than the one provided in the Second Schedule has been applied, I adopt the multiplier of 13. The total loss of dependency is assessed at Rs.4,68,000/- (Rs.3,000 x 12 x 13).

15. The counsel for the appellant also refers to and relies upon the judgment in the case of **Virender Singh vs. Anand Prakash, 2007 Rajdhani law Reporter 532** in which it was held that the

claimants are entitled to just compensation which can be higher than the amount claimed. There is no dispute on this preposition of law.

16. With respect to the compensation for love and affection and loss of estate, the learned Tribunal has awarded Rs.10,000/- and Rs.2,500/- respectively. No reason or justification has been given.

In judgment of the case of **United India Insurance Co. Ltd. vs.**

Sulochana, III (2007) ACC 50 (DB), Madras High Court has awarded

Rs.25,000/- each to mother and daughter towards love and affection and Rs.50,000/- towards loss of consortium. I award Rs.10,000/-

towards love and affection to appellant No.1 and Rs.5,000/- towards

love and affection to each of appellants No. 2 to 5.

17. The appellant is entitled to compensation of Rs.5,00,000/- (Rs.4,68,000/- + Rs.10,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.2,000/-).

18. The appeal is allowed and the compensation is enhanced from Rs.1,58,500/- to Rs.5,00,000/-. The learned Tribunal had awarded

interest @12% from the date of filing of the petition till after one month of the award and 14% thereafter. I do not disturb the interest on Rs.1,58,000/- as it is in the conformity with bank interest rates at that time. However, on the enhanced amount now awarded, the respondent shall be entitled to the interest @7.5% from the date of filing of the petition, that is, 27th January, 1994 till the date of payment. The share of the appellants in the enhanced amount shall be as under:-

Appellant No.1	:	80%
Appellants No.2 to 5	:	5% each.

19. The enhanced amount along with interest be deposited by the respondent with the learned Tribunal within 30 days. The learned Tribunal is directed to release 30% of the share of appellant No.1 to her and remaining 70% of the amount be kept in a fixed deposit for a period of ten years on which no loan, advance or withdrawal be permitted without the prior permission of the learned Tribunal but the periodical interest be permitted be released to the appellants.

With respect to shares of appellants No.2 to 5, 50% of their share be released to them and remaining 50% of their share be kept in fixed deposit for a period of five years with restriction on withdrawal, loan and advance as above in the case of appellant No.1. The learned Tribunal shall first release the cheques towards the amount to be kept in fixed deposits and the remaining amount be released only after the original fixed deposit receipts with proper endorsements are shown to the learned Tribunal and the copies of FDRs duly attested by the Bank are placed on record of the learned Tribunal.

J.R. MIDHA, J.

MARCH 31, 2009