

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO No. 193/2002

% Judgment reserved on: 9.4.2008
Judgment delivered on: 27.4.2009

Ms. Shireen Vishwanathan & Ors. Appellants
Through: Mr. Raju Dudani, Adv.

versus

Sh. Ramakant Gajanan Mohare & Ors. Respondents
Through: Mr. Pankaj Seth, 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? | NO |
| 2. | To be referred to Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

KAILASH GAMBHIR, J.

1 The present appeal arises out of the award dated 12/12/2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 14,29,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. Late Major C.M. Vishwanathan was the team leader of the Ordinance Overland Himex Motor Cycle Rally sponsored by Hero Honda Motors Ltd. The rally was flagged off from Delhi on 04/11/95. On 15/11/95, the rally team left Kohlapur at about 7.30 a.m on its way to Panji (Goa). It was proceeding on National Highway No. 17 and was moving at a modest speed of 40 km per hour on the proper side of the road. In the meanwhile, a Mahindra Jeep bearing registration No. MH-03-H-439 being driven in a rash and negligent manner by the respondent No.1 came from the opposite direction. It was being driven at a very fast speed and in a zig zag manner. It dashed against the motor cycle driven by Major C.M Vishwanathan. The impact was so severe that Major C.M. Vishwanathan was flung in the air, and was then thrown on the left side of the road. He started bleeding profusely from the injury suffered by him and suffered fracture of right femur, right tibia, pelvis, apart from injuries on various parts of the body. He was removed to nearest Rural Hospital in Kankavali and was then air lifted to Panji. Major C.M. Vishwanathan could not survive the

injuries and was declared brought dead in Military Hospital, Panji, Goa.

4. A claim petition was filed on 06/12/96 and an award was passed on 12/12/2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Raju Dudani counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 15,390/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs. 22,000/- per month after considering future prospects. The counsel submitted that the tribunal has erroneously applied the multiplier of 13 while computing compensation when according to the facts and circumstances of the case multiplier of 15 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 36 years of age only and would have lived for another 30 yrs had he not met with the accident. The counsel also stated that had the deceased not met with his

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untimely death he would have expanded his business and would have been earning much more in the near future. It was also alleged by the counsel that the tribunal did not consider the fact that due to high rates of inflation the deceased would have earned much more in near future and the tribunal also failed in appreciating the fact that even the minimum wages are revised twice in a year and hence, the deceased would have earned much more in his life span. 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 @ 12% 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.

6. Per Contra Mr. Pankaj Seth, counsel for respondent insurance company submitted that there is no illegality in the impugned award. Counsel further contended that award passed by Tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

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

8. Learned Tribunal has assessed the income of the deceased on a sound reasoning, after taking into account the settled law, therefore, there is no ground to interference in the same.

9. As regards the future prospects, I am of the view that the tribunal has assessed the income of the deceased after considering future prospects, considering that he was in a government service and over a period of time would have earned higher salary had he not met with the accident. Therefore, no interference in this regard is also called for.

10. As regards the contention of the counsel for the appellants that the tribunal erred in applying the multiplier of 13 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1995 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute book. The age of the deceased at the time of the accident was 36 yrs and he is survived by his widow and aged mother. 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 after considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 16 shall be applicable.

11. 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 12% p.a., I feel that the rate of interest awarded by the tribunal is not just and fair and requires no 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. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 9% pa by the tribunal and the same is not interfered with.

12. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses and loss of estate, whereas, no compensation has been granted towards loss of consortium and the loss of services, which were being rendered by the deceased to the appellants. In this regard compensation towards loss of love and affection is awarded at Rs. 10,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

13. On the basis of the discussion, the total loss of dependency comes to Rs. 17,28,000/- ($9,000 \times 12 \times 16$). After considering Rs. 80,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 18,08,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 18,08,000/- from Rs. 14,29,000/- with interest on the differential amount @ 7.5% per annum from the date of filing

of the petition till realisation and the same shall be paid to the appellants by the respondent insurance company in the same proportion as awarded by the tribunal within 30 days of this order.

15. With the above directions, the present appeal is disposed of.

April 27, 2009

KAILASH GAMBHIR, J.