

+ **FAO No. 187 of 2002**

% Judgment delivered on: 06.04.2009

versus

**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.

1. The present appeal arises out of the award dated 22.9.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,66,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 23.10.1993 at about 4.50 a.m. Shri P.C. Jain (deceased) while driving two wheeler scooter bearing registration No. DL-4-SA-7183, with a minor boy and another adult person as pillion riders, was proceeding on Gurgaon Road opposite Military Farm Record Office on way from Delhi to Gurgaon. The scooter at that time was proceeding on proper side of the road at moderate speed. At that very time, a truck bearing registration No. HR-29B-2484 came from behind. It was being driven by its driver at a high speed and in a rash and negligent manner. The front left hand portion of the truck struck against rear portion of the scooter. The truck after the accident dragged the scooter, scooterist and the pillion riders to quite some distance. The truck came to a halt after going on the kacha portion by the left side of the road. The scooterist sustained multiple grievous injuries and later succumbed to the same in Safdurjung Hospital.
4. A claim petition was filed on 22.03.1994 and an award was made on 22.9.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. The appellants had assailed the said award on quantum of compensation. Counsel for the appellants contended that the

tribunal erred in assessing the income of the deceased at Rs. 3500/- per month whereas after looking at the facts and circumstances of the case, the salary with future prospects ought to have been worked out by doubling the present salary i.e. Rs. 3,500/- x 2 = Rs. 7,000/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of Rs. 1028/- p.m. of the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his mother, wife and three minor children. The counsel submitted that the tribunal has erroneously applied the multiplier of 12 while computing compensation when according to the facts and circumstances of the case multiplier of 16 should have been applied. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 38 yrs of age only and would have lived for some more years had he not met with the accident. The counsel also stated that had the deceased not met with his untimely death he was bound to be promoted as Assistant Grade Clerk and then as Superintendent and would have been earning

much more in the near future. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 15% per annum in place of only 9% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants. In support of his submissions counsel for the appellants placed reliance on the following judgments:-

1. **General Manager, K.S. Road Transport vs. Susamma Thomas 1994(1) ACJ 1**
2. **Sarla Dixit vs Balwant Yadav 1996 (1) ACJ 581**
3. **Jyoti Kaul vs State of MP 2000 ACJ 1368**
4. **A.C. Gupta vs New India Assurance Co. Ltd. 90 (2001) DLT 397**
5. **Lata Wadhwa vs State of Bihar JT 2001 (6) SC 431**
6. **Patricia Jean Mahajan vs United India Insurance Co. Ltd. 94 (2001) DLT 355.**
6. Per contra Mr. Kanwal Chaudhary, counsel appearing for the respondent/New India Assurance Co. Ltd. refuted the submissions

made by the counsel for the appellant. He contended that the Award made by the Tribunal is just and fair and there is no need to interfere with the findings given by the Tribunal. With respect to the future prospects counsel for the respondent contended that he has no objection if the future prospects are awarded as the deceased was Government employee and in stable service.

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

8. The appellants/claimants had produced one witness Mrs. Neelam Kukreja, LDC, Accounts Branch Office of District & Session Judge, Delhi to prove salary, date of birth and qualification of the deceased. The said witness had brought along with her the record in respect of late Shri P.C. Jain to prove that the deceased was working as Reader in the Court of Judicial Magistrate, Delhi and he was employed in the office on 14.10.1974 as LDC. His date of birth as per record was 14.10.1955. He had passed B.A. in 1973 and his date of retirement was 31.10.2013. The scale of pay of the deceased was Rs. 950 – 1500 and his last basic pay was Rs. 1375/- w.e.f. 1.10.1973 and the last salary drawn by him was Rs. 3,500/-. Further the wife of the deceased deposed that the deceased had

a bright future and had bright chances of promotion and was expected to draw a monthly salary of Rs.8,000/-pm. After considering all these factors, I am of the view that the tribunal committed no error in assessing the income of the deceased at Rs. 3,500/- p.m. Therefore, no interference is made in the award on this count.

9. As regards the future prospects I am of the view that considering that the wife of the deceased deposed that he had a bright future and bright chances of promotion and also considering that the respondent itself has no objection to this, I am inclined to award future prospects. Thus taking the income of the deceased to be Rs. 3500/- per month at the time of accident and applying the formula as laid down in **Sarla Dixit Case (supra)** taking into account the further prospects, the income of the deceased comes to Rs. 5250/- p.m. $(3500 + 7000/2)$.

10. As regards the contention of the counsel for the appellant that the deduction of Rs. 1028/- p.m. made by the tribunal are on the higher side as the deceased is survived by his mother, wife and three minor children. The tribunal applied the unit method while assessing the deduction and has rightly reached to the deduction of Rs. 1028/-pm. Applying the same unit formula, the

deduction comes to Rs. 1415/-. Thus the loss of dependency comes to Rs. 1415/-. Thus the loss of dependency comes to $5250 - 1415 = 3835/-$ per month or Rs. 46020/- per annum.

11. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 12, I feel that the tribunal has committed error. This case pertains to the year March, 1994 and at that time II schedule to the Motor Vehicles act was not brought on the statute books. The said schedule came on the statute book in the year November, 1994 and prior to November, 1994 the law of the land was as laid down by the Hon'ble Apex Court in **1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas**. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. The deceased was of 38 years at the time of his death. He is survived by his widow, aged mother and three minor children. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased and considering the applicable multiplier under Schedule to Motor Vehicle Act, the multiplier of 14 should have been applied. Therefore, in the facts of the instant case the tribunal erred in applying the multiplier of

12 and multiplier of 14 shall be applicable. Thus taking into account the multiplier of 14 the compensation comes to Rs. 6,44,280/-.

12. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and does not require any interference. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon'ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. This case pertains to the year 1993. In the facts and circumstances of the case, I find no infirmity in the award regarding award of interest

@ 9% pa by the tribunal and the same is not interfered by this Court.

13. On the contention regarding that the tribunal has not granted compensation towards loss of love & affection, funeral expenses and loss of estate, loss of consortium and the loss of services, which were being rendered by the deceased to the appellants. In this regard Rs. 40,000/- compensation is awarded towards love and affection; Rs. 5,000/- is awarded towards funeral expenses and Rs. 10,000/- is awarded towards loss of expectation of life, but the same is not a conventional head of damages thus the said amount is adjusted towards loss of estate. Further, Rs. 50,000/- is awarded towards loss of consortium.

14. As far as the contention pertaining to the awarding of amount towards loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same is not conventional head of damages.

15. On the basis of the discussion, the total loss of dependency comes to Rs. 6,44,280/-. After considering Rs. 1,05,000/-, which is

granted towards non-pecuniary damages, the total compensation comes out as Rs. 7,49,280/-.

16. In view of the above discussion, the total compensation is enhanced to Rs. 7,49,280/- from Rs. 3,66,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the petition till realisation and the same should be paid to the appellants by the respondent insurance company in the same ration as given by the Tribunal.

17. With the above direction, the present appeal is disposed of and the matter is remitted back to the Tribunal for apportionment.

06.04.2009

KAILASH GAMBHIR, J.