

**Batasho Devi Vs. Rekha and Others**

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**Court :** Delhi

**Decided On :** Feb-25-2016

**Judge :** R.K. Gauba

**Appeal No. :** MAC. APP. 612 of 2012 & CM APPL. 10030 of 2012

**Appellant :** Batasho Devi

**Respondent :** Rekha and Others

**Judgement :**

Oral:

Pramod Singh, a constable in Delhi Police, then aged 25 years, died as a result of injuries suffered in a motor vehicular accident that occurred at about 07:15 PM on 06.01.2007 at Akbar Road upon being hit by ambassador car bearing registration no.DL-9CK-0004 (the offending vehicle) statedly driven by the second respondent herein (impleaded in the claim petition as second respondent), it being a motor vehicle of the Department of Tourism of the Government of India for which reason Union of India, the third respondent herein, was also impleaded as a party respondent (second respondent before tribunal). Rekha, the widow of Pramod Singh brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) on 21.05.2007 which was registered as suit no.1320/2007. In the said case she impleaded as Batasho Devi (the appellant herein) as third respondent (proforma party), she

being the mother of the deceased Pramod Singh. The tribunal held inquiry and on that basis awarded compensation in the sum of Rs. 22,04,472/- with interest at the rate of eight percent (8%) per annum (it is mentioned in the operative part as 7%) from the date of filing of the petition till realization. The said amount included Rs. 21,74,472/- calculated as loss of dependency on the basis of the then salary and allowances (Rs. 10,067/- per month) drawn by the deceased, and Rs. 10,000/- each as non-pecuniary damages under the heads of loss of consortium, loss of estate and funeral expenses. In the judgment, the tribunal directed the entire amount of compensation with interest to be paid to the claimant (the first respondent herein). The appellant moved an application before the tribunal which was registered as Miscellaneous case no.M-9/10 which was decided by order dated 16.07.2011 whereby the award earlier passed was modified and thirty percent (30%) of the awarded compensation with proportionate interest was apportioned in favour of the appellant herein.

2. By the appeal at hand, Batasho Devi (the mother of the deceased Pramod Singh) has raised grievances, inter-alia, to that extent that the widow (first respondent herein) having got married on 18.09.2010 could not have been granted seventy percent (70%) of the awarded compensation. She also contends that she was not noticed during the inquiry before the tribunal and that the compensation on account of loss of dependency and under non-pecuniary heads of damages is inadequate for the reasons, amongst others, that by virtue of approval of recommendation of subsequent Central Pay Commissions, the income of the deceased would have increased manifold, of which benefit deserves to be factored in.

3. On perusal of record of the tribunal, the contention of the appellant about she not being served with notice before inquiry by the tribunal is found to be factually wrong. A notice sent by registered AD post for 18.09.2007 was duly served as per acknowledgement card on record. Another notice sent for 19.12.2007 was also served and yet no one appeared on behalf of appellant.

4. The grievances as to the non-consideration of the increase in salary of Government servants pursuant to the subsequent pay commissions cannot be

accepted and in this context reference need to be made only to the following observations of the Hon ble Supreme Court in case of Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121:

45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.

5. The grievances respecting the award of non-pecuniary damages and levy of rate of interest, however, are correct. In Rajesh and Ors. v. Rajbir Singh and Ors., (2013) 9 SCC 54, the Supreme Court had awarded Rs. 1,00,000/- each on loss of consortium and loss of love and affection and funeral expenses of Rs. 25,000/-. In Shashikala v. Gangalakshamma (2015) 9 SCC 150, the Supreme Court took a similar approach and added Rs. 25,000/- towards loss of estate. There is no reason why similar awards under the said four non-pecuniary heads of damages should not have been made.

6. Thus, instead of Rs. 30,000/- which is the sum total of the three non-pecuniary heads of damages considered by the tribunal, a composite amount of Rs.

2,50,000/- is awarded to take care of the above said four heads of non-pecuniary damages. This would result in net increase in the compensation awarded by Rs. 2,20,000/-.

7. There is confusion in the judgment of the tribunal as to the rate of interest. At one place, it is mentioned as eight percent (8%) per annum while in the operative part, it is directed that the insurance company shall pay awarded compensation at rate of seven percent (7%) per annum. The vehicle involved was of the Government and in terms of the statutory provisions contained in the MV Act, it was not required to be covered by any insurance policy. Thus, Union of India is vicariously liable to pay the compensation. Having regard to the consistent view taken in serious of cases by the Hon ble Supreme Court, it is directed that the awarded compensation shall carry interest at the rate of nine percent (9%) from the date of filing of petition till realisation [Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9; Supe Dei v. National Insurance Co. Ltd. (2009) 4 SCC 513; Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy and Ors. (2011) 14 SCC 481; Basappa v. T. Ramesh (2014) 10 SCC 789; Syed Sadiq etc. v. Divisional Manager, United India Ins. Company (2014) 2 SCC 735; Surti Gupta v. United India Insurance Company and Ors. 2015 (3) SCALE 795; Kumari Kiran v. Sajjan Singh (2015) 1 SCC 539].

8. Needless to add that the amount already paid shall be suitably adjusted.

9. It is own case of the appellant that the widow of Pramod Singh had remarried after the judgment by the tribunal. In these circumstances and having regard to the relationship of the parties, this court does not find any reason to disturb the ratio of the apportionment.

10. In terms of the modification of the award as above, further amount shall have to be paid to the appellant and the first respondent (the claimant). The Union of India is directed to deposit the balance of its liability in terms of this judgment by depositing the amounts with tribunal within 30 days of this judgment, whereby the same shall be put in fixed deposit receipts in the respective names of the said recipients in interest bearing fixed deposit accounts in a nationalised bank of their choice for a period of seven years with right to draw monthly interest.

11. Should there be any default on the part of Union of India, the appellant and/or first respondent shall be entitled to take out execution proceedings before the tribunal.

12. The appeal is disposed of in above terms.

Appeal disposed of.

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