

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 146/2008

Judgment delivered on: March 07, 2008

Smt. Chameli & Anr. Appellant.
Through: Mr. S.N.Parashar, Advocate

Versus

Shri Roop Chand & Anr. Respondents
Through: Mr.A.K. Pandey, proxy counsel
for the respondent.

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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The present appeal arises out of the award dated 18.10.2007 wherein the tribunal has awarded a sum of Rs.

4,33,607/- as compensation along with interest @7% per annum. The appellants now seek enhancement in the compensation amount over and above the said award amount.

Respondent no.1 is the driver and owner of the offending vehicle. The claim petition was mainly contested by the insurance company and the insurance company has been directed by the Tribunal to satisfy the award. The present appeal is also being contested by the insurance company. Mr. Amit Kumar Pandey, Advocate appearing for Mr. Pradeep Gaur, designated counsel for National Insurance Co.Ltd., submits that he has no objection if the appeal is taken up for final disposal.

Since the vehicle was duly insured with the respondent no.2 insurance company and award has been passed only against the insurance company, therefore, I do not feel any necessity of directing notice on respondent no.1, as service of respondent no.1 would unnecessarily

delay the disposal of the present appeal. Notice on respondent no. 1 is accordingly dispensed with.

The appeal is being taken up for final disposal at the admission stage, itself.

To deal with the contentions of the parties, the brief facts of the case inter-alia are that on 22.6.2005 at about 11.00 A.M. the deceased Shri Mukhram was plying his rickshaw and when he reached at Kodi Colony, near Toll Tax, Seemapuri, Delhi, a truck bearing registration no. HR-38-BG-6926 being driven by its driver in a very rash and negligent manner came from behind and hit the rickshaw, resulting into the death of Shri Mukhram.

Counsel for the appellant has raised four contentions in support of the present appeal. Mr. S.N. Parashar, counsel for the appellant submits that the deceased was a rickshaw puller and although, the appellants had claimed income of the deceased at

Rs.4500/- per month, but since failed to prove the said income, therefore, the Tribunal has taken the recourse of Minimum Wages Act to assess the income of the deceased in the category of unskilled workers. The contention of the counsel for the appellant is that although the appellants have no objection as far as assessment of income under the Minimum Wages Act is concerned but then necessarily future increase under the Minimum Wages should have been considered by the Tribunal. Counsel for the appellant thus sought to urge that the appellants are entitled to the said statutory increase which this Court has also been granting in other matters. Counsel for the appellant also contends that without taking into consideration that the deceased was survived by his parents and wife, the Tribunal has deducted 1/3rd of the income towards his personal expenses. The next contention of the counsel for the appellant is that a meager amount of Rs.15,000/- has been granted by the

Tribunal towards loss of consortium and loss of love and affection. Counsel also contends that lower rate of interest i.e., 7% p.a. has been awarded by the Tribunal.

On the other hand, Mr. Amit Kumar Pandey, counsel for the respondent contends that the award passed by the Tribunal is fair, just and reasonable and the same does not warrant any interference by this Court while exercising appellate jurisdiction.

Mr. Pandey contends that the Tribunal while placing reliance on the judgment of this Court in **Ram Singh & Ors. Vs. Oriental Insurance Co.Ltd., LPA No. 649/2002, dated 23.8.2005** and judgment of the Apex Court in **Bijoy Kumar Dugar Vs. Bidyadhar Dutta & Ors. II (2006) ACC 36** came to the conclusion that the appellants are not entitled for any future increase. Counsel for the respondents contends that even on other aspects the award cannot be termed as unreasonable and unrealistic.

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

Persistently, this Court has taken a view that if income of the person is assessed under the Minimum Wages Act, then increase under the Minimum Wages Act can also be considered as increase under the minimum wages cannot be equated with future prospects for which the parameters are entirely different. A perusal of the minimum wages as notified periodically under the Minimum Wages Act shows that to neutralize increase in inflation and cost of living, minimum wages virtually increases more than double within a span of 10 years. Minimum wages of skilled labourers in the year 1980 were Rs.320/- p.m. and same rose to Rs.1,083/- p.m. in the year 1990, meaning thereby, that there has been an increase of nearly 238% in the minimum wages from year 1980 to 1990. Thus, it could be safely assumed that the income of the deceased as assessed by the Tribunal at Rs.3045/-

would have become doubled in the next 10 years and taking the average of the same, the monthly income of the deceased would come to Rs. 4,567.50.

There is no challenge to the multiplier as the Tribunal has rightly applied the multiplier of 17 and taking into account the said multiplier of 17, financial loss of dependency would come to Rs. 6,21,180/- after deducting $\frac{1}{3}$ rd of the income towards personal expenses of the deceased. This court is not inclined to interfere in the said deduction of $\frac{1}{3}$ rd as the deceased was survived by his aged parents and young widow. However, with regard to the award of Rs.15,000/- towards loss of consortium and loss of love and affection, this court is of the view that the said compensation is quite on the lower side. The deceased was 25 years old at the relevant time of the accident and therefore, the widow left behind by him must be of lower age than of 25 years. An amount of Rs.50,000/- is awarded towards the loss of consortium in favour of the

widow and separate amount of Rs.20,000/- is awarded towards loss of love and affection. The rate of interest is also enhanced from 7% p.a. to 7.5% p.a.

Let differential amount be paid by the respondent to the appellants with up-to-date interest @7.5% p.a., from the date of filing of the petition till realization.

With these directions, the appeal stands disposed of.

March 07, 2008

KAILASH GAMBHIR J.

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