

(2010) 02 DEL CK 0201

Delhi High Court

Case No: M.A. No"s. 298-300 of 2005

Abha Gupta and Others

APPELLANT

Vs

Duli Chand and Others

RESPONDENT

Date of Decision: Feb. 25, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 1

Citation: (2011) 1 TAC 664

Hon'ble Judges: J.R. Midha, J

Bench: Single Bench

Advocate: Santosh Chaurihaa, for the Appellant; Kamaldeep, for the Respondent

Judgement

J.R. Midha, J.

The Appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 10,78,000/- has been awarded to the Appellants. The Appellants seek enhancement of the award amount.

2. The accident dated 25th September, 2002 resulted in the death of Dr. Hari Kishore Gupta. The deceased was survived by his widow and two sons who filed the claim petition before the learned Tribunal.

3. The deceased was aged about 56 years at the time of the accident and was working as a Scientist-F with Kumarappa National Handmade Paper Institute drawing a salary of Rs. 28,428/- per month. The learned Tribunal took the income of the deceased as Rs. 22,000/- per month, deducted 1/2 towards the personal expenses and applied the multiplier of 8 to compute the loss of dependency at Rs. 10,56,000/-. Rs. 2,000/- has been awarded towards funeral expenses and Rs. 20,000/- towards loss of consortium. The total compensation awarded is Rs. 10,78,000/-.

4. The learned Counsel for the Appellants has urged the following grounds at the time of hearing of this appeal:

- (i) The income of the deceased be taken to be Rs. 28,428/- per month.
- (ii) The future prospects be taken into consideration.
- (iii) The personal expenses of the deceased be reduced from 1/2 to 1/3rd.
- (iv) The multiplier be enhanced from 8 to 9.
- (v) The compensation be awarded for loss of love and affection and loss of estate.
- (vi) The rate of interest be enhanced from 7% per annum to 7.5% per annum.

5. The income of the deceased was proved by PW-2. PW-2 brought the service record of the deceased and deposed that the deceased joined Kumarappa National Handmade Paper Institute as Scientist-F on 4th April, 2001 in the scale of Rs. 16,400-450-Rs. 20,000 and his gross salary was Rs. 27,936/- per month. The copies of the pay slip for the months of May, August and September, 2003 were produced before the Court. PW-2 further deposed that the deceased was working at the post of Acting Director and his retirement age was 60 years. PW-2 further deposed that the deceased could have been promoted to the post of Director after one year with a salary of Rs. 34,000 - Rs. 35,000. PW-2 proved the salary certificate of the deceased as Ext.PW2/A. PW-2 further deposed that the arrears of Rs. 492/- were also given to the deceased towards the dearness allowance and the total gross salary of the deceased at the time of the accident was Rs. 28,428/- per month. As per the salary certificate Ext. PW2/ A, the deceased was getting basic salary of Rs. 16,400/-, dearness allowance of Rs. 7,052/-, house rent allowance of Rs. 2,640/-, CCA of Rs. 240/- and transport allowance of Rs. 800/-. The income of the deceased has been proved by PW-2 and Ext. PW2/A as Rs. 28,428/-. It has also been sufficiently proved that the deceased was due for promotion to the post of Director after about one year and would have got the salary of Rs. 34,000 - Rs. 35,000 per month. Although, the Hon'ble Supreme Court has held that the future prospects should not be taken into consideration in respect of persons aged above 50 years except in exceptional circumstances, in view of the clear evidence of PW-2 on record that the deceased was due for promotion after one year and would have drawn a salary of Rs. 34,000 - Rs. 35,000 per month, this case falls in the exception and the income of the deceased for computation of compensation is taken to be Rs. 34,000/- per month. Rs. 4,000/- per month is deducted towards the Income Tax and the net income of the deceased after deduction of Income Tax is taken to be Rs. 30,000/-.

6. The learned Tribunal deducted 1/2 towards the personal expenses of the deceased. According to the judgment of the Hon'ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), the appropriate deduction is 1/3rd as the deceased has left behind three legal representatives. The personal expenses of the deceased are, therefore, reduced from 1/2 to 1/3rd. The learned Tribunal has applied the multiplier of 8. The deceased was aged about 56 years at the time of the accident and the appropriate multiplier

according to the judgment of the Hon"ble Supreme Court in the case of Sarla Verma (supra) is 9. The multiplier is, therefore, enhanced from 8 to 9. Taking the income of the deceased to be Rs. 30,000/-, deducting 1/3rd towards personal expenses and applying the multiplier of 9, the loss of dependency is computed to be Rs. 21,60,000/- (Rs. 30,000 x 2/3 x 12 x 9).

7. The learned Tribunal has not awarded any compensation towards loss of love and affection and loss of estate. Rs. 10,000/- is awarded towards loss of love and affection and Rs. 10,000/- towards loss of estate.

8. The learned Tribunal has awarded interest @ 7% per annum whereas appropriate rate of interest according to the judgment of Hon"ble Supreme Court in the case of Dharampal v. U.P. State Road Transport Corporation III 2008 A.C.C. (1) : 2008 (3) T.A.C. 789 S.C. is 7.5% per annum. The rate of interest is, therefore, enhanced from 7% per annum to 7.5% per annum.

9. The Appellants are entitled to total compensation of Rs. 22,02,000/- (Rs. 21,60,000 + Rs. 2,000 + Rs. 20,000 + Rs. 10,000 + Rs. 10,000).

10. The appeal is allowed and the award amount is enhanced from Rs. 10,78,000/- to Rs. 22,02,000/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the date of notice under Order XXI, Rule 1 of the Code of Civil Procedure.

11. The enhanced award amount alongwith interest be deposited by Respondent No. 3 with UCO Bank A/c Abha Gupta, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 45 days.

12. The order with respect to the disbursement of the award amount shall be passed after examining the claimants who are directed to remain present in Court on the next date of hearing.

13. List the appeal on 11th May, 2010,

14. Copy of this order be given "Dasti" to learned Counsel for both the parties under signature of Court Master.