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**(2009) 04 DEL CK 0141**  
**In the Delhi High Court**  
**Case No : FAO No. 152 of 2004**

M.C.D.

APPELLANT

Vs

Mukesh Kumari

RESPONDENT

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**Date of Decision :** 01-04-2009

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 167

**Citation :** (2009) 04 DEL CK 0141

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

**Bench :** Single Bench

**Advocate :** Amita Gupta, for the Appellant; N.K. Jha, for R-1 to 4, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.R. Midha, J.—This appeal was dismissed in default on 29th February, 2008. The appellant has filed this application for restoration of the appeal after a delay of about one year on 13th February, 2009. As per the office report, there is a delay of 319 days in filing of this appeal. The learned Counsel for the respondent opposes the application and submits that there is an unexplained delay of one year and the restoration be allowed subject to cost. The learned Counsel for the respondent further submits that the appeal may be finally heard.

2. The delay in filing the application for restoration is condoned subject to the cost of Rs. 10,000/- to be paid to respondent No. 1 and the appeal is restored to its original number.

3. List for reporting compliance with respect to the payment of the cost on 6th May, 2009. The cost of Rs. 10,000/- be paid by means of cheque in favour of respondent No. 1.

4. CMs stand disposed of.

FAO No. 152/2004

6. The appeal has been finally heard on merits.

7. The accident dated 12th January, 1995 resulted in the death of Narender Kumar who was standing besides the stationary MCD Truck bearing No. DL-1G 7538 for getting it filled with refuse by MCD loader bearing No. DL-1M-0032. The said loader was being reversed towards the MCD truck by its driver when it hit the deceased and thereafter, hit the boundary wall. The deceased was crushed under the loader and got buried under the debris of the wall and died on the spot.

8. The deceased was aged 33 years at the time of the accident. The deceased was survived by his widow aged 23 years, two minor children aged 3 years and 3 months respectively and parents aged 65 years and 70 years who filed the claim petition before the learned Tribunal.

9. The deceased was working in MCD as daily wager drawing a salary of Rs. 1,806/- per month.

10. The learned Tribunal took the average income of the deceased as Rs. 2,709/- following the principle laid down by the Apex Court in *Sarla Dixit v. Balwant Yadav* 1996 SCC 1274. 1/3rd was deducted towards the personal expenses of the deceased and the multiplier of 17 was adopted by the learned Tribunal to compute the loss of dependency at Rs. 3,68,424/-. Rs. 50,000/- was deducted towards the interim award and Rs. 8,000/- was paid from State Staff Welfare Fund. Rs. 15,000/- was awarded towards loss of consortium, love and affection and Rs. 3,000/- towards funeral expenses. The net compensation has been assessed by the learned Tribunal at Rs. 3,28,424/- (rounded off to Rs. 3,30,000/-). The learned Tribunal further awarded interest @9% per annum.

11. The first ground of challenge by the appellant is that the claim petition was not maintainable as the claimants had taken the compensation under the Workmen's Compensation Act. The learned Tribunal has considered this plea in para 19 of the award. The claimants/respondents No. 1 to 5 never applied for compensation under Workmen's Compensation Act. The appellant suo moto deposited the compensation under the Workmen's Compensation Act which will not disentitle the claimants from seeking the compensation under the Motor Vehicles Act as Section 167 of the Motor Vehicles Act gives the option to the claimants to seek compensation either under the Workmen's Compensation Act or Motor Vehicles Act and the claimants/respondents clearly opted for compensation under the Motor Vehicles Act.

12. The second ground of challenge by the learned Counsel for the appellant is that the appellant has given the employment to respondent No. 1 on compassionate ground in MCD. The compassionate job to the wife of the deceased on humanitarian grounds cannot disentitle the claimants from seeking the compensation payable under the law. This view has also been taken by this Court in the recent decision in the case of *National Insurance Co. Ltd. v. Manju Bala* AIR 2009 Delhi 19. I agree with the view taken in this judgment and reject this ground.

13. The third ground of challenge by the appellant is that the compensation awarded by the learned Tribunal is on a higher side. There is no merit whatsoever in this ground also as I find that the compensation awarded is rather on a lower side. The deceased left behind five legal representatives, namely, a widow, two minor children and parents and, therefore, the personal expenses of the deceased should have deducted at the rate of 1/6th instead of 1/3rd. The compensation of Rs. 15,000/- awarded for loss of consortium, love and affection is also on a lower side. The compensation for loss of consortium, love and affection has to be awarded under separate heads and the claimants would have been entitled to a higher amount. However, since there is no cross-appeal/cross objections by the claimants, the compensation awarded cannot be enhanced.

14. There is no merit or substance in this petition which has been decided by the learned Tribunal by a well reasoned award. There is no infirmity in the findings of the learned Tribunal.

15. This appeal is dismissed with costs.

16. The deceased was the employee of the appellant who was crushed by their own vehicle. Instead of showing the grace of making the payment according to the law, the appellant filed this appeal which remained pending before this Court for about five years and the appellant obtained the stay order against release of any amount to the claimants. The accident is of the year 1995 and 14 years have passed from the date of the accident. The loss to the claimants is irreparable as they would have required the money from time to time for sustenance and up bringing the children as well as their education.

17. The learned Counsel for the respondents submits that the claimants/respondents have received only Rs. 73,540/- vide cheque No. 920372 dated 15th March, 2007 in compliance of the order dated 23rd August, 2006.

18. The appellant is directed to deposit the remaining award amount along with interest up to the date of deposit with the learned Tribunal within 30 days.

19. The learned Counsel for the appellant submits that the appellant has deposited Rs. 2,31,468/- in terms of the order dated 12th July, 2004. The amount deposited by the appellant shall be adjusted by the learned Tribunal. However, it is made clear that the liability of the appellant to pay the interest shall continue up to the date of deposit of the final amount with the learned Tribunal and the appellant would not be entitled to any benefit of deposit of some amount with this Court as the appellant had obtained the stay of release of the amount to the claimants.

20. The statutory amount of Rs. 25,000/- be remitted by the Registrar General of this Court to the learned Tribunal to be adjusted against the award amount within a period of two weeks.

21. Upon the deposit of the entire award amount along with interest, the learned Tribunal is directed to release the same in terms of the award. However, 50% of

the award amount be kept in a fixed deposit for a period of seven years on which the respondents shall be entitled to periodical interest but no loan or advance be permitted without the permission of the learned Tribunal.

22. The learned Counsel for the respondent submits that respondent No. 5 has expired and his share has devolved upon respondents No. 1 to 4. The learned Tribunal is directed to apportion the share of respondent No. 5 equally amongst the respondents No. 1 to 4.

23. Copy of this order be given "Dasti" to learned Counsel for the parties under signatures of Court Master.