

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **MAC APP. No. 152/2008**

Judgment delivered on: March 10, 2008

Smt. Ganga Devi And Ors. Appellants

Through: Mr. S.N. Parashar, Adv.

versus

Sh. Jagan Nath And Ors. Respondents

Through: Mr. Kanwal Chaudhary,
Adv. 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?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

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The present appeal arises out of the award dated 7/11/2007 of the Motor Accident Claims Tribunal

whereby the Tribunal awarded a sum of Rs. 6,05,968 along with interest @ 7.5% per annum to the claimants.

The conspectus of facts of the case are as follows:

On 02.11.2006 at about 01:45 pm Shri Dharampal was pulling the cycle rickshaw and going towards Paschim Puri. When he reached at T-point New Slum flats, Paschim Puri and turned left, at that time he was on foot and pulling the cycle rickshaw, in the mean time, a Tampoo Tata 709 bearing registration no. DL-1LC-9538 driven by Shri Jaggan Nath came from the side of New Slum Flats, Paschim Puri Delhi in rash and negligent manner at uncontrolled high speed without observing traffic norms and without any indication, while turning right side hit to the cycle rickshaw from the front side. Due to the forceful impact deceased fell down on the road and died on the spot.

A claim petition was filed on 03/01/2007 and an award was made on 7/11/2007. Aggrieved with the said

award enhancement is claimed by way of the present appeal.

Sh. S.N. Prashar counsel for the appellants has assailed the said award on quantum of compensation. Counsel for the appellants contends that the tribunal erred in making the deduction to the tune of 1/4th of the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his widow, two minor children and aged parents. The counsel also submits that the tribunal has erroneously applied the multiplier of 14 while computing compensation when according to the facts and circumstances of the case multiplier of 18 should have been applied. The counsel further submits that the tribunal has erred in awarding compensation towards loss of consortium at a meagre sum of Rs. 15,000/-.

The matter can be taken up for disposal at the admission stage itself. Therefore, no notice is issued to the respondents no. 1&2.

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

As regards the contention of the counsel for the appellant that the 1/4th deduction made by the tribunal are on the higher side as the deceased is survived by his widow wife, two minor children and aged parents, I feel that the same needs no interference. The widow was aged 26 years, father aged 70 years, mother aged 65 years and minor children aged 5 years and 2 years, at the time of the accident. Keeping in view the facts of the instant case, the 1/4th deduction has been correctly made and therefore, I am not inclined to interfere with the award on this ground.

With regard to the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 14 in the facts and circumstances of the case, I feel that the tribunal has committed error. On perusal of the award it comes into light that the learned tribunal applied the multiplier of 14 on the basis of the judgments of the Apex Court in UPSRTC vs. Krishna Bala & Ors. – (2006) 6 SCC 249; Tamil Nadu State Transport Corporation

Ltd. Vs. S. Rajapriya & Ors. – (2005) 6 SCC 236; Managing Director, TNSTC Ltd. v. K.I. Bindu,(2005) 8 SCC 473 and New India Assurance Co. Ltd. v. Kalpana,(2007) 3 SCC 538.

In plethora of cases the Hon'ble Apex Court has held that the II Schedule can be taken as a guide in computing compensation and any deviation therefrom, should take place only on the peculiar facts and circumstances of the case. In this regard in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India,(2003) 3 SCC 148** the Hon'ble Apex Court has observed as under:

“11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.”

The facts of the abovementioned judgments of the Apex Court are not same as that of the present case. In **Krishna Bala's case** (Supra), the multiplier of 22 was reduced to 13, as the same was not in consonance with the II Schedule; in **S. Rajapriya's case** (Supra), **K.I. Bindu's case** (Supra) and **Smt. Kalpana's case** (Supra), also the facts were different. At the time of the accident, the deceased was aged 30 years and his widow was aged 26 years, father aged 70 years, mother aged 65 years and minor daughters aged 5 years and 2 years, respectively. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 18 should have been applied. Therefore, in the facts of the instant case the multiplier of 18 shall be applicable.

On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of consortium, I feel that the compensation towards loss of consortium is on the lower side. The deceased was

of 30 years of age & his widow was 26 years of age at the time of the accident. No amount of compensation can fill the void brought into the life of the widow due to the death of her husband at such a young age, grant of Rs. 15,000/- for loss of consortium appear to be quite a meagre amount and therefore, the same stands enhanced to Rs. 50,000/-.

In view of the above discussion, the total compensation is enhanced and the differential amount with interest @ 7.5% per annum from the date of filing of the petition till realisation shall be paid to the appellant by the respondent no.3.

With the above direction, the present appeal is remitted back to the tribunal for apportionment of the enhanced amount of compensation in favour of the appellants.

March 10, 2008
'raj'

KAILASH GAMBHIR, J