Sr. No.	Date	Orders

25.

% 31-7-2006

Present: Mr. J.N. Aggarwal for the appellant.
            Mr. Vivek Sharma for the respondent.

+ <u>**MAC. APP. No.250/2004 & CMs No.2499/06 & 3148/06**</u>

*   Both the learned counsel submits that the amount has been settled amicably. The total amount deposited by the appellant is Rs.18.25 lacs. Out of this Rs.17,53,886/- is to be released to the claimant (s). Rs. 71,114/- is to be refunded to the appellant.

Learned counsel for the respondent submits that out of the claimants' share, Rs.9 lacs has already been released vide order dated 29.11.2004 and the balance amount has been lying in the form of FDR with Delhi High Court. He further submits in his application No.2499/2006 that this FDR may be released to the claimant (s) with the endorsement that the FDR shall not be encashed or encumbered in any way before three years. It is directed that after making such endorsement the said FDR be also given to the claimant (s) within two weeks. Rs.71,114/- be refunded to the appellant vide cheque within two weeks. Dasti to both the parties.

Petition stands disposed of.

J.P. SINGH, J.

July 31, 2006
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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+   <u>**MAC APPEAL NO. 250 of 2004**</u>

%   **Date of Decision :** <u>09 November, 2005.</u>

Delhi Transport Corporation   **....**   **Appellant.**

          Through Mr. J.N.Aggarwal, Advocate.

                   VERSUS

Smt Rekha Singh & Ors.   **.... Respondents.**

          Through Mr. Vivek Sharma, Advocate.

CORAM:

HON'BLE MR.JUSTICE SANJIV KHANNA

1.   Whether Reporters of local papers may be
        allowed to see the judgment?

2.   To be referred to the Reporter or not ?

3.   Whether the judgment should be reported
        in the Digest ?

<u>**SANJIV KHANNA, J**</u>**: (ORAL)**

     The present Appeal is directed against the Award dated 4th

February, 2004 passed by the learned Motor Accidents Claims

Tribunal in S. No.93/2003 titled Ms. Rekha Singh and others

versus Shri Bharat Singh and another. The appellant-DTC, is

aggrieved by the said Award on two grounds. It is firstly submitted

that it is a case of contributory negligence and this aspect has not been taken into consideration by the learned Tribunal. Secondly, it is submitted that the age of the deceased-Mr. Mahesh Pal Singh at the time of death was 59 years and, therefore, the learned Tribunal has erred in doubling the income of the deceased for computing the loss of dependency. It is submitted that keeping in view the age of the deceased, future prospects should not have been taken into consideration as the deceased was working in the Ministry of External Affairs and would have retired within one year.

Learned counsel for the respondent, on the other hand, submits that the compensation which has been awarded is just and fair. It is also submitted that only Rs.25,000/- has been awarded towards loss of consortium. He has pointed out that respondent no.1 has become a widow and has been deprived of company of her husband.

I have gone through the paper book and the contentions of the learned counsel for the parties. I do not find any merit in the contention of the learned counsel for the appellant that the present case is one of contributory negligence. Learned counsel for the respondent has shown me certified copy of the site plan which

clearly shows that the bus was being rashly driven and had come on the wrong side of the road. There is also evidence of Mr.B. P. Sarkar-PW-2 who was travelling in the car along with the deceased. He has stated in his evidence how the accident had taken place. The allegations of negligence stand duly proved.

Regarding the second contention of the learned counsel for the appellant, I find that it has some merit. The deceased, at the time of death, was 59 years old and would have retired within about one year. He was earning Rs.2,24,303/- p.a. There was hardly any likelihood of his salary going up or increasing to the extent of becoming double. Keeping in view the age of the deceased and the fact that he was just about to retire, there is no justification and reason to double his yearly salary on the ground of future prospects for the purpose of calculating the loss of dependency. It may also be mentioned here that as per the affidavit filed before the learned Tribunal at the time of the death of the deceased, respondent no.1 (daughter of the appellant) was already married and settled down in Varanasi with her husband and respondent no.3 (son of the appellant) had settled down in the States and was working there. Keeping in view these factors, I feel

that the learned Tribunal has erred in doubling the income for the purpose of applying the multiplier and calculating the loss of dependency. To that extent, the Award passed by the learned Tribunal is modified. The loss of dependency should be calculated as under:-

(1) Annual income from salary : Rs.2,24,303/-
    (less 1/3 towards personal expenses) : (-) Rs. 74,768/-

(2) Annual dependency : Rs.1,49,535/-.

The learned Tribunal has applied multiplier of 8, which is as per Schedule II of the Motor Accidents Act, 1988. The multiplier applied in the present case appears to be just and fair. In any case, no argument has been addressed that the same is excessive. On the annual dependency as determined above, the total loss of dependency would come to Rs.11,96,280/-.

In addition, the respondent will be entitled to Rs.20,000/- towards funeral expenses and Rs.25,000/- towards loss of consortium, as awarded by the learned Tribunal. Thus, in all the respondent will be entitled to Rs.12,41,280/- along with interest as mentioned at internal page 10 of the Award. The compensation

shall be paid in terms of and in the proportion as mentioned in the Award. 50% of the compensation payable shall be kept in a fixed deposit of a nationalised bank for a period of three years. Excess amount, if any, deposited by the appellant may be refunded along with interest, if any.

The Appeal is accordingly partly allowed and the impugned award/judgment dated 4th February, 2004 is modified to the extent indicated above. No costs.

SANJIV KHANNA, J

NOVEMBER 9, 2005
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