

**\* HIGH COURT OF DELHI : NEW DELHI**

**FAO App. No.444/2003**

% Judgment reserved on:11<sup>th</sup> September, 2008

Judgment delivered on:30<sup>th</sup> September, 2008

1. Kumari Sugandh-Minor  
Through her next friend/natural guardian/mother  
Smt. Renu Bansal, rc/o Lala Radhey Shyam Anil  
Kumar, r/o9 WZ-1499, Nangalrai Cantt., New Delhi
2. Late Shri Bhagwan Dass Bansal through L.Rs.
  - 2-a. Sh. Pawan Bansal-Son r/o. A-2-A/3, Janakpuri,  
Delhi-58
  - 2-b. Shri Ashwini Bansal-Son r/o. A-2-A/3, Janakpuri,  
Delhi-58.
  - 2-c. Smt. Usha Goel wife of Shri Satish Kumar-  
D/o. r/o. C-6/66, Keshav Puram, Delhi-35.
  - 2-d. Smt. Sheela Gupta W/o. Sh. Murli Gupta-  
D/o. r/o.K-5/90, Gali No.27, Bhagat Singh Chowk,  
Bahajanpura, Delhi.
  - 2-e. Smt. Neena Gupta W/o. Shri. Parveen Gupta-  
D/o. r/o. 232, Ram Nagar, Ambala City, Haryana
3. Smt. Kela Rani  
A-2A/3, Janakpuri, Delhi-58 ....Claimants.

Through: Ms. Sushma Aggarwal, Adv.

Versus

1. Sh. Jagphool Singh S/o. Sh. Subhash Chander  
(Owner), Dhamdahera District Gurgaon (Haryana)

2. Sh. Dharamveer S/o. Sh. Bansi Lal (Driver)  
Village Manithi, P.S. Khol, District Rewari (Haryana)
3. M/s. Mewat Financiers  
E-150, East of Kailash, New Delhi
4. The New India Assurance Co. Ltd.  
Dhamdera, Distt. Gurgaon (Haryana)

Also At:-

The New India Assurance Co. Ltd.,  
Regional Office No.1, Jeevan Bharti Building,  
5<sup>th</sup> Floor, Tower-II, 124, Connaught Place,  
New Delhi-1. ...Respondents.

Through: None.

Coram:

**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**V.B.Gupta, J.**

Appellants have filed present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as 'Act') seeking enhancement of the compensation awarded in this case vide judgment dated 20<sup>th</sup> January, 2003 passed by Ms.

Rekha Sharma, J. (the then Judge, MACT) (for short as 'Tribunal').

2. The Tribunal in this case awarded a compensation of Rs.6,34,272/- along with interest @ 9% p.a. from the date of filing of petition till realization.

3. Initially, the claim petition was filed by one Smt. Renu Bansal, (widow of Lt. Abhimanyu Bansal). Sh. Bhagwan Das Bansal (father of deceased) and Smt. Kela Rani, appellant No.3, herein (mother of deceased).

4. During the course of trial, an application was filed for deleting the name of Smt. Renu Bansal, as well as appellant No.1, Kumari Sugandh (Minor), from the array of the parties.

5. It was stated in the application that Smt. Renu Bansal has re-married and had also taken appellant No.1, with her, where she was being brought up as a member of the family of her new husband.

6. That application was partly allowed vide order dated 2<sup>nd</sup> June, 1998 passed by the Tribunal, holding that in view of the second marriage of Smt. Renu Bansal, she was not

entitled to claim compensation. Accordingly, her name was deleted from the array of the petitioners. However, no order for deletion was passed in respect of appellant No.1.

7. The facts relevant for disposal of the present appeal are, that on 11<sup>th</sup> November, 1995 at about 3.30 p.m., Sh. Abhimanyu Bansal was going from Dhaula Kuan to Janak Puri on his motorcycle No.DL-4S-K-5713. When he reached the round about at Dhaula Kuan, Police Picket, a truck No. HNG-4116, which was being driven by respondent No.2 in a rash and negligent manner, struck against his motorcycle. As a result of the impact, Abhimanyu Bansal fell down on the road and died instantaneously. He was taken to Safdarjung Hospital where he was declared “brought dead”.

8. Summons of the claim petition were sent to the owner of the truck/respondent No.1, its driver/respondent No.2, the financier of the offending truck/respondent No.3 and respondent No.4/Insurance Company, with whom the truck was insured.

9. None of the respondents, except the Insurance Company responded to the summons.

10. The Insurance Company, in its written statement denied its liability to pay compensation. It was inter-alia alleged, that the driver of the offending truck did not possess a valid and effective driving licence. However, the factum of insurance of the offending truck had not been disputed.

11. Vide impugned judgment, out of the awarded amount, 50% was ordered to be paid to appellant No.1 and the same was to be kept in Fixed Deposit till she attains the age of majority. Remaining 50% was ordered to be paid in equal proportion to appellant No.2, Sh. Bhagwan Das Bansal, (father of deceased) and appellant No.3.

12. 50% of the amount awarded to appellant No.3, was ordered to be kept in FD for a period of 5 years, while the remaining amount was ordered to be released to her.

13. During the course of the present proceedings, appellant No.2 (father of deceased) has expired and his

Legal Heirs have been brought on record and amended memo of parties has already been filed.

14. Notice of this appeal was issued to all the respondents.

15. Respondents No.1 to 3 were served by publication but there was no appearance on their behalf.

16. Counsel for respondent No.4/Insurance Company had put in his appearance for the first time in this Court on 9<sup>th</sup> January, 2004. Later on, counsel for Insurance Company appeared on certain dates but thereafter absented.

17. Vide order dated 8<sup>th</sup> March, 2006, Court notice was ordered to be issued to respondent No.4.

18. As per record, respondent No.4 was duly served for 8<sup>th</sup> May, 2006 but nobody appeared on behalf of the said respondent.

19. Later on, counsel for respondent No.4 appeared but again w.e.f. 9<sup>th</sup> August, 2007, none appeared for respondent No.4.

20. Thereafter, many dates were fixed for hearing, but none appeared on behalf of respondent No.4.

21. On 11<sup>th</sup> September, 2008, as counsel for the appellant was present and none had been appearing on behalf of respondents for the last so many dates, the arguments in this case were heard.

22. It has been contended by the learned counsel for the appellants that the trial Court has committed a mistake in not considering, Rs.4,370/- per month, as the starting salary and there was no ground not to rely upon the statement of father who has stated that the deceased being a well qualified person, there was every chance for him to rise to a high position in his life, if he had been live.

23. Another contention is that as per statement of the father of the deceased, the deceased was contributing Rs.4,000/- p.m. towards household expenses and there is nothing on record to disbelieve this statement.

24. Other contention is that, the Trial Court has erred in not considering the future prospects of advancement in life and career while, there is evidence with regard to rise in the future income of the deceased as per the statement of father of the deceased.

25. Lastly, the Trial Court has committed a grave mistake in awarding only Rs.15,000/- towards loss of love, affection and funeral expenses and interest @ 9% p.a. considering the present low rate of interest, while the deceased died in fatal accident in 1995, when rate of interest was high and as such the Trial Court should have granted the interest at least @ 12% p.a.

26. Regarding salary, the Trial Court held that;

“The question which next arises for consideration is about the amount of compensation to which the petitioners are entitled. It come in the evidence of father of the deceased, Petitioner Shri Bhagwan Das, that deceased was earning Rs.4,300/- at the time of his death. He also proved his salary certificate on record as Ex.PW1/3. It is mentioned in Ex.PW1/3 that the basic salary of the deceased was Rs.3,800/-



per month. It also mentioned therein that he was getting bonus at the rate of 15% per annum. Keeping these two components of his income in view, I accept the testimony of the witnesses that the last drawn salary of the deceased was Rs.4300/- even otherwise, the evidence so given was not called into question, in as much as, the witness was not subjected to any cross-examination.”

27. Thus, I do not find any infirmity or illegality by the Trial Court on this count.

28. As regards future prospects, there is no dispute with the proposition that future advancement in life and career of the deceased could form a valid factor or consideration for determination of his/her gross income as held by the Apex Court in a number of cases. But this is not to be done as a matter of course. Some proof is required to be furnished for this.

29. In ***Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors., AIR 2006 SC 1255***, the Apex court has observed as under;

“The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000/- to Rs. 10,000/- per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income.”

30. Thus, the future prospects cannot be granted, unless there is evidence to this effect on record.

31. There is no evidence other than statement of PW1 on record to prove that the deceased was in a trade where he would have earned more from time to time or he had special merit or qualification or opportunities, which would have led to an improvement in his income.

32. Thus, in view of the facts of the case, I do not find any force in the contention of the learned Counsel for the appellants that the Tribunal has not taken into

consideration the future increase in the income of the deceased.

33. As regards to the compensation on account of loss of love, affection and funeral expenses, the Tribunal has awarded the sum of 15,000/- on this account.

34. The Second Schedule of the Act provides, fixed amount of compensation towards funeral expenses as Rs.5,000/.

35. Further, as per Second Schedule of the Act, no compensation can be given for loss of love and affection. However, the Tribunal has awarded Rs. 15,000/- on this account. Thus, no fault can be found with the findings of the Tribunal on this count.

36. As regards the award of interest @ 9% per annum by the Tribunal, I do not find any justification for increasing the same to 12% p.a., as there has been variation in the rate of interest as per the Bank Rates, prevailing of the relevant time.

37. In ***Abati Bezbaruah v. Deputy Director General, Geological Survey of India***, (2003) 3 SCC 148, the Apex Court has observed as under;

“The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.”

38. In view of the above decision, I am of the opinion that the award of interest @ 9% cannot be considered to be on lower side. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal, in awarding 9% interest on the award amount.

39. An important fact which is not to be lost sight of is that as per record, the claim petition before the Tribunal was earlier filed by Smt. Renu Bansal, who is the widow of the deceased. However, during the course of trial, an application was filed for deleting the name of Smt. Renu Bansal as well as appellant No.1

i.e. Kumari Sugandh (minor) from the arrays of the parties.

40. It was stated in the application that Smt. Renu Bansal has re-married and had also taken appellant No.1/Kumari Sugandh with her, where she was brought up as a member of family of her new husband.

41. That application was partly allowed by the Tribunal holding that in view of second marriage of Smt. Renu Bansal, she is not entitled to claim compensation. However, no order for deletion was passed in respect of appellant No.1.

42. Since, Smt. Renu Bansal/the widow of deceased, (as well as mother of appellant No.1) has re-married and had also taken appellant No.1 along with her, where appellant No.1 is being brought up as a member of family of new husband of Smt. Renu Bansal, the appellant No.1 thus, does not remains financially dependent upon the earnings of the deceased.

43. Taking all these facts into consideration, the compensation awarded by the Tribunal to the appellant No.1, under these circumstances, appears to be quite excessive and no ground is made out for enhancement of the impugned award.

44. Thus, the present appeal is not maintainable and the same is hereby dismissed.

45. No order as to costs.

46. Trial Court record be sent back.

30<sup>th</sup> September, 2008  
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**V.B.GUPTA, J.**