

*** HIGH COURT OF DELHI : NEW DELHI**
MAC APPEAL No.239 of 2008

% Judgment reserved on: 25th April, 2008

Judgment delivered on: 1st May, 2008

1. Sh.Raj Kumar, S/o Late Sh. Gainda Ram,

2. Mrs. Kanta Rani, W/o Sh. Raj Kumar

Both R/O E-63, South Anarkali, Delhi-51

Ind Address:

79/1, Chandu Park, Gali No. 3,

Near Som Bazar, Delhi-51

.....Appellants

Through: Mr.Manish Mannie, Adv.

Versus

1. Balbir Singh,
S/O Sh. Rakha Singh,
R/O Village & Post Ghungrali Sikhan,
Samrala, Distt. Ludhiyana (Punjab)

Ind Address:

C/O Sardar Kulwant Singh,

R/O D.S. Transport, Plot No. 112,

Transport Nagar, Ludhiyana (Punjab)

2. Sardar Kulwant Singh,
S/O Sardar DilJung Singh,
C/O D.S.Transport,Plot No.112,
Transport Nagar, Ludhiyana (Punjab)

3. New India Assurance Company Ltd.
5th Floor, Tower-II, Jeevan Bharti Building,
124 Connaught Place, New Delhi

.....Respondents

Through: Mr.Kanwal Chaudhary, Advocate.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal has been filed by the appellants against the impugned judgment dated 18.09.07 passed by Sh. A.S. Jayachandra, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), KKD, Delhi for enhancement of the compensation amount.

2. In a nutshell, the facts relevant for the purpose of dealing with this appeal are as follows:

3. On 20.11.05, the deceased Sh. Kamal kishore along with his younger brother Chander Mohan were travelling

on motor-cycle from Delhi to Sector-55, Faridabad and when at about 12.55 p.m. reached Canara bank, Town no.1, Faridabad, then a truck bearing no. HR-38G-3162, driven by Respondent no.1 came from behind at a very high speed driven rashly and negligently and hit against the motorcycle of the deceased. Deceased Kamal Kishore died due to the fatal injuries and Chander Mohan received serious injuries.

4. The Tribunal vide impugned judgment, awarded compensation of Rs.3,38,000/- including Rs.30,000/- for the funeral expenses, transportation of body and loss to the estate by applying a multiplier of 11, along with interest @ 7.5% per annum.

5. Not satisfied with the award, the present appeal has been filed by the parents of the deceased, seeking enhancement of the compensation.

6. It has been contended by Learned Counsel for the appellants that the Tribunal erred in assessing the income

of the deceased on the basis of Minimum Wages @ Rs.3,500/- per month whereas, the deceased was actually earning Rs.5,900/- p.m. The Tribunal has failed to consider that Minimum Wages are being revised twice in a year; as such the deceased would have earned much more in near future. No compensation for loss of love and affection and pain and suffering and mental torture on account of sudden and premature death of the deceased were awarded. The Tribunal erred in paying the interest @ 7.5% only on the awarded amount. It ought to have awarded the interest @ 18% p.a. on the awarded amount from the date of the petition till realization.

7. Ld. Counsel also cited ***Daya Arora & Ors. v. Kapur Singh & Anr.***, IV (2005) ACC 313 and ***United India Insurance Co. Ltd. v. Budhi Ram & Ors.***, I (2008) ACC 533 in support of its contentions.

8. Thus, the principal question that arises for determination in this appeal is that “Whether the

compensation awarded by the learned Tribunal is just and fair or not?”

9. It was well established before the Tribunal by the testimony of PW-2, Chander Mohan and affidavit Ex.P-1 given by Raj Kumar, father of the deceased that deceased Kamal Kishore died on 20.11.05 in accident due to rash and negligent driving of the vehicle no. HR38-G-3162. Further the respondents have not led in any evidence to show anything to discredit the negligence attributed. Therefore, the aspect of involvement of the vehicle of the respondents was clearly made out.

10. In arriving at the compensation aforesaid, the learned Tribunal has taken into account the age of the mother and father of the deceased at 50 and 52 years respectively. The deceased was 21 years and he was having good health and privately employed as a salesman with Royal Verma Jewellers (P.) Ltd. The appellants had not produced any document to show the age and income of the deceased

except the Driving Licence and the certificate Ex.PW 1/2 issued by the employer of the deceased

11. Ex. PW1/2 does not disclose the registration particulars under various statutes with record to the establishment of the employer. Moreover, the employer of M/s Royal Verma Jewellers (P) Ltd. where the deceased was employed, has not been examined to prove as to what monthly salary was being paid to the deceased. Admittedly, the primary and best evidence with regard to the income of deceased has not been produced.

12. Thus, in the absence of any other evidence, the Ld. Tribunal had taken the help of Minimum Wages Act to assess the monthly income of the deceased, which is the right approach adopted by it. Thus I do not find any infirmity on the findings of the Tribunal on this issue.

13. Further, I do not find any force in the contention of the learned Counsel for the appellants that the Tribunal has not taken into consideration the future increase in the

income of the deceased. Regarding the future prospects, the same cannot be granted unless there is evidence to this effect on record. There is no evidence on record to prove that the deceased was in a trade where he would have earned more from time to time or he had special merit or qualification or opportunities which would have led to an improvement in his income. Therefore, in view of ***Bijoy Kumar Duggar v. Bidagar Dutta*** AIR 2006 SC 1255, the contention regarding the future prospects is rejected.

14. Another contention raised by the learned counsel for appellants is that no compensation on account of loss of love and affection and on account of pain & suffering and mental torture has been awarded by the Ld. Tribunal. In support of its contention, reliance has been placed upon **Daya Arora & Ors.** (supra) by the appellants.

15. In the grounds of appeal, it has been alleged that the Tribunal ought to have paid one Lac rupees for loss of love & affection, as the appellants are young widow and minor

children who lost their sole bread earner.

16. This plea in the ground of appeal taken was nobody in case, before the Tribunal, because the deceased in the present case was unmarried and the appellants are his parents and as such question of awarding Rs.1,00,000/- for loss of love & affection to young widow and minor children does not arise and the case law cited by the Ld. Counsel for the Appellants on this point is not at all applicable to the facts of the present case.

17. As regards the award of interest @ 7.5% per annum by the Tribunal, in ***Abati Bezbaruah v. Deputy Director General, Geological Survey of India***, (2003) 3 SCC 148, the Apex Court has observed as under;

“The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.”

18. In view of the above decision, I am of the opinion that the award of interest @ 7.5% cannot be considered to be

lower side. I do not find any justification for increasing the same to 18% p.a. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal in awarding interest on the award amount.

19. Keeping in view all the facts and circumstances brought on record, I am of the view that the compensation as awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

20. The present appeal is, therefore, dismissed.

**V. B. GUPTA
(JUDGE)**

**1st May, 2008
ac**