

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APP No. 518/2007

Judgment delivered on: 27.02.2008

Kanta Rani & Anr. Appellant.

Through: Mr. Mannie, Adv.

versus

Pawan Kumar Mittal & Anr. Respondents

Through: Mr. S.L. Gupta, 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 appellant seeks to challenge the impugned award dated 23.05.2007 so as to claim enhancement in the compensation amount over and above the amount of Rs. 1,74,012/- as awarded by the Tribunal. Brief summary of the facts to deal with contentions of the parties are as under:-

On 19.07.2006 at about 05:30am, an accident took place involving Tempo No. DL-1LB-9723, resulting into causing fatal injuries to Pramod Dhall @ Tony (now deceased). The deceased was aged about 26 years and he was having good health. He was doing private service as Helper and was earning Rs. 3300/- p.m. at the time of accident.

The main grievance of the appellant in the present appeal is that the tribunal has not granted any future prospects although, the income of the deceased was assessed under the Minimum Wages Act. The appellant is also aggrieved on account of the fact that $\frac{2}{3}$ rd of the income of the deceased has been taken into consideration towards personal expenses, although, under the Second Schedule of the Minimum Wages Act, only $\frac{1}{3}$ rd of the income can be deducted out of the personal expenses. No amount has been awarded for loss of love and affection is another grievance of the appellant.

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

The present petition was filed under Section 163-A of Motor Vehicles Act. Under Second Schedule, no provision has been made for granting an increase in the wages. As the said provision in

the statute was culled out so as to give benefit to all such victims of accident whose income was not above Rs. 40,000 and also where aspect of negligence is not required to be proved. The tribunal has assessed the income of the deceased under Minimum Wages Act, that too because appellant has failed to adduce any reliable evidence on record so as to prove the income of the deceased. I do not find any justification to grant any increase in the said wages as there is no such provision made in the statute under Section 163-A of the Minimum Wages Act.

As regards, the grievance of the appellant that tribunal has allowed deduction of $2/3^{\text{rd}}$ income towards personal expenses, I find merit in the submission of the counsel for the appellant. In the structural formula under the Second Schedule, the provision has been made only for $1/3^{\text{rd}}$ deduction and accordingly without deviating from the said criteria, $1/3^{\text{rd}}$ deduction from the said income of the deceased is allowed in place of $2/3^{\text{rd}}$ as held by the tribunal. The appellant also urged that no amount of compensation has been awarded towards loss of love and affection as the deceased is survived by his parents. The tribunal has awarded a sum of Rs. 20,000/- on account of loss of consortium and the said loss of compensation towards consortium is nothing else but the compensation towards loss of love and affection.

I do not find any infirmity in the impugned award on this aspect. No compensation has been awarded towards loss of estate although, Second Schedule of the Motor Vehicles Act provides for the same. An amount of Rs. 10,000/- is awarded towards loss of estate. The amount of compensation as awarded by the tribunal stand modified in terms of the above directions. The differential amount of Rs.1,53,836/- shall be paid by the respondent along with up to date interest @ 7.5% per annum from the date of filing of application till its realization.

Counsel for the appellant states at this stage, even the insurance company has not paid the compensation in terms of the impugned award. Let the entire amount be paid along with the accrued interest @ 7.5% per annum from the date of filing petition till its payment.

February 27, 2008

KAILASH GAMBHIR, J

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