

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO. 535/2002

Judgment delivered on: February 06, 2008

Sh.Hayat Singh

..... Appellant.

Through: Mr.O.P. Mannie, Advocate

versus

Sh.Dev Raj & Ors.

..... Respondents

Through: Mr.S.L. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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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 |

KAILASH GAMBHIR, J. Oral:

By way of present appeal counsel for the appellant seeks to challenge the impugned award whereby amount of Rs. 48,000/- has been awarded in favour of appellant. Brief summary of the facts and the contentions raised by the parties are as under:-

On 24.10.1985 at about 1:30pm, Shri Avtar Singh along with his

son, Shri Hayat Singh and grand daughter Ms. Rekha, boarded the bus bearing registration no. DEP 6900 from Central Secretariat for going towards Rajindra Park, their residence. The said bus reached at the bus stand near Rachna Cinema, Pusa Road and stopped there. When Shri Avtar Singh was in the process of alighting from the bus, the bus driver started the bus with a sudden jerk and in a rash & negligent manner and without giving any warning to him. As a result, Shri Avtar Singh fell down and received fatal injuries. He was rushed to RML Hospital from accident site, where he took his last breath.

Mr. O.P. Mannie, counsel for the appellant contends that the tribunal has deducted Rs. 6,000/- towards the personal expenses of the deceased and has taken financial dependence at Rs. 400/- per month out of the monthly income of the deceased of Rs. 1,000/- per month. The contention of the counsel for the appellant is that the deceased was survived by his son and the deduction on personal expenses should not have exceeded more than $\frac{1}{3}^{\text{rd}}$ as per the Second Schedule of Motor Vehicles Act. Counsel for the appellant also contends that as per the Second Schedule of Motor Vehicles Act, the appropriate multiplier should be 11 in place of 10 as awarded by the tribunal. Counsel for the appellant further contends that tribunal has not taken into consideration grant of any compensation under non-pecuniary damages.

Per contra, Mr. S.L. Gupta, counsel for the respondent contends that no fault can be found with the findings given by the tribunal. Counsel also contends that the tribunal has reasonably taken into account the monthly dependence of the appellant upon the deceased at Rs. 400/- per month, although the appellant being major and an employed person was not financially depending upon his deceased father. Counsel for the respondent contends that no help can be taken from the second Schedule of the Motor Vehicles Act to determine the multiplier in the present case as the accident in the present case occurred prior to the amendment in the Motor Vehicles Act.

I have heard learned counsel for the parties and have perused the records. It is not in dispute that the appellant was not financially dependent upon the deceased. Even in his deposition, nowhere the appellant has disclosed about his alleged financial dependence on his deceased father. The tribunal in para 5 of the main award has taken note of this fact and thereafter reached to the conclusion that monthly dependence of the appellant in such a case cannot be taken to be more than Rs. 400/- per month. I do not find any illegality and infirmity in the said findings of the tribunal. The contention of the counsel for the appellant on this plea is thus, rejected. The multiplier applied in the present case is 10 on the date of the passing of the award. The Second Schedule of the Motor Vehicles Act had already come into effect at the time of passing the

impugned order. But accidents occurring prior to insertion of the structural formula, the judgment of the Apex Court in Susamma Thomas held the field on the issue of multiplier. In any event of the matter, the appellant is not claiming higher multiplier than the upper limit fixed by the Apex Court, therefore, the multiplier of 10 is raised to 11. The tribunal has not awarded any compensation for the loss of love and affection and for funeral. Grant of Rs. 25,000/- towards love and affection and Rs. 5,000/- towards funeral expenses would meet the ends of justice. The differential amount of award shall be paid with up to date interest @ 6% from the date of filing the petition till its realization to the appellant.

With these directions the present appeal is disposed of.

February 06, 2008

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KAILASH GAMBHIR J.