

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

MAC APP 260/2008

% Judgment reserved on: 25th April, 2008

Judgment delivered on: 30th April, 2008

1. Smt. Kalpana Das W/o Late Sh. Himanshu Das,
2. Smt. Malti Das W/o Sh. Dabarsar Das,
3. Sh. Madhav Das S/o Late Sh. Himanshu Das,
4. Smt. Aarti Das W/o Khuddi Ram Das,
5. Jotish Kumar S/o Late Sh. Himanshu Das,
6. Ranjan Kumar S/o Late Sh. Himanshu Das,
7. Sarti D/o Late Sh. Himanshu Das,
8. Uttam Kumar S/o Late Sh. Himanshu Das,
9. Sattam Kumar S/o Late Sh. Himanshu Das,
10. Sh. Manoranjan Das S/o Late Sh. Bhagwan Das,

Petitioner No. 6 to 9 being minor through their mother and natural guardian Smt. Kalpana Das (Petitioner No. 1)

All resident of Jhuggi No. 227 and CN No. 278, Mahatma Gandhi Camp, Road No. 77, near Mother's Pride School and CNG Petrol Pump, Ring Road, West Punjabi Bagh, New Delhi

(Permanent Add. H.No.538, Village-Basamanapur, P.O Motihari Distt. East Champaran, Bihar)

..... Appellants

Through: Mr. S.N. Parashar, Adv.

Vs.

1. Sh. Amit Sharma S/o Sh. K.K. Sharma,
R/o H.No. 648, Sector-4, Gurgaon (Haryana)
And also at 1253/1A, Nath Business Center,
Nagal Dewat, New Delhi.
(Driver and Owner)

2. The New India Assurance Co. Ltd.,
A-2/3, Lusa Tower, Azadpur, Delhi-110033.

..... Respondents

Through: Mr. Kanwal Chaudhary,
Adv. for Respondent No.
2/Insurance Company.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 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.

The present appeal has been filed by the appellants
against the impugned judgment dated 07.01.08 passed by
Sh. Gulshan Kumar, Judge, Motor Accident Claims Tribunal

(for short as “Tribunal”), Rohini, Delhi, for enhancement of the compensation amount.

2. In a nutshell, the facts relevant for the purpose of dealing with this appeal are as follows:

3. On 25.04.06 at about 1.25 a.m., the deceased Himanshu Das along with his neighbors were sleeping on Central Verge/Road divider, Ring Road, Ganda Nala, Near CNG, Petrol Pump, West Punjabi Bagh, New Delhi. In the meantime, one Indica car bearing no. DL-9CC-6219 came from the side of Punjabi Bagh and was giving towards Raja Garden, in a rash and negligent manner. The driver of the said Indica car, without observing the traffic norms hit and boarded on Central Verge and crushed the deceased along with his neighbors. Deceased, Himanshu Das died on the spot but was taken to Sanjay Gandhi Memorial Hospital, where he was declared brought dead.

4. A petition seeking compensation was filed by the parents, widow and children of the deceased against the

driver, owner and insurer of the Indica car No. DL-9CC-6219.

5. The Tribunal vide impugned judgment, awarded compensation of Rs.3,43,516/- with interest @ 6.5% p.a. in favour of the appellants from the date of filing the petition till realization.

6. Not satisfied with the award, the appellants have preferred the present appeal, seeking enhancement of the compensation.

7. It has been contended by Learned Counsel for the appellants that deceased was working as Raj Mistri/Mason and the same comes under the category of skilled worker; hence, the Tribunal erred in considering the income of the deceased on the basis of Minimum Wages of unskilled worker. The Tribunal has not considered the income of the deceased as per his vocation. Further, the Tribunal has not considered the future prospects and future rise in income of the deceased at the time of assessment of compensation.

As per the various judgments of this Court and Apex Court no amount is to be deducted towards self-expenses of the deceased when the Tribunal has considered the income of the deceased on the basis of Minimum Wages act, whereas, the Tribunal had deducted ¼th amount of income towards self-expenses of the deceased which is very high because the deceased left behind ten family members.

8. Thus, the principal question that arises for determination in this appeal is that “Whether the compensation awarded by the learned Tribunal is just or not?”

9. It was well established before the Tribunal by the testimony of PW-1 Sh. Jotish Kumar, son of deceased considered along with the other documents i.e. the charge sheet, FIR, post-mortem report etc., that deceased Sh. Himanshu Das died on 25-04-06 in accident due to rash and negligent driving of the Indica car No. DL-9CC-6219.

10. There was no proof of income, experience or educational qualification of deceased on record to show that deceased was a skilled workman. After evaluating the evidence, the Tribunal treated the deceased as unskilled worker and as per the notification issued by Delhi government, the minimum wages of an unskilled workman as on the date of accident was Rs.3,217/- per month, hence the same was rightly taken as monthly income of the deceased by the Tribunal.

11. Regarding the future prospects, the same cannot be granted unless there is evidence to this effect on record. There is no evidence 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. Therefore, in view of ***Bijoy Kumar Duggar v. Bidagar Dutta*** AIR 2006 SC 1255, the contention regarding the future prospects is rejected.

12. The next question which arises for consideration is as to what multiplier should be adopted to calculate the compensation?

13. At the time of accident, the age of the deceased was 51 years as per election Card which was made in 1995 showing his age 40 years. Therefore, in these circumstances, a multiplier of 11 has to be applied as per Schedule II of the Motor Vehicles Act, 1988 (for short as "Act") by the Tribunal which has been rightly done by the learned Tribunal.

14. As regards the loss of dependency, the deceased is admittedly survived by his wife, parents and children. In a plethora of cases, the Apex Court and various High Courts have held that $\frac{1}{3}^{\text{rd}}$ amount of the income should be deducted towards self-expenses. The tribunal had already deducted $\frac{1}{4}^{\text{th}}$ amount of income towards self expenses, which is more than reasonable. I am, therefore, not inclined to take any contrary opinion, thus, there is no

scope for further deduction.

15. As regards the award of interest @ 6.5% per annum by the Tribunal, 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.”

16. In view of the above decision, I am of the opinion that the award of interest @ 6.5% cannot be considered to be lower side. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal in awarding 6.5% interest on the award amount.

17. Keeping in view all the facts and circumstances brought on record, I am of the view that the compensation as awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

18. The present appeal is, therefore, dismissed.

19. No order as to costs.

V. B. GUPTA, J.

April 30, 2008
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