

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App No.31/2008

Judgment delivered on: January 18, 2008

Monika Thakur & Ors. Appellant.
Through: Mr.Amit Kumar Pandey,
Advocate.

versus

Gagan Kamboj & Ors. Respondents
Through: Mr.K.L. Nandwani, Advocate
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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By way of this appeal, the appellant seeks to challenge the impugned award whereby an amount of Rs.9,70,790/- has been passed by the Tribunal along with interest at the rate of 7.5% from the date of filing of the

petition till the date of award and future interest at the rate of 9% p.a., after one month of the award till realisation.

Mr.K.L. Nandwani, Advocate is present on behalf of respondent No.3. Respondent Nos.1 and 2 are the owner and driver of the offending vehicle. The claim petition was mainly being contested by respondent No.3 as the offending vehicle was duly insured with respondent No.3.

Both the counsel appearing for the parties state that notice to respondent Nos.1 and 2 can be dispensed with as they are the owner and driver of the offending vehicle and the matter can be taken up for final disposal.

The brief facts of the case necessary for deciding the present appeal are as under:-

On 30.12.2005 at about 10.00 p.m., the deceased Shri Mata Prasad Singh was going on his motorcycle bearing registration No. DL5S-1464 and when he reached R & B Block, Opposite State Bank, Dilshad Garden, suddenly a scooter bearing registration No. DL 7S N 2053 was going from the MTNL, Dilshad Garden which was driven in a rash and negligent manner, hit the aforesaid motorcycle. As a result,

the deceased fell down on the road and sustained head injuries and he was admitted to the hospital. He died in the hospital.

Mr.Amit Kumar Pandey, counsel appearing for the appellants contend that the Tribunal has not taken into consideration the correct income of the deceased. The contention of counsel for the appellants is that in the evidence of the appellant, it has been categorically stated that the deceased was earning a sum of Rs.8,000/- p.m. and out of that he had been giving Rs.6,000/- for the expenses of the family. Counsel has also placed reliance on the salary certificate at page 38 of the paper book in which the gross salary of the deceased has been shown at Rs.8,000/- p.m. The salary certificate has been issued by the employer of the deceased M/s. Vardhman Construction Co. on 17.2.06 at the request of legal heirs of the deceased. Counsel has further placed reliance on the testimony of Shri M.K. Jain, Contractor of M/s. Vardhman Construction Co. who in his deposition also supported the said income. Another contention raised by the appellant is that the Tribunal has not granted any compensation amount towards special diet and conveyance

although the deceased remained under medical treatment for about 21 days. Counsel contends that meager amount of Rs.1,14,790/- has been granted by the Tribunal towards medical treatment although a sum of Rs.1,80,000/- was claimed by the appellants. Counsel for the appellant also contends that no benefit of future prospects has been given by the Tribunal.

Per contra, Mr.K.L. Nandwani, counsel appearing for respondent No.3 contends that no fault can be found with the findings of the Tribunal. Counsel further contends that even in the absence of any cogent material placed by the appellants, still the Tribunal has taken into account income of the deceased at Rs.6,000/-.

Counsel for the respondent further contends that whatever proofs towards medical bills were furnished by the appellants, the same have been duly allowed by the Tribunal. No specific amount towards special diet and conveyance allowance was claimed by the appellants before the Tribunal and, therefore, the same cannot be considered at appellate stage. On future prospects also, the contention of counsel for

the respondent is that no material to this effect was placed before the Tribunal. Counsel thus, contends that the Tribunal has awarded just and fair compensation in favour of the appellants. The same may not be interfered at the appellate stage.

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

Perusal of the award shows that the Tribunal has assessed the income of the deceased at Rs.6,000/- p.m. believing the testimony of the employer who in his deposition has categorically stated that the deceased was earning a sum of Rs.6,000/- p.m. Although the said witness made a reference to the conveyance allowance of Rs.2,000/- being earned by the deceased but since the conveyance allowance cannot be considered to be a part of the salary as such an amount is required to be spent by the person during his life time and, therefore, the Tribunal has not considered the said conveyance allowance as a part of the earnings of the deceased. Even in the cross-examination of PW-2, the witness failed to substantiate the said monthly income with the help of any

document, account books or tax records etc. but still the Tribunal believed the testimony of the appellant as well as the said employer and determined the income of the deceased at Rs.6,000/- p.m. I, therefore, do not find any infirmity in the said finding of the Tribunal.

As regards claim of the appellants towards special diet and conveyance allowance, I find no separate amount has been claimed by the appellants in the claim petition and also even in the evidence filed by the appellants, the Tribunal has granted a sum of Rs.30,000/- as sundry expenses after taking into consideration the amount which the appellant must have spent towards conveyance allowance and towards the expenses incurred for keeping an attendant. The medical bills as submitted by the appellants have been taken into consideration and amount claimed has been allowed by the Tribunal. There is thus, no infirmity or perversity in the said finding of the Tribunal as well.

On the claim of future prospects, the appellants have not placed any material on record and as per the recent decision of the Apex Court in **Bijoy Kumar Dugar Vs. Bidya**

Dhar Dutta & Ors, (2006) 3 SCC 242, unless sufficient reliance or cogent material is placed on record to claim the benefit of future prospects, no increase towards future prospects can be considered. The relevant para of the said judgment is reproduced below:

“The mere assertion of the claimants that the deceased would have earned more than Rs 8000 to Rs 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.”

On the basis of the above discussion, benefit of future prospects cannot be granted and therefore, no interference is required in the award.

In the backdrop of the same, I do not find any merit in the appeal and same is hereby dismissed.

January 18, 2008
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KAILASH GAMBHIR, J