**(2012) 07 DEL CK 0471**

**In the Delhi High Court**

**Case No :** MAC.APP. 80 of 2009

Smt. Anita and Others — APPELLANT

Vs

Shri C. Kulandaivel and Others — RESPONDENT

**Date of Decision :** 16-07-2012

**Acts Referred:**

**Citation :** (2012) 07 DEL CK 0471

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

**Bench :** Single Bench

**Advocate :** P.L. Sharma, for the Appellant; K.L. Nandwani, for R-3, Mr. Sukhbir Singh, for R-4 and Mr. A.K. Soni, for R-5, for the Respondent

**Final Decision :** Allowed

## Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs.6,98,000/- awarded by the Motor Accident Claims Tribunal (the

Claims Tribunal) for the death of Shri Krishan who died in a motor vehicle accident which occurred on 11.12.2005. During inquiry before the

Claims Tribunal, it was claimed that the deceased was earning Rs.4,500/- per month. On 11.12.2005 deceased Shri Krishan was driving a Tata

Qualis No.DL-IVB-0074 from Jaipur to Delhi. When he reached near Shahjahanpur Check Post on National Highway No.8, the Tata Qualis

collided against a stationary truck No.TN-28L-1555 which was parked in the middle of the road in a dangerous and careless manner.

2. On appreciation of evidence, the Claims Tribunal found that there was negligence in the ratio of 70:30 on the part of the truck driver and the

Qualis driver (the deceased). Respondents No. 1 and 2 were held liable to pay the compensation to the extent of 70% and Respondent No.3 the

United India Insurance Company Limited, being the authorized Insurer was held liable to indemnify the insured (Respondent No.2). Respondent

No.4, Amandeep Singh was the owner of the Tata Qualis. He being the deceased''s employer was held liable to pay the compensation. M/s.

National Insurance Company Limited was held liable to indemnify the Insured as the risk of the employee was covered by the Insurance Policy.

3. There is no challenge to this finding by Respondents No.1 to 5.

4. Following contentions are raised on behalf of the Appellants:-

(i) That PW-4 Amandeep Singh''s (employer) testimony that he was paying a salary of Rs.4,500/- per month to the driver, was not challenged in

cross-examination. The Claims Tribunal erred in taking the deceased''s income as per the Minimum Wages of a skilled worker i.e. Rs.3600/- per

month.

(ii) The number of dependents were five. Even if father is excluded, there were four dependents and there should have been a deduction of one-

fourth of the deceased''s income towards the personal and living expenses instead of one-third as taken by the Claims Tribunal.

(iii) The appropriate multiplier as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, was ''16''. The Claims Tribunal

erred in taking the multiplier as ''15''.

5. The Appeal must succeed on all the grounds.

6. PW-4''s testimony with regard to the salary of Shri Krishan, (the deceased), was not challenged in cross-examination. It may be noticed that

Shri Krishan was employed just about a month before the date of the accident and no document could have been possibly brought by Amandeep

Singh with regard to his salary. Moreover, the Court can also assume that in the year 2005, the driver of a commercial vehicle like Qualis must be

getting a salary of at least Rs.150/- per day i.e. Rs.4,500/- per month in the year 2005.

7. The Claims Tribunal had added 50% towards the future prospects. However, in the absence of any evidence with regard to the future

prospects, the Appellants were entitled to an increase of 30% towards the inflation on the basis of the judgment of the Supreme Court in Santosh

Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559.

 

8. It is also not disputed that there were four dependents of the deceased Shri Krishan in addition to his father. The deduction towards the

personal and living expenses, therefore, should have been one-fourth as per Sarla Verma (supra). Since the deceased was aged 34 years at the

time of the accident, the suitable multiplier to be adopted is ''16'' instead of ''15''.

9. The loss of dependency thus comes to Rs.8,42,400/- (4500/- + 30% x 12 x 3/4 x 16).

10. No provision was made for awarding compensation towards the loss of consortium and loss to estate. I would make a provision for

Rs.10,000/- each under both the heads. In addition to a sum of Rs.40,000/- awarded by the Claims Tribunal towards the loss of love and

affection and Rs. 10,000/- towards funeral expenses.

11. The overall compensation comes to Rs.9,12,400/-.

12. The enhanced compensation of Rs. 2,14,400/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

13. Respondents No.3 and 5 (the United India Insurance Company Limited and M/s. National Insurance Company Limited) are directed to

deposit the enhanced compensation along with interest in UCO Bank, Delhi High Court, New Delhi within six weeks.

14. It may be noticed that no compensation was awarded by the Claims Tribunal in favour of the parents. Mother has been considered to be

financially dependent on the son as per Sarla Verma (supra).

15. Out of the enhanced compensation, a sum of Rs.75,000/- along with proportionate interest shall be payable to the Respondent No.8, who is

deceased''s mother and a sum of Rs.40,000/- along with proportionate interest to Respondent No7, who is deceased''s father.

16. Rest of the compensation along with proportionate interest shall enure for the benefit of the Appellant Anita and shall be utilized by her for

herself as well as for the benefit of her two minor children.

17. 50% of the enhanced compensation shall be held in fixed deposit for a period of three years. Rest shall be released to the Claimants.

18. The Appeal is allowed in above terms. Pending Applications also stand disposed of.

 