

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.662/2002**

% Date of reserve: 30th January, 2009
Date of decision: 31st March, 2009

MUNI RAM & ANR. Appellant
Through: Mr. Om Prakash, Adv.

versus

MANGAT RAM & ORS. Respondent
Through: Mr. Asit Tewari, Adv. for
respondents No.1 and 2
Mr. S.L. Gupta, Advocate for
respondent No.3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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?

JUDGMENT

1. The appellants have challenged the Award of the learned Tribunal whereby compensation of Rs.1,06,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. On 5th May, 1988, the deceased Anand Kumar, aged 14 years, a student of class-VII was riding on his bicycle when truck bearing No.DLI-5444 crushed him under the front wheel.

3. The appellants are parents of the deceased and they filed the application for compensation before the learned Tribunal.

4. The deceased was the only son of the appellants. The shock of the death was so severe that appellant No.1 became mentally deranged and went into depression and even could not attend to his business. Appellant No.1 remained under medical treatment and lost all sense of timing and partially regained sense after about three years.

5. Appellant No.2 is an illiterate lady who also got depressed with the untimely death of her only son and also on account of serious mental illness of her husband due to the sudden death of her son.

6. Appellant No.1 was working as a mechanic for repair of trucks at the time of the death of his son but his income stopped as he could not attend his work due to aforesaid mental condition.

7. The learned Tribunal awarded Rs.1,06,000/- to the appellants. The learned Tribunal held that the deceased would have attained 18 years of age in 1992 and would have earned minimum wages of an unskilled worker of Rs.598/- per month and the multiplier of 12 was adopted but the dependency was reduced to 8 years. The learned Tribunal took the average income for computing compensation as Rs.2,000/- per month out of which half was deducted towards

personal expenses of the deceased and the dependency was taken to be Rs.1,000/- per month on which the multiplier of 8 was applied. Rs.10,000/- was added towards loss of love and support and loss of estate to arrive at the figure of Rs.1,06,000/-. The interest at the rate of 9% was awarded from the date of petition till date of award minus the period of seven years because of the delay by the appellant in leading the evidence.

8. The appellants have challenged the impugned award on the ground that the learned Tribunal erred in computing the income of the deceased, the corresponding dependency of the appellants and in applying the correct multiplier. The contention of the appellants is that the learned Tribunal should have taken the notional income of the deceased for computing the income at Rs.15,000/- per month as per the Second Schedule of the Motor Vehicles Act and the multiplier of 15 should have been applied to compute the compensation. The second ground of challenge is that the compensation for loss of company of the child as also pain and suffering is very meager and inappropriate and the same be enhanced. The third ground is that the interest on the award should be through-out the period from the date of filing of the petition till realization.

9. The learned counsel for the appellant refers to and relies upon the Judgment of the Apex Court in the case of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257** where the

Hon'ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-“

10. The counsel for the appellant also refers to and relies upon the judgment of this Court in the case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** which related to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in **Manju Devi's case (supra)** awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable

expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

11. The counsel for the appellant also relies upon the judgment of the Rajasthan High Court in the case of

Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II

(2006) ACC 1997 relating to the death of a 12-year old boy. Following the decision of the Apex Court in **Manju Devi's case (supra)**, the Rajasthan High Court also awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

12. The counsel for the appellant lastly refers to and relies upon the judgment of this Court in the case of **R.K. Malik & Ors. Vs. Kiran Pal & Ors., III (2006) ACC 261** where 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

13. In the case of **Rattan Lal Mehta vs. Rajinder Kapoor, 1996 ACJ 372**, it has been held that it is open to Courts/Tribunals to apply table in the Second Schedule in respect of accidents when occurred prior to the 1994 amendment of the Motor Vehicles Act.

14. This case is squarely covered by the aforesaid judgments of the Apex court followed by this Court. The compensation to the appellant is, therefore, enhanced from

Rs.1,06,000/- to Rs.3,00,000/- (Rs.2,25,000/- as per the Second Schedule taking the notional income of the deceased to be Rs.15,000/- and applying the multiplier of 15 and Rs.75,000/- towards non-pecuniary damages for loss of love and affection, loss of company of the child and also pain and suffering by them as a result of the untimely death of their only son).

15. With respect to the interest, the learned Tribunal has awarded interest at the rate of 9% per annum from the date of filing of petition till date of award minus seven years. The learned Tribunal held that the appellants are not entitled to interest for a period of seven years as the appellants delayed the leading of evidence. The learned Tribunal did not appreciate that the appellants are illiterate. They lost their only son. Appellant No.1 went into mental trauma and also stopped attending to his work. Though the case was delayed due to the delay in leading the evidence but it cannot be lost sight of that the compensation to the appellants became payable immediately on the death of their son and the Insurance Company continued to retain the money. No steps were taken by the Insurance Company to come forward and offer the compensation. The death of the child is not in dispute. Even age of the child is not in dispute. The Second Schedule provides for the notional income in respect of the children. The law for compensation is well settled by the catena of judgments cited above. Nothing prevented the

Insurance Company to come forward and show the grace of offering the compensation to the appellants. However, it is unfortunate that the insurance company did not show any sense of responsibility in this regard. I, therefore, hold that the Insurance Company is liable to pay interest for the entire period from the date of filing of the petition before the learned Tribunal till realization. However, the rate of interest for the period of seven years from the date of filing of the petition restricted to @5% per annum and thereafter @ 7.5% per annum.

16. The appeal is, accordingly, allowed. The compensation to the appellants is enhanced from Rs.1,06,000/- to Rs.3,00,000/- along with interest @ 5% per annum for a period of seven years from the date of filing of the petition and thereafter @7.5% till realization.

17. Respondent No.3 is directed to deposit the enhanced award amount along with interest with the learned Tribunal within 30 days. 70% of the award amount be kept in a fixed deposit in the name of the appellants 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 released to the appellants and the remaining 30% be released to the appellants. The learned Tribunal shall first release the cheques towards the amount has 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.

March 31, 2009
s.pal

J.R. MIDHA, J