

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 49/2004

Judgment delivered on: January 17, 2008

D.T.C. & Anr.

..... Appellants.

Through: Mr. Jyotindra Kumar, Advocate

versus

Shri Surinder Arora & Anr.

.....

Respondents

Through: Mr. Rajeshwar 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:

The present appeal preferred under Section 173 of The Motor Vehicles Act, 1988, arises out of the award dated 14.7.2003 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum of Rs. Rs.8,10,000 along with interest @ 9% p.a. to the claimants from the date of filing of the petition till the date of impugned order.

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

On 2.9.2000, the deceased Shri Sanjiv Arora was going on his two wheeler scooter bearing registration no. DL-53-K-5982, when the offending bus bearing registration no. DL-1P-A-2974 came from behind the scooter at a very fast speed and hit him due to which Shri Sanjiv Arora died.

Mr. Jyotindra Kumar, counsel for the appellant contends that the Tribunal has wrongly taken into

consideration the income of the deceased at Rs.4,500/- p.m. The second contention of the counsel for the appellant is that the Tribunal has also taken into consideration the future prospects of the deceased without there being any material on record to support the grant of the future prospects. The third contention of the counsel for the appellant is that the respondents claimants have claimed a sum of Rs.5 lacs as compensation but the Tribunal has awarded more than 8 lacs along with interest @ 9% p.a. The contention of the counsel for the appellant is that in para 23 of the claim petition, the claimants themselves have disclosed the income of the deceased at Rs.4,000/-p.m. Although contrary to the same in para 6 of the claim petition, figure of Rs.4,500/- has been mentioned. Placing reliance on the testimony of the PW-1, father of the deceased, counsel for the appellant contends that except a bald statement made by him, no material to support the

income of the deceased was produced by the respondents claimants. Counsel for the appellant contends that no person from the office of the employer of the deceased was produced by the respondents so as to prove the factum of employment of the deceased with the Chartered Accountant firm, namely, Mukesh Sharma & Associates, as well as the monthly income from the said company. Counsel for the appellant further contends that no evidence much less any sufficient evidence was placed by the respondents so as to claim the benefit of future prospects of the deceased. In support of his argument counsel for the appellant has placed reliance on the judgment of the Apex Court in **Bijoy Kumar Duggar Vs. Bidya Dhar Dutta & Ors.- (2006) 3 SCC 242** and contends that in the absence of any sufficient or cogent material placed on record, no benefit towards the future prospects can be granted by the courts. Counsel also contends that the Tribunal

should have restricted the award to the claimed amount of Rs. 5 lacs and should not have awarded more than the amount as claimed by the respondents claimants themselves.

Per contra, Mr. Rajeshwar Gupta counsel for the respondents refutes the contentions raised by the counsel for the appellant. Counsel for the respondents contends that the Tribunal has granted the compensation amount after considering the facts and circumstances of the present case and the compensation awarded by the Tribunal is absolutely just, fair and adequate. Counsel for the respondents further contends that the father of the deceased who entered into the witness box as PW-1 had duly proved the factum of the employment of the deceased with the chartered accountant firm and his appointment letter wherein the salary of the deceased was disclosed at Rs.4,500/-. Counsel for the respondent further contends that the

Tribunal is not bound to strictly go by the amount as claimed in the claim petition as the compensation amount to be awarded by the Tribunal has to be just and fair and therefore, the same in the given facts of the case can be increased from the claimed amount of the compensation. On the aspect of the future prospects, the contention of the counsel for the respondent is that taking into consideration the educational qualification of the deceased he was entitled to the benefit of the future prospects, and therefore, no infirmity can be found in the findings of the Tribunal on this aspect.

I have heard learned counsel for the parties and have also perused the record.

Perusal of the award shows that the Tribunal has relied upon the testimony of the father of the deceased PW-1 who had proved on record the income of the deceased at Rs. 4,500/- by proving the certificate as Ex.PW1/7, issued by the said chartered accountant

firm. The trial court record further shows that the deceased Shri Sanjiv Arora was a graduate from the University of Delhi and did his diploma in computer course from APTECH Computer Education. It is no more res integra that for proving the income of the deceased, sufficient material has to be placed on record. It is equally true that for claiming the future prospects also, cogent material and reliable evidence has to be placed and proved by the claimants and mere assertions being made in this regard would not suffice to either claim a particular income or to claim the benefit of future prospects. The Apex Court in Bijoy Kumar Duggar's case has held as under:

"The mere assertion of the claimants that the deceased would have earned more than Rs 8000 to Rs 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where

he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.”

The best course to prove the income of the deceased would have been to summon the witness from the office of employer but no such witness was produced or sought to be produced by the respondents claimants before the Tribunal. Similarly, the claimants respondents did not place any material on record to show as to how the deceased would have been entitled to future prospects. In the absence of such material, the only course left with the Tribunal was to take the help of the Minimum Wages Act. The deceased was admittedly a graduate and a diploma holder in computer education and as per the Minimum Wages Act, the minimum wages

payable to a graduate in the year 2000 were Rs.3284. The monthly income of the deceased is thus assessed at the said amount of Rs. 3284/-. Once the income of the deceased is determined under the Minimum Wages Act, then increase in the Minimum Wages can also be taken into consideration as the minimum wages are revised by the Government every year so as to meet the increase in the price index, inflationary trends and other economic factors. A perusal of the minimum wages notified under the Minimum Wages Act shows that to neutralize increase in inflation and cost of living, minimum wages virtually increase more than double within a span of about 10 years. For example, minimum wages for a graduate in the year 1991 were Rs. 1215/- but in the year 2000, the same got increased to Rs.3284.. Multiplier of 13 has been applied in the present case and therefore, safely the income of the deceased would have at least doubled within the said period. The said income

of Rs.3284/- is thus doubled to Rs.6568/- and taking the average of the same it would come to Rs.4926/- p.m. or Rs.59,112/- p.a. and multiplying the said income with the multiplier of 13, the total income of the deceased would come to Rs.7,68,456 and after making 1/3rd deductions the loss of dependency would come to Rs.5,12,304/-. Since by taking into account the Minimum Wages Act, compensation amount swings further, therefore, it would be appropriate if the findings of the Tribunal granting an amount of Rs.8,10,000/- towards loss of financial dependency is not interfered with in the interest of justice. As regards the contention of the appellant that the Tribunal could not have granted the compensation amount in excess of what has been claimed by the respondents claimants, I do not find myself in agreement with the argument of the counsel for the appellant. It is not the amount mentioned in the claim petition which would determine the basis for

granting the compensation. The Tribunal has to take into consideration Section 168 of the Motor Vehicles Act which mandates the grant of just compensation after holding an enquiry into the claim and after giving the parties due opportunity. No amount as claimed in the claim petition can restrict the Tribunal from awarding just and fair compensation.

In the light of the above discussion, there is no merit in the appeal.

Dismissed.

January 17, 2008

KAILASH GAMBHIR, J

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