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**(2011) 09 DEL CK 0287**

**Delhi High Court**

**Case No:** Mac Appeal No. 137-40 of 2006

Usha Rani and Others

APPELLANT

Vs

Pritam Singh and Others

RESPONDENT

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**Date of Decision:** Sept. 30, 2011

**Hon'ble Judges:** M.L. Mehta, J

**Bench:** Single Bench

**Advocate:** L.K. Tyagi, for the Respondent

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### **Judgement**

M.L. Mehta, J.

The present appeal has been filed by the Appellants challenging the award dated 10.02.2006 passed by learned Motor Accidents Claim Tribunal ("the Tribunal" for short) whereby a sum of Rs. 1,34,400/- was awarded as compensation to the Appellants in the Claim Petition filed by them for seeking compensation on account of death of Jagmohan Lal, the husband of Appellant No. 1 Usha Rani and father of minor children Sunita, Anuj and Nitin.

2. On 19.2.1984, the deceased was travelling in a truck bearing registration number PBO 4695 which was being driven by Respondent Pritam Singh in a rash and reckless manner and when he applied the brakes, the deceased was thrown out of the truck and died instantly. The awarded compensation of Rs. 1,34,400/- by the Tribunal was made up of Rs. 1,22,400/- on account of loss of dependency of the claimants, Rs. 2,000/- on account of funeral expenses, Rs. 5,000/- on account of loss of consortium, Rs. 2500/- on account of loss of estate and Rs. 2500/- on account of loss of love and affection. In arriving at loss of dependency of Appellants, the Tribunal took the monthly income of the deceased as Rs. 600/- and added Rs. 1200/- being double the salary and thereafter took the mean by dividing it by 2 and thereby arrived at the average monthly income of the deceased at Rs. 900/- per month. The learned Tribunal made deduction of 1/3rd i.e. Rs. 300/- per month as towards the personal and living expenses of the deceased and thus assessed Rs. 600/- per month or say Rs. 7200/- per annum as loss of dependency of the

Appellants/claimants. The Tribunal applied a multiplier of 17 and arrived at a figure of Rs. 1,22,400/- as loss of dependency of the Appellants/ claimants. The Appellants/ claimants have assailed the award alleging that the compensation awarded to them is highly on the lower side. It was averred that the deceased was working in MCD as LDC and had he not died in the accident, his salary would have been increased to Rs. 12,000/- per month in the year 2005. In this regard, reliance was placed on the testimony of PW7, an official of MCD. The compensation is also challenged on other grounds. The awarded rate of interest @ 9% till the year 2000 and thereafter @ 5.5.% till the date of payment was also alleged to be on lower side.

3. It is seen that PW1 had testified about the deceased to be working as LDC and getting a gross salary of Rs. 778/- prior to his promotion as LDC. In the year 1980, he was working as peon in MCD. Mr. P.L. Chawla, PW7, an official from MCD also testified that at the time of death of the deceased, he was getting a salary of Rs. 880/- per month though he had stated that had the deceased not died, his salary would have been about Rs. 12,000/- per month. He also stated that the deceased would have retired from service on 30.4.2014. There were some contradictions about the salary of the deceased as deposed by PW1 and PW7. The Tribunal calculated the carry home salary of the deceased as Rs. 600/- which was exclusive of HRA and CCA. In my view, the learned Tribunal seems to have erred in arriving at this calculation of Rs. 600/- per month as the carry home salary of the deceased. There was categorical evidence of PW7, an official of MCD, that the deceased was getting salary of Rs. 880/- per month. Since the deceased was in a stable government job and there were prospects of his future promotion and increase in the salary, the Tribunal ought to have given due consideration to the same in assessing the average monthly income of the deceased. Be that as it may, the average monthly income of the deceased can be taken to be Rs. 1320 per month (880+1760 divided by 2). Since the deceased left behind 4 legal heirs, 1/4th of his salary ought to have been deducted towards his personal and living expense instead of 1/3rd. That being so, a sum of Rs. 330/- can be deducted from his salary as towards his personal and living expense and as per this a sum of Rs. 990/- per month could be said to be the loss on account of dependency of the claimants/ Appellants. Accordingly, Rs. 990/- per month or say Rs. 11880/- per annum can be said to be the loss of dependency of the Appellants/ claimants. Keeping in view the age of the deceased to be 29-30 years, a multiplier of 17 was rightly applied by the Tribunal. That being so, Rs. 2,01,960/- (11880 x 17) or say Rs. 2,02,000/- is assessed as loss of dependency of the claimants/ Appellants.

4. The compensation awarded on other counts is also seen to be unjust and extremely on lower side. Having regard to the facts and circumstances of the present case, a sum of Rs. 10,000/- is assessed to be compensation on account of funeral expenses; Rs. 10,000/- towards loss of consortium; Rs. 25,000/- towards loss of estate and Rs. 50,000/- towards loss of love and affection of the appellants. In this way, the total compensation payable to the Appellants/claimants comes out to be

Rs. 2,97,000/-. Therefore, the Appellants/ claimants would be entitled to enhanced compensation of Rs. 1,62,600/- which Respondent No. 3/ Insurance company being the insurer shall pay to the Appellants/ claimants within 30 days from passing of this order and thereafter with interest @ 7.5% per annum till the date of payment. Since the Appellant No. 2 Ms. Sunita has been married, the enhanced compensation shall be paid in equal proportion to Appellants Smt. Usha Rani, Anuj and Nitin. The share of Anuj and Nitin shall remain deposited in fixed deposits in any nationalized bank in their names for the period till they attain the age of majority.

5. The appeal stands disposed accordingly.