

**(2012) 04 DEL CK 0431**

**Delhi High Court**

**Case No:** MAC.APP. 753 of 2010

Devi Dutt and Ors

APPELLANT

Vs

Manish Sharma and Ors

RESPONDENT

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**Date of Decision:** April 19, 2012

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166

**Hon'ble Judges:** G.P. Mittal, J

**Bench:** Single Bench

**Advocate:** S.N. Parashar, for the Appellant; Suman Bagga, Advocate for R-3, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

G.P. Mittal, J.

The Appellants who are the legal representatives of deceased Krishna Nand seek enhancement of compensation of Rs. 60,000/- awarded for his death which occurred in a motor accident on 26.02.2008. By the impugned judgment dated 27.10.2009, the Motor Accident Claims Tribunal (the Claims Tribunal) held that the Appellants who were the four sons and one married daughter of the deceased, aged between 26 years to 34 years were not financially dependent on him. The Claims Tribunal, therefore, awarded a sum of Rs. 10,000/- towards last rites and a sum of Rs. 50,000/- towards Loss of Love and Affection.

2. During evidence before the Claims Tribunal, it was sought to be proved that the deceased owned 8-10 Bighas of land and eight goats. He had an income of Rs. 4,000/- to Rs. 5,000/- per month from selling milk and also from agriculture.

3. It is urged by the learned counsel for the Appellants that Section 166 of the Motor Vehicles Act nowhere provides that the legal representatives should be financially dependent. The legal representatives irrespective of their being financially dependent would be entitled to the amount of compensation for Loss of

Dependency.

4. On the other hand, it is urged by the learned Counsel for Respondent No.3 Insurance Company that since the Appellants were not financially dependent, the amount could be awarded only towards Loss to Estate, Love and Affection and Funeral Expenses.

5. Learned counsel for the Appellants places reliance on National Insurance Company Limited v. Meghji Naran Sortiya & Ors., II 2009 ACC 289 (SC). It was a case of the death of a mason, aged 58 years. The Supreme Court took note of the fact that the Claimants were not financially dependent upon the deceased, deducted 50% towards personal and living expenses of the deceased and awarded the compensation on the basis of 50% of the deceased's income as contribution to the family or the savings by the deceased (in other words towards the Loss to Estate). Thus, the compensation paid to the non dependent children was primarily towards Loss to Estate.

6. The minimum wages of an unskilled worker on the date of the accident were Rs. 3633/- per month. The deceased belonged to the lower strata of the society. He owned eight goats in addition to some agricultural land.

7. In the facts and circumstances, I would accept the deceased's income from agriculture and by selling milk to be about Rs. 4,000/- per month. As per the copy of the Ration Card issued on 04.03.2004, placed on record of the Claims Tribunal, the deceased was aged about 58 years. Thus, on the date of the accident his age would come to be 62 years.

8. Following Meghji Naran Sortiya (Supra), I would deduct 50% of the deceased's income towards his personal and living expenses and the remaining amount as savings, and on applying the multiplier of "7" the compensation payable to the Appellants under the Loss to Estate would come to Rs. 1,68,000/- ( $4,000/- \times 1/2 \times 12 \times 7$ ).

9. On adding notional sums of Rs. 25,000/- towards Love and Affection and Rs. 10,000/- towards Funeral Expenses, the overall compensation comes to Rs. 2,03,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of deposit with the Claims Tribunal.

10. The enhanced amount of compensation i.e. Rs. 1,43,000/- along with interest shall be deposited by the Respondent No.3 ICICI Lombard General Insurance Company Limited with the Registrar General of this Court within six weeks by cheque in favour of the Appellants in equal proportion. The same shall be released in favour of the five Appellants immediately on deposit. The Appeal is allowed in above terms.