

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APP No. 84/2008

Judgment delivered on: February 21, 2008

Shmt Bhukani Devi Appellant.
Through: Mr. S.N. Parashar, Adv.

versus

Shri Hazari Yadav & Ors. Respondents
Through: Mr. S.S. Yadav for Mr. S.L.
Gupta, Advocatefor 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:

*

By way of the present appeal, the appellant seeks to challenge the impugned award and has claimed

enhancement of compensation amount over and above the amount of Rs.3,75,000/- as awarded by the Tribunal.

Brief facts of the case are as under:

On 17.10.2005 at about 11:45 PM deceased Sh. Hardev Ram who was labourer, was helping the driver of the offending vehicle to reverse it. Due to rash and negligent driving of the driver of the truck bearing Registration No. HR-46-C-3747 i.e. respondent No.1, the offending vehicle ran over the deceased who had died at the accident spot itself.

Mr. S.N. Parashar, counsel appearing for the appellant has raised three contentions to assail the findings of the Tribunal. The first contention raised by the counsel for the appellant is that the Tribunal has not taken into account the future increase in the minimum wages. The second contention raised by the counsel for the appellant is that appropriate multiplier as laid down in the 2nd Schedule of the Motor Vehicles Act considering age of the deceased has not been applied by the Tribunal. The third contention is that the deceased was survived by a large family

comprising six members, but the Tribunal has deducted 1/3rd amount of income towards the personal expenses of the deceased.

Mr. S.S. Yadav, Advocate who appears for Mr. S.L. Gupta Advocate for respondent No.3 the National Insurance Co. Ltd., submits that the Tribunal has granted just and fair compensation in the facts and circumstances of the case and therefore, the findings given by the Tribunal are correct and does not require any interference by this Court.

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

Respondent Nos. 1 and 2 are the owner and driver of the offending vehicle. Since in the present appeal, enhancement in compensation has been claimed against the insurance company, therefore, I do not feel any necessity for directing service of the appeal on respondent Nos. 1 and 2. Moreover, respondent Nos. 1 and 2 did not contest the claim petition before the Tribunal and were proceeded ex parte.

Perusal of the award shows that the Tribunal has assessed the income of the deceased at Rs. 3200/- as per the Minimum Wages which were applicable on the relevant date of accident. It is no more res integra that wherever the income of the deceased is assessed under the Minimum Wages Act then increase in the minimum wages is also required to be taken into consideration. It has been noticed after perusing the table of increase in the Minimum Wages Act, that the said wages become double within a period of about 10 years. And therefore, the same increase can be considered in the facts and circumstances of the present case. The deceased was of the age of 40 years. But no evidence has been placed on record by the appellant so as to disclose the age of the widow and all the children. In any case of the matter, the multiplier is to be adopted on the basis of the age of the dependants and that of the deceased, whichever is higher. Since the deceased has left behind his widow and children, therefore, it can be safely assumed that the age of the deceased could not have been less than the age of the family members left behind by him. The age of the deceased has been proved on record, which

is 40 years and appropriate multiplier under the IIInd Schedule of the Motor Vehicles Act between 40 to 45 years is 15. The multiplier as has been applied by the Tribunal is thus raised to 15. While taking into account the increase in the minimum wages, the income of the deceased would become double i.e., Rs. 6400/- and taking average of the same, the income would be Rs. 4800/- p.m. or 57,600/- p.a. and after multiplying the multiplier of 15 total loss of financial dependents, would come to Rs. 8,64,000/-

Perusal of record shows that the deceased was left by his widow and five minor children, and therefore, deduction of $\frac{1}{3}$ rd amount towards personal expenses as allowed by the Tribunal would be unreasonable. Considering large family of the deceased, he would not have been spending $\frac{1}{3}$ rd expenses towards his own maintenance and therefore the said $\frac{1}{3}$ rd expenses as allowed by the Tribunal are modified to $\frac{1}{5}$ th expenses towards the personal use of the deceased. After making $\frac{1}{5}$ th deduction, the total loss of dependency would come to

Rs. 6,91,200/- The impugned award is, thus, modified from Rs. 3,75,000/- to Rs. 7,31,200/-.

The Tribunal has also granted 6% rate of interest which is also on the lower side. Same is also raised from 6% to 7.5% per annum. The differential amount now shall be paid by the respondent insurance company with an interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

In view of the above discussion, the appeal is disposed of.

February 21, 2008
'raj'

KAILASH GAMBHIR, J