

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App No. 384/2004

Judgment delivered on: January 04,2008

Sh.Munna Prasad Appellant.
Through: Mr. Mohit Gupta, Advocate.

versus

Sh.Hira Lal & Ors. Respondents
Through: Mr. Amit Kumar Pandey for respondent
No.3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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:

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By way of this appeal, the appellant seeks to challenge the impugned award dated 10.03.2004. Primarily, the Tribunal has not correctly assessed the income of the appellant and also the future prospects of the appellant due to his suffering the

permanent disability to the extent of 75%. The appellant is also aggrieved due to the lesser rate of interest awarded by the Tribunal in his favour.

Before advertng to deal with the contentions of the parties, it would be appropriate to give brief facts of the case as under:-

The appellant Shri Munna Prasad, aged about 27 years, met with an accident on 14.09.2001 at about 1.40 p.m near Village Jhetohi, Main Bypass Road, within the jurisdiction of Police Station Kanker Khera, District Meerut. On the unfortunate date of the accident he was travelling in the Canter bearing registration No. DL1LC9438, which was being driven by the driver, Shri Hira Lal in a most rash and negligent manner and at a very high speed while going from Delhi to Muzaffar Nagar. When they reached village Jhetohi, the driver lost control of the Canter and struck against a tree. The appellant sustained grievous injuries and was immediately rushed to Shanti Nursing Home on Sardhana Road, Kanker Khera, Meerut and from there was removed to Guru Tegh Bahadur Hospital, Delhi in a precarious condition. The left leg of the appellant from the knee was amputated. A claim petition was filed on

15.01.2002 and award was made on 10.03.2004.

I have heard learned counsel for the parties at considerable length and have perused the record.

Mr. Mohit Gupta, counsel for the appellant contends that the appellant was working as a helper as well as driver and from both the sources he was drawing a monthly salary of Rs.4,500/- per annum. In support of his income the counsel contends that the photocopy of the driving licence clearly shows that the appellant was in possession of a valid driving licence to drive the heavy motor vehicle. Counsel also contends that in the transport vehicle always there is a second driver and, therefore, the Tribunal ought to have relied on the testimony of the appellant that he was working as a driver as well as a helper in the offending truck. Counsel further contends that the truck owner brought in the witness box became hostile against the appellant due to hostility. Due to this he had to be cross-examined by the appellant. Counsel further contends that the said owner of the truck deliberately did not produce the records and gave a statement contrary to the testimony of the appellant. Counsel further contends that, at least, the Tribunal could have taken the minimum wages as laid down under the Minimum Wages Act so

as to properly assess the income of the appellant who is in possession of a driving licence. On the similar ground the counsel contends that future prospects or increase in the minimum wages should have also been taken into consideration by the Tribunal. Counsel also sought to urge grievance of the appellant on the award of lesser rate of interest, @ 6% per annum which at least should have been 9% per annum.

Per contra counsel for the respondent contends that already Tribunal has granted an excessive amount of compensation in favour of the appellant. The appellant has been awarded a sum of Rs.3,24,000/- towards loss of earning capacity besides an exorbitant amount of Rs.1,50,000/- towards pain and sufferings, besides Rs. 2,00,000/- towards loss of amenities of life or permanent disability. The grant of such higher amounts under the aforesaid heads would show the liberal approach of the Tribunal, the counsel for the respondent contends that even an amount of Rs.30,000/- towards medicines/conveyance and special diet is also on the higher side although the appellant got treatment mainly in the Government Hospital and even his employer had spent an amount of Rs.40,000/- on his treatment.

A perusal of the award shows that appellant had received

serious injuries at the prime of his age i.e. of 27 years on the date of accident and got amputation of his left leg upto the knee joint and as per the disability certificate issued by the GTB Hospital dated 29.11.2002 the disability was opined to be permanent to the extent of 75%. The appellant has claimed his salary of Rs.4,500/- from his employment in two different capacities i.e. one as a helper and the other as a driver. Merely claiming a particular income in the claim petition or in the evidence without their being any supportive evidence cannot be held sufficient for establishing a particular income. A bald statement either of the victim himself or his employer would not be enough to believe the income as alleged by the claimant. In this regard in **Oriental Insurance Co. Ltd. v. Meena Variyal**, **(2007) 5 SCC 428** the Hon'ble Apex Court has observed as under:-

“It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis--vis claim for compensation arising out of an

accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment. "

Merely because the appellant was in possession of a driving licence or was a trained driver would not be enough to determine the income of the appellant as that of a driver. Any person can be in possession of a particular qualification or a particular licence, but necessary evidence has to be adduced in support thereof. In such matters this Court has already taken a view that best course would be to take the help of Minimum Wages Act. The accident in question had taken place on 14.09.2001 and the income of the appellant as a workman as on the date of accident can be taken into consideration for properly assessing the income of the appellant. Under the Minimum Wages Act the income of the semi-skilled workman is relevant in the present case and the same on the date of accident was Rs.2,758/- per month. Therefore, the same income can be taken into account for determining the financial loss to the dependent. This Court has further taken the view that in plethora of judgments where

recourse is taken for assessing the income of a person under the Minimum Wages Act, then in such case increase in the minimum wages should also be taken into consideration. It can be noticed that increase in the Minimum Wages Act takes place every year after taking into account the price index, inflation rate and other economic factors and such increase takes place in order to neutralize the falling power of the rupee. Hence, such an increase cannot be treated at par with the future prospects. The multiplier of 18 has been applied in the present case and, therefore, safely income of the appellant can be assessed after making the above said income to the double of the amount and then taking an average of the same. The same is assessed at Rs.4,137/- per month. It is also a settled legal position that normally deduction of 1/3rd income is made towards personal expenses. The reliance is also placed by counsel for the respondent in the case of **New India Assurance Co. Ltd. vs. Charlie and Another; (2005) 10 SCC 720** merited not without any force. Relevant paras of the same is reproduced as under:-

“4. In support of the appeal, learned counsel for the appellant submitted that the age of the injured was about 37 years and a multiplier of 16 was adopted on the ground that there was permanent disability and, therefore, deprivation of contribution is on the

higher side. Strong reliance is placed on the decisions of this Court in **G.M., Kerala SRTC v. Susamma Thomas and U.P. SRTC v. Trilok Chandra** to contend that the multiplier is on the higher side. It is also submitted that whatever be the earning, a portion of it is spent on personal expenditure and normally $1/3^{\text{rd}}$ deduction is made therefrom. But in the instant case after taking into account the fact that the income of the injured was Rs.18,000 per year, the multiplier of 16 has been applied without making any deduction.

5. In response, learned counsel for the respondent submitted that the injured has been totally crippled and has been almost rendered immobile by 100% disability. Even at the time of discharge he was not in conscious condition. Taking into account this factor the quantum as awarded cannot be said to be on the higher side.

6. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon the circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, $1/3^{\text{rd}}$ deduction has to be made for personal expenditure."

After taking $1/3^{\text{rd}}$ income towards personal expenses the personal loss of dependency would come to Rs.2,758/- per month and multiplying the same with the multiplier of 18 the actual financial loss would come to Rs.5,95,728/-. Along with general damages the total compensation would come out to Rs.9,45,758/-. The impugned award in sum of Rs.7,04,000/- shall

stand enhanced to Rs.9,45,758/- accordingly. I am in agreement with the contention of counsel for the appellant that a lower rate of interest has been awarded by the Tribunal. I am, therefore, inclined to enhance the rate of interest from 6% to 7.5% per annum from the date of filing of the petition till realisation. Counsel appearing for the respondent states that entire amount in terms of the award already stands paid to the appellant which position is not disputed by the appellant. Therefore, the respondent shall now pay the differential amount of Rs.2,41,758/- along with interest which has now been raised from 6% to 7.5% from the date of filing of the petition till realisation.

With these directions the appeal is disposed of.

January 04, 2008
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KAILASH GAMBHIR, J,