

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **MAC APP. No. 149/2008**

Judgment delivered on: March 10, 2008

Sh.Mahender Kumar And Ors. Appellants

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

versus

Sh. Ravi Shankar And Ors. Respondents

Through: Mr. Kanwal Chaudhary, Adv

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:

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By way of the present appeal, the appellants seek to challenge the impugned award dated 30.11.2007 so as to claim enhancement in the compensation amount over and

above the amount of Rs.6,78,400/- awarded by the Tribunal inclusive of interim compensation. The present appeal filed by the appellants can be disposed of at the stage of admission itself.

Respondent No.3 insurer of the offending vehicle is being duly represented by Mr. Kanwal Chaudhary Advocate who is the designated counsel of the respondent Insurance Company. There is no dispute that the offending vehicle is duly insured with respondent No.3 and being the insurer of the offending vehicle, respondent No. 3 alone is required to pay compensation amount being indemnifier of the insured.

Respondent Nos. 1 and 2 are the driver and owners of the offending vehicle and they did not contest the case before the Tribunal mainly on the ground that the offending vehicle is duly insured with respondent No.3 insurance company. I, therefore, do not feel any necessity of directing notices of the present appeal on respondent Nos. 1 and 2 as the service of notice upon respondent Nos. 1 and 2 would be sheer waste of time and would unnecessarily cause delay in the disposal of the present

appeal. Notice on respondent Nos. 1 and 2 is accordingly dispensed with. Respondent No.4 is the widow of the deceased late Sh. Ashok Kumar and the said widow before the Tribunal had foregone her claim for compensation as she got remarried during the pendency of the claim petition before the Tribunal. The widow herself made statement before the Tribunal on 9.1.2007 to this effect. In view of the relinquishment of the claim by respondent No.4, there is no need to direct service of present appeal on respondent No.4 as well. Notice on respondent No.4 is also dispensed with.

Brief facts of the case are that on 26.8.03 at about 8:10 a.m. the deceased Ashok Kumar was going to his office at Mayapuri, Delhi, on his scooter along with his sister-in-law who was a pillion rider. When he reached near Nayyar Hospital a bus bearing Registration No. DL-1P-5996 driven by respondent No.1 in a rash and negligent manner at uncontrolled high speed without observing traffic norms came from the back side and hit the scooter. Due to the forceful impact deceased fell down on the road

and he sustained serious/grievous injuries. The deceased succumbed to the injuries sustained in the accident.

Mr. S.N. Parashar, counsel appearing for the appellant has mainly raised two grounds so as to claim enhancement in compensation. The first ground urged by the counsel for the appellant is that the Tribunal has wrongly deducted $\frac{1}{2}$ of the income towards personal expenses of the deceased although the deceased is survived by his widow, parents and two sisters. In support of his argument, counsel for the appellant has placed reliance on the judgment of the Apex Court in **Fakeerappa And Anr vs. Karnataka Cement Pipe Factory And Ors** reported in I (2004) ACC 494 (SC). Counsel contends that in similar facts, the Court allowed $\frac{1}{3}$ rd deduction of income towards personal expenses. Mr. Parashar further submits that even this Court has been allowing the same deduction of $\frac{1}{3}$ rd in such like cases.

The second grievance raised by the counsel for the appellant that the Tribunal has not applied the correct

multiplier as laid down in the 2nd Schedule of the Motor Vehicles Act.

The contention of counsel for the appellant is that taking in view the average age of the parents which comes to 44, the appropriate multiplier in the 2nd Schedule of the Motor Vehicles Act is 15 and not 11 as applied by the Tribunal.

Mr. Kanwal Chaudhary, counsel appearing for the insurance company on the other hand contends that the deceased is survived only by his parents. The widow has already remarried and the sisters cannot be considered to be financial dependents upon their brother. Counsel, thus, contends that half deduction of the income towards personal expenses as determined by the Tribunal is correct. With regard to the other contention raised by the counsel for the appellant on the aspect of multiplier, Mr. Kanwal Chaudhary counsel contends that the Tribunal has made reference to various decisions of the Apex Court and then has reduced the multiplier from 15 to 11 which as per the judgment of the Tribunal is most appropriate and

keeping in view the facts of the case as well as the law laid down by the Apex Court. Mr. Kanwal Chaudhary, thus, contends that the amount which is to be granted in favour of the dependents has to be just, fair and reasonable but in any case cannot be excessive so as to satisfy the greed of the claimants.

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

A young boy of 22 years of age lost his life in an accident leaving behind his young widow and his parents and two sisters. The parents of the deceased were also of 47 and 42 years of age. The Tribunal has taken into consideration deduction of half of the income towards personal expenses on the ground that the deceased was married at the time of accident, and therefore, the married person at least would have contributed half of the expenses to his family and rest on the parents as well as unmarried sisters. It is an undisputed position that two sisters of the deceased were still unmarried and the deceased was also contributing not only towards his parents but towards his

unmarried sisters as well. After considering the aforesaid facts of the Apex Court judgment in **Fakeerappa's** case (Supra), this Court is of the view that 1/3rd of the income towards personal expenses would be more appropriate than deduction of half of the income towards personal expenses as taken by the Tribunal. Deductions are, thus, allowed to the extent of 1/3rd of the income towards personal expenses and not ½ as held by the Tribunal.

With regard to the other issue raised by the appellant that the Tribunal has not applied correct multiplier in accordance with the IInd Schedule of the Motor Vehicles Act, this Court is of the view that the structural formula laid down in the IInd Schedule of the Motor Vehicles Act, should act as guide although not as an absolute rule. The Apex Court in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148**, has held that for any deviation from the said structural formula, the Tribunal must advance some reasons justifying such deviation. The relevant para of said judgment is reproduced below:

“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.”

As rightly contended by Mr. Kanwal Chaudhary that reference has been made to the various Apex Court decisions wherein multiplier has been reduced as per IInd Schedule to a lower multiplier, but simply on the basis of such cases where multiplier has been reduced by the Apex Court, where there is no similarity with the facts of present case, this Court is not inclined to accept the rationale given by the Tribunal. An award of Rs.6,00,000/- has been granted by the Tribunal and considering the fact that a life has been lost right at the threshold of his youth leaving behind his widow, parents and unmarried sisters. I, therefore, feel that the multiplier of 15 as laid down in the

IInd Schedule of the Motor Vehicles Act need no deviation. Accordingly, multiplier of 11 as applied by the Tribunal is enhanced to multiplier of 15 in accordance with IInd Schedule of the Motor Vehicles Act.

In view of the above discussion, the impugned award is modified to the extent of applying multiplier of 15 in place of 11 and deduction of 1/3rd of the income of deceased towards personal expenses is allowed from half as laid by the Tribunal.

The differential amount shall be paid along with interest @ 7.5% per annum.

With these directions, the present appeal is disposed of.

March 10, 2008
'raj'

KAILASH GAMBHIR, J