

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 509/2007

Judgment delivered on: 26.02.2008

Smt. Bimla & Anr. Appellants.
Through: Mr. Manish Mainie, Adv.

versus

Shri Narender & Ors. Respondents
Through: Mr. Pradeep Gaur, Adv. for R-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:

1. By way of present appeal the appellant seeks to challenge the impugned Award dated 13.4.2007 whereby an amount of Rs. 3,30,680/- has been awarded in favour of the appellants.
2. Brief summary of the facts of the case are that on 5.2.2006 at about 9:45 pm, Ms. Shagun Singh (now

deceased) along with her cousin Sh. Yaduvender Singh was travelling on motorcycle as a pillion rider and received fatal injuries when hit from behind by a bus bearing Registration No. DL-1PB-5602. A criminal case vide FIR No.51/2006, under Section 279/304-A IPC was registered at P.S. I.P. Estate against Sh. Narender, driver of the offending bus.

3. Mr. Manish Mannie, counsel appearing for the appellants contends that the Tribunal has not correctly assessed the income of the deceased. The contention of the counsel for the appellants is that the deceased was working as Customer Care Executive with M/s Chawla Electronics, Daryaganj, Delhi and was drawing a salary of Rs. 6,000/- per month, but the said salary was not accepted by the Tribunal, although the appellants had examined the Accountant of the said firm, who has proved the salary certificate of the deceased on record as Exhibit PW-3/C. Counsel further contends that the testimony of the said witness has been disbelieved by the Tribunal simply on account of the fact that

the said witness did not produce the appointment letter, the attendance record of the deceased and also the salary register. The contention of the counsel for the appellants is that, being a small firm the employer M/s Chawla Electronics was not maintaining all such records and, therefore, the Tribunal has committed grave error in not accepting the income of the deceased as duly proved on record by the independent statement of the Accountant of the employer firm. The appellants are also aggrieved by the fact that the Tribunal has not properly taken into account the future increase and has erred in wrongly assessing the increased income from Rs. 47,820/- per annum to Rs. 51,000/- per annum and then taking the mean of the same. The contention of the counsel for the appellants is that once the Tribunal has assessed the income of the deceased under the Minimum Wages Act, then as per the settled legal position, the income was required to be doubled then average of the same should have been taken to determine the financial

loss of the dependents. The contention of the counsel for the appellants is that this Court has already taken a view that the income under the Minimum Wages Act gets doubled within a period of 10 years, therefore, safely the income of Rs. 3720/- per month as assessed by the Tribunal under the Minimum Wages Act should have been first doubled and then the average of the same should have been taken into consideration by the Tribunal. Counsel for the appellant also sought to urge that the deceased was a bright student and had scored about 72.5% in her CBSE exams and students with such qualification are easily taken into employment by various BPOs on a handsome salary.

4. The appellants are also aggrieved that the Tribunal has not applied the correct multiplier as laid down in the Second Schedule of the Motor Vehicles Act. The contention of the counsel for the appellants is that without giving any reasons, the Tribunal has deviated from the Second Schedule and has applied multiplier of 11 in place of 15. The other contention

as raised by the counsel for the appellants is that the Tribunal has not granted adequate compensation towards the loss of love and affection. Counsel for the appellant has placed reliance on the judgment of this Court reported in **Shyam Narayan vs Kitty Tours Travels & Ors IV (2005) ACC 1**, wherein a sum of Rs. 50,000/- was awarded on account of loss of company of child, pain and suffering, suffered by the parents as a result of untimely death of child. Counsel for the appellant also assails the rate of interest @ 7.5% p.a. as awarded by the Tribunal and sought enhancement of the same @18% p.a.

5. Per contra Mr. Pradeep Gaur, counsel appearing for the respondent insurance company vehemently refutes the said submission made by the counsel for the appellants. Mr. Pradeep Gaur submitted that the Tribunal has granted fair, just and reasonable compensation in favour of the appellants and it is only due to greed of the appellants that the present appeal claiming enhancement in the compensation

amount has been filed by the appellants. Counsel for the respondent sought to urge that once the Tribunal has arrived at a finding that the salary certificate as filed by the appellant was procured one, the said circumstance was enough in itself to totally disbelieve that the deceased was in private service with the said firm. The contention of the counsel for the respondent that the deceased was admittedly of 18 years of age at the relevant time of the accident and the salary certificate was held to be procured one and, therefore, in such like cases at best the notional income @ Rs. 15,000/- per annum as laid down in the Second Schedule of the Act should have been the safest course for the Tribunal to have applied instead of resorting to the Minimum Wages Act for correctly assessing the income of any child, who was not in any job. Expanding his arguments further counsel for the respondent insurance company contended that already the Tribunal has adopted a very liberal approach and not only the income of the deceased

was assessed under the Minimum Wages Act, but the increase has also been considered by the Tribunal, and therefore, the appellants are not entitled for any further enhancement in the compensation amount. On the grant of multiplier of 15. Mr. Pradeep Gaur counsel contended that once the Tribunal has already granted a higher compensation in favour of the dependent members then as per the view taken by the Supreme Court in similar matters the multiplier correspondently gets reduced than the one as laid down in Second Schedule of the Motor Vehicles Act. The counsel thus contends that no infirmity can be found with the findings of the Tribunal taking into consideration the multiplier of 11 keeping in view the facts and circumstances of the case. Counsel also sought to justify the award of Rs. 10,000/- towards loss of love and affection as the deceased is survived only by her parents.

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

7. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.
8. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.
9. In the instant case, the appellants claimants had examined Sh. Pradeep Goel, PW3, who proved Ex. PW-3/C the salary certificate of the deceased, Ms. Shagun Singh. The said witness was working as an Accountant with Chawla Electronics, Daryaganj. He deposed that the deceased was working with Chawla Electronics and was drawing a salary of Rs. 6,000/- per month. He further deposed that no appointment letter was issued to the deceased and he did not bring the salary register, with him. He further stated in his deposition that no attendance

register was being maintained at the said shop. On perusal of the award it comes in to light that the tribunal assessed the income of the deceased as per the Minimum rates of wages notified under the Minimum Wages Act. The salary certificate of the deceased was not duly proved thus, the tribunal committed no error in assessing the income of the deceased in accordance with the wages notified in the Minimum Wages Act. On perusal of the record it comes into light that the deceased was a secondary school passed and thus, the tribunal rightly assessed the income as that of a matriculate.

10. However, it has been the consistent view of this court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. A perusal of

the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

11. Therefore, the tribunal erred in not considering increase in minimum wages, while assessing the income of the deceased and same should be considered while computing compensation towards loss of dependency.

12. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 11 in the facts and circumstances of the case, I feel that the tribunal has committed no error. In the instant case, the deceased was of 18 years of age and the appellant father of the deceased was of 51 years of age at the time of the accident, in this regard the approach of the Apex Court is consistent that the selection of particular multiplier to a large extent depends upon the age of

the deceased and the age of the dependants, whichever is higher. In this regard, the Apex Court in **New India Assurance Co. Ltd. v. Kalpana**, (2007) 3 SCC 538 has observed as under:-

“7. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

13. In view of the above discussion, the tribunal committed no error in applying the multiplier of 11 in the facts of the present case.
14. As regards the contention of the counsel for the appellants that the tribunal erred in not allowing adequate compensation towards loss of love and

affection, pain and sufferings and loss of company of child. I feel that Rs. 10,000/- awarded by the tribunal towards loss of love and affection is insufficient and the same is enhanced to Rs. 20,000/-. Compensation payment towards shock, mental torture and agony suffered by the appellants on account of demise of their daughter is neither a head for grant of compensation under the IIInd Schedule nor same has been awarded by Courts and Tribunals so far and hence, no compensation in this regard is made to the appellants for shock, mental torture and agony. In this regard in **N.Sivammal Vs. Pandian Roadways Corpn., (1985) 1 SCC 18**, the Hon'ble Apex Court observed as under:

“4. Thereafter, the High Court proceeded meticulously to examine every item of compensation included in the award. The High Court held that award of Rs 5000 under the head mental agony suffered by the claimants as a result of the death of the deceased cannot legally be sustained. This is only the different way looking at the same thing which is legally permissible. Muthukrishnan lived for 19 days since the accident and he was throughout under a shadow of death. He

had suffered severe injuries. He must have suffered continuous pain and compensation was admissible for pain and suffering, suffered by the deceased. Therefore, the amount of Rs 5000 which the High Court held inadmissible, is legitimately admissible under another head and therefore by changing the head we restore the amount of Rs 5000 awarded by the Tribunal.”

15. In the light of the above discussion, I am not inclined on awarding compensation towards shock, mental torture and agony suffered by the claimants on account of death of their child.
16. Lastly, the counsel for the appellant has also sought enhancement in the rate of interest from 7.5% to 18%. Section 171 of the Motor Vehicles Act empowers the Tribunal to award simple interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. Section 171 of the Motor Vehicles Act is reproduced as under:-

“171. Award of interest where any claim is allowed- Where any Claims Tribunal allows a claim for compensation made under this Act,

such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

17. It would be evident from the said provision that no rate of interest has been fixed and, therefore , varying rates of interest are being awarded by various Tribunals. Award of interest is compensation for forbearance or detention of money and that interest is being awarded to a party on being kept out of the money, which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claims cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matters. In this regard in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India, (2003) 3 SCC 148**, the Hon'ble Apex Court has given following observations:

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

18. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same, as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money, which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity.

Neither Section 34 CPC nor Section 4-A (3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

18. As on the date of the decision of the present case, the rate of interest on the fixed deposit was 7.5%, therefore, the same is held to be correct rate of interest payable to the claimants in the present case on the compensation awarded from the date of filing of their application till realisation. Thus, the award requires no interference in this regard.
19. In view of the above discussion, the total compensation is enhanced to Rs. 5,31,040/- from Rs. 3,30,680/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants, who will share the compensation in equal proportion, by the respondent no.3.

20. With these modifications and directions, the present appeal is disposed of.

February 26, 2008
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KAILASH GAMBHIR J.