

**IN THE COURT OF MS. NIRJA BHATIA :  
PRESIDING OFFICER: MOTOR ACCIDENT  
CLAIMS TRIBUNAL : SAKET : NEW DELHI**

**Suit No.368/2010**

**Unique Case ID No. 02406C0340132010**

- 1 Smt.Buchiya Devi Wife of late Ram Avtar Singh**
- 2 Sunil Kumar Singh S/o late Ram Avtar Singh**
- 3 Anil Kumar Singh S/o late Ram Avtar Singh**
- 4 Daysunar Devi Wife of Shri Shibu Singh,**
- 5 Shibu Singh Son of late Shri Chulya Singh,**

All residents of  
Plot No.467, Pocket-B, Phase-II,  
JJ Colony, Madanpur Khadar, New Delhi-110076.

**.....Petitioners**

**Versus**

- 1 Somender Singh S/o Karan Singh (driver)**

Resident of :

(i) Village Neem Chana, PS Agota,  
District Bullandsher, UP.

(ii) DTC Depot, IP Estate,  
Ring Road, New Delhi.

- 2 Delhi Transport Corporation (owner)  
through Depot Manager,  
East Vinod Nagar Depot, Delhi-110091.**

- 3 United India Insurance Company Ltd.  
DO-IX, Himalaya House, 8<sup>th</sup> Floor,  
K.G.Marg, New Delhi-110001.**

**.....Respondents**

**Date of institution : 04.09.2010**

**Date of reserving the judgment : 28.07.2011**

**Date of pronouncement : 28.07.2011**

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## **AWARD**

This judgment/award shall decide the question of awarding the compensation filed by way of present petition under Section 166 read with Section 140 of MV Act, 1988 as amended up to date (hereinafter referred as Act), arising out of a fatal case.

2 The brief facts necessary for decision have been detailed by the petitioner stating that on 27.7.2010 at about 6.00 PM while her husband, deceased Ram Avtar Singh was coming on two-wheeler scooter, bearing registration No.DL 3S J-7234 and had reached Mathura Road, near Hanuman Mandir, near Okhla Tank, Sarita Vihar, a DTC bus, bearing registration No.DL 1P C-8306, being driven by driver R-1, Somender Singh, rashly and negligently, hit the scooter from behind as the bus was being driven in contravention to the traffic rules and was coming speedily from the Ashram side. As an impact of the accident, the deceased fell on the road and received fatal injuries.

3 It is claimed that the deceased was in the business of Civil Construction and as his business was going very well, there were chances that his income would have been much more in future. It is also claimed that from his business, the deceased was earning about Rs.2,29,480/- per annum. Total compensation of about Rs.50 lac along with interest @ 12% per annum, is prayed.

4 The present petition has been filed subsequent to filing of the DAR which arose from FIR No.220/2010, registered under Section 279/337 IPC, later on converted into

Section 279/337/304-A IPC, at PS Sarita Vihar. At the time of filing of the DAR, the IO complied with the directions of the Hon'ble High Court issued in FAO No.842/2003 and placed on record all the requisite documents. The inquiry is proposed as charge-sheet which comprised the FIR, seizure memo of the scooter, the mechanical inspection report of both the vehicles, MLCs and also verified the fitment of the vehicle for its being plied on road. The DL verification, insurance cover note and permit had also been duly verified. As a consequence, the insurance company made an offer of Rs. 13,21,000/- to the petitioner for settlement which was refused by the petitioners as they found it to be inadequate. The DTC and the driver Somender Singh did not file any reply to the petition when the opportunity was given. However, the insurance company separately filed its reply.

5           The issues were framed vide order dated 20.10.2010 to the following extent :

**1       Whether the deceased suffered fatal injuries in the accident which took place on 27.7.2010 at about 6.00 PM involving DTC bus, bearing No.DL 1P C-8306 due to rash and negligent driving of respondent No.1, owned by respondent No.2 and insured with respondent No.3? OPP**

**2       Whether the petitioners are liable for compensation. If so, to what amount and against which of the respondents?**

**3       Relief.**

6 Subsequently, the petitioner participated in the inquiry and tendered her affidavit. She was cross-examined. By separate statements, the respondents closed their evidence without leading any evidence. Submissions have been heard. I now proceed to record my reasonings on reaching on the decision as below :

**ISSUE NO.1 : NEGLIGENCE**

7 The present petition is tagged with DAR and the DAR itself is presumed to have been filed under Section 166 MV Act. As a consequence, the petitioner was under obligation to establish on record the factum of negligence attributable to the driver, Somender Singh. In the petition and subsequently on affidavit which is filed on oath, the petitioner affirmed the fact claiming that the DTC bus was being plied in contravention to the traffic rules and was at a fast speed due to which it hit the scooter from the back side, while the bus was coming from the Ashram side. The IO who conducted the investigation post registration of the FIR and got the vehicle inspection report conducted also indicted the driver Somender Singh in his investigation and proposed to file the charge-sheet against him under Section 279 IPC besides other provisions of Section 304-A and 337 IPC. It is pertinent to point that the DTC as well as the driver did not file any reply to the DAR based on the investigation. They opted not to file any WS whereby opting not to rebut any of the allegations made against them. In such circumstances, the allegations made against the driver are deemed to have been proved. Further, the driver did not bring any evidence to the contrary

from his part which also reflects that the driver has with-held the best evidence and is guilty of suppressing the material facts. Thus, adverse presumption is also required to be drawn against him. In view of the above, sufficient material has been placed on record to establish the factum of negligence attributable to the driver, R-1, Somender Singh.

8 Even otherwise, it is pertinent to observe that the degree of proof required for proving the negligence on the part of the driver in the present proceedings, is not as vigorous as is required in proving the guilt of the accused in criminal trial. The intent of the present legislation is benevolent and the entire purpose of the legislation is likely to be defeated if in each case the petitioner is asked to prove beyond reasonable doubt the involvement and negligence on the part of the driver. In reaching to the above opinion, I am guided by the judgment of **Kaushnuma Begum and others Versus New India Assurance Limited, 2001 ACJ 421 SC** as well as the case reported as **National Insurance Company Limited Versus Pushpa Rana, 2009 ACJ 289**, wherein it is held that mere involvement of a vehicle is sufficient to establish and hold the claim petition to be maintainable. It is held that even the certified copy of charge-sheet may not be asked for if the petitioner is able to satisfy on record the involvement of the offending vehicle through the copy of FIR and the mechanical inspection report. The issue hence, is decided in favour of the petitioner and against the respondents.

## **ISSUE NO.2 : COMPENSATION**

## **LOSS OF DEPENDENCY**

9 Deceased Ram Avtar Singh was claimed to be self-employed and was a Civil Contractor, having income of Rs.2,29,480/- per annum, at the time of his meeting with the accident. It is also claimed that the business of the deceased was going very well and his income was increasing regularly and there were all probabilities of increase in his income in future, had he remained alive. The investigating officer along with the DAR, has filed the ITR, Ex.PW1/10 for the financial year, 2009-2010 showing gross income of the deceased as Rs. 1,64,760/- which was subsequently increased to Rs.2,29,480/- in the financial year, 2010-2011 as per Ex.PW1/11. The age of the deceased is reflected as 46 years. The learned counsel for the insurance company has averred that the deceased is not entitled to any inflation in future. In support of his contention, he has relied upon the judgment of Hon'ble High Court in case titled, **Delhi Transport Corporation Versus Deep Kanta and others, 2002 (3) TAC 743**, in which the Court has held that in the case of a businessman, the increase in the future income has to be visualized with due care and circumspection for the reason that a businessman usually faces more uncertainties and ups and downs in the course of his business.

10 The facts of the present case are altogether different from the facts cited in the judgment relied upon by the learned counsel for the insurance company, wherein the Hon'ble Court held that proof of income or books of accounts cannot be insisted upon in every case for the reason that self-

employed persons in low income can neither be expected to maintain books of accounts nor to have any documentary proof in respect of their income. In the case cited by the learned counsel, the deceased was a self-employed of low income group who do not have any documentary proof to prove his income but in the instant case, the deceased had the documentary proof in the shape of ITRs.

11 Thus, in view of the holding of the Hon'ble Delhi High Court in the above-cited case that prospects of future advancement in the career and increase in the income of a deceased must be taken into consideration while computing the compensation to the legal representatives, the insulation in the income of the deceased from inflation in due time, is allowed. The deceased met with the fatal accident on 27.7.2010 and as per the ITR, Ex.PW1/11, at the time of his meeting with the accident, his annual income was Rs. 2,29,480/-. The deceased was aged about 46 years at the time of his meeting with the accident. It is presumed that his earnings must have been insulated against inflation. In view of the guidelines issued by Hon'ble High Court in case titled **Dalvinder Kaur @ Devinder Versus United India Insurance Company Ltd., decided on 25.3.2010 in FAO No.524/2003 and Delhi Transport Corporation Versus Deep Kanta and others (supra)**, future prospects @ 50% are hence, assessed. In such circumstances, following formula is adopted to assess the income of the deceased and to calculate the dependency liable to be paid.

$$2,29,480 \times 50\% = 1,14,740/-$$

$$2,29,480 + 1,14,740 = \text{Rs.}3,44,220/-$$

### **Deductions**

The deceased left behind him his five LRs and therefore, in view of the judgment of passed in **Sarla Verma versus DTC passed on 15.4.2009 in CA No.3483/2008**, deductions on account of personal expenses @ 1/4<sup>th</sup> are to be made from the yearly dependency. To get the actual dependency of the LRs of the deceased, the following formula is adopted :

$$3,44,220 \text{ divided by } 4 = 86,055/-$$

$$3,44,220 - 86,055 = 2,58,165/-$$

Thus, the actual yearly dependency of the petitioners is assessed as Rs.2,58,165/- which the deceased would have contributed to the family, had he remained alive.

### **Multiplier**

The deceased was 46 years of age at the time of his demise. Hence, in view of the law laid down in **Sarla Verma Versus DTC** (supra), the multiplier for the persons falling in the age group of 46-50 is "13". Hence, total loss of dependency of the LRs of the deceased is **258165 X 13 = 33,56,145/-** The award on account of dependency for the above amount is passed.

### **MEDICAL BILLS**

12 The petitioners have placed on record the medical bills showing that they incurred an amount of Rs.1,30,223.75 off to **Rs.1,30,224/-** for purchasing the medicines and on account of other hospital charges for the treatment of the



deceased. The award of the above amount is passed in favour of the petitioners.

### **FUNERAL EXPENSES**

13 The petitioners on record, have not filed any document on account of expenses of funeral of the deceased. However, it is presumed that an amount of Rs.20,000/- at least may have been spent on the last rites of the deceased. The amount of **Rs.20,000/-** is hence, awarded on account of funeral expenses.

### **LOVE & AFFECTION**

14 The deceased left behind him his widow and two sons besides old aged parents. In view of the judgment delivered by the Hon'ble High Court in case titled, **Kailash Kaur and another Versus New India Assurance Company Limited, passed in MAC Appeal No.318/2008, decided on 24.3.2009**, amount of Rs.10,000/- in favour of each son, is passed. Accordingly, I hereby award an amount of Rs.10,000 X 2 = **Rs.20,000/-** on account of love and affection to the sons of the deceased.

### **LOSS OF CONSORTIUM**

15 In the present case, the petitioner Buchiya Devi has suffered loss of life of her husband as well as loss of enjoyment of her life on account of being deprived of the company of her husband and enjoyment of matrimonial bliss. She may not be able to live a normal life after having lost her life partner. It is generally seen that after the demise of the husband, who is the sole bread earner of the family, a widow face enormous difficulties and struggle to retain a life of

normalcy. I hereby award an amount of **Rs.25,000/-** on account of Loss of Consortium to her.

**The total compensation is assessed as under :-**

**Loss of dependency :** Rs.33,56,145/-

**Medical Bills :** Rs. 1,30,224/-

**Funeral Expenses :** Rs. 20,000/-

**Love & Affection :** Rs. 20,000/-

**Loss of Consortium :** Rs. 25,000/-

**TOTAL :** Rs.35,51,369/-

**Less Interim Award :** Rs. 50,000/-

**Balance Payable Sum :** Rs.35,01,369/-

Hence, the petitioners are awarded a total amount of **Rs.35,01,369/-**.

### **RELIEF**

16 I hereby award an amount of **Rs.35,01,369/-** as compensation with interest @ 7.5% per annum from the date of filing of the present petition, i.e., 4.9.2010 till the date of realisation of the amount, in favour of the petitioner and against the respondents. The driver, R-1 is the principal *tort feasor* whereas R-2, being the owner and R-3 being the insurance company, are the joint *tort feasor* and are vicariously liable the acts of the driver, R-1.

17 In the judgment of **Union of India and others Versus Nansari and others, MACA 682/2005**, decided on 13.1.2010, which has been affirmed by the Hon'ble Supreme Court in **order dated 17.12.2009 in SLP (Civil) No. 11801-11804/2005**, the Hon'ble High Court have given directions for the protection of the award amount. In view of the aforesaid judgment, it is directed that out of the above

awarded amount of Rs.35,01,369/- (Rupees thirty five lac one thousand three hundred and sixty nine only), a sum of Rs. 3,01,369/- (Rupees three lac one thousand three hundred and sixty nine only) be released forthwith to the petitioner No.1, Smt.Buchiya Devi.

18 Out of the remaining amount of Rs.32,00,000/-, (Rupees thirty two lac only), Rs.6,00,000/- (Rupees six lac) each, amounting to Rs.12,00,000/- (Rupees twelve lac only) be awarded in favour of the sons, being petitioner Nos.2 and 3, namely, Sunil Kumar Singh and Anil Kumar Singh, of the deceased, which amount be released to them on realisation.

19 Out of the remaining amount of Rs.20,00,000/-, (Rupees twenty lac only), Rs.2,50,000/- (Rupees two lac fifty thousand only) each, amounting to Rs.5,00,000/- (Rupees five lac only) be awarded in favour of parents of the deceased, i.e., petitioner Nos.4 and 5, namely, Smt.Daysunar Devi and Shri Shibu Singh, which amounts also be released to them immediately on its realisation.

20 The remaining amount of Rs.15,00,000/- (Rupees fifteen lac only) be kept in the State Bank of India, Saket Branch by way of FDR for a period of ten years in the account, Smt.Buchiya Devi. The petitioners may approach Shri H.S.Rawat, Nodal Officer (Mobile No.09717044322), State Bank of India, or Shri Manish Mishra, Branch Manager (Mobile No.9711001555) Saket Branch, for opening of the accounts after receiving the copy of the award, whereafter the amount of the petitioner Smt.Buchiya Devi shall be released to her as under :

21            10% of the award amount be released to her after one year, along with proportionate interest.

22            10% of the award amount be released to her after second year, along with proportionate interest.

23            10% of the award amount be released to her after third year, along with proportionate interest.

24            10% of the award amount be released to her after fourth year, along with proportionate interest.

25            10% of the award amount be released to her after fifth year, along with proportionate interest.

26            10% of the award amount be released to her after sixth year, along with proportionate interest.

27            10% of the award amount be released to her after seventh year, along with proportionate interest.

28            10% of the award amount be released to her after eighth year, along with proportionate interest.

29            10% of the award amount be released to her after ninth year, along with proportionate interest.

30            The remaining 10% of the award amount of the FDR be released to the petitioner in the tenth year, along with proportionate interest. The original FDR be kept with the bank which shall issue a photo identity card to the petitioner to ascertain her identity. The copy of the award shall be given to the parties.

31            It is directed that the FDR so deposited with the bank, be renewed automatically and the interest thereupon shall be paid monthly, which shall be credited automatically in the savings account of the petitioner. The original FDR be detained by the bank in safe custody. However, the original

passbook shall be issued and given to the petitioner along with the photocopy of the FDR. The bank is directed to hand over the original FDR on afflux of time and shall issue the photo identity card to the petitioner to facilitate the withdrawal after due verification. It is further directed that no cheque book shall be issued to the petitioner without the permission of this court.

32 It is also directed that the insurance company shall make an endorsement of the title of the case, suit number, name of the parties and other relevant details while depositing the cheques in the bank. The compliance be made by all concerned.

33 Copy of the order shall be kept for receiving the compliance. File be consigned to the record room after completion of necessary formalities.

**Announced in open Court**

**Dated : 28.07.2011**

**( NIRJA BHATIA )**

**PO : MACT-02, (SE)**

**Saket Courts, New Delhi**