

+ **FAO No. 25 of 2002**

Smt. Narinder Kaur & Ors. Appellants
Through: Mr. O.P. Mannie, Adv.

Shri Tarlok Singh & Ors. Respondent
Through: Nemo

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

1. The present appeal arises out of the award dated 15th October 2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 56,100/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 27/4/1980, the deceased Sh. Narender Singh who aged about 28 years was carrying out transport business was returning on his scooter bearing registration No. DEJ- 7990 to Bhogal after attending marriage at Sheedi Pura, Karol Bagh, New Delhi. A truck bearing registration No. CPF- 9526 came from the opposite direction and drifted towards the deceased and struck the scooter. The accident was caused due to rash and negligent driving of the driver of the truck. As a result of the impact, the deceased fell down and received multiple injuries, which proved fatal. He was rushed to J.P. Hospital from the accident site, where he succumbed to his injuries.
4. A claim petition was filed on 29th October 1980 and an award was made on 15th October 2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. O.P. Mannie, counsel for the appellants assailed the said award on the ground of quantum. Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 325 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. 800 per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of 1/3rd 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 young widow, two minor children and old parents. The counsel submitted that the tribunal has erroneously applied the multiplier of 16 while computing compensation when according to the facts and circumstances of the case multiplier of 18 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 28 yrs of age only. 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 @ 9% per annum in place of only 12% 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, separately rather a cumulative amount of just Rs. 10,000/- was awarded as non-pecuniary damages.

6. Nobody has been appearing for the respondents.
7. I have heard learned counsel for the appellants and perused the record.
8. The appellants claimants had brought nothing on record to prove the income of the deceased. Wife of the deceased PW1 deposed that the deceased was doing transport business at the time of the accident and was earning Rs. 800/- per month. But in her cross examination she stated that she cannot state under what name style, her husband was doing the business of transport, she also stated that she had no document to show that the deceased was earning Rs. 800 per month. She also stated that he was pursuing studies in BA from Dayal Singh College on part time basis and was in first year. But PW6 father of the deceased deposed that the deceased was earning Rs. 1100-1200 per month. There is clear contradiction in the statements of the two witnesses as regards the earnings of the deceased. On perusal of the award it comes in to light that there was sufficient evidence on record to prove that the deceased was pursuing studies in BA from Dayal Singh College on part time. Perusal of the award shows that there was dispute regarding the age of the deceased and after perusing the original death certificate along with its corrections, the trial court came

to the conclusion that the deceased was of 28 years of age and not 42 years. Since, there was no evidence on record to prove the vocation and the earnings of the deceased, therefore, the tribunal rightly assessed the income of the deceased as that of the matriculate with the aid of the Minimum Wages Act. After considering all these factors I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 325 pm.

9. 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.

10. 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.

11. Therefore, no interference is made in relation to income of the deceased by this court.

12. As regards the future prospects, it is well settled that future prospects are not akin to increase in minimum wages. 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. 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. 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.

13. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal is on the higher side as the deceased is survived by young widow, two minor children and old parents. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

14. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 16 in the facts and circumstances of the case, I feel that the tribunal has not committed any error. This case pertains to the year 1980 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 1994 and prior to 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 28 years of age and his widow wife was of 26 years, his father was of 88 years, his mother was of 73 years, his daughter was of 4 years and his son was of 2 years 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 taking a balanced view after considering the applicable multiplier under II Schedule to the Motor Vehicle Act the multiplier of 16 should have been applied. Therefore, in the facts of the instant case the tribunal did not err in applying the multiplier of 16.

15. 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.

16. On the contention regarding that the tribunal has erred in not granting adequate compensation towards non-pecuniary damages, I feel that the same should have been awarded by the tribunal. The compensation towards non-pecuniary damages is enhanced to Rs. 1,05,000/- from Rs. 10,000. In this regard compensation towards loss

of love and affection is awarded at Rs. 40,000/-; compensation towards funeral expenses is enhanced to Rs. 5,000/- and compensation towards loss of estate is enhanced to Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

17. As far as the contention pertaining to the awarding of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of the deceased and the 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 as the same are not conventional heads of damages.

18. On the basis of the discussion, the income of the deceased would come to Rs. 487.50 after doubling Rs. 325 to Rs. 650 and after taking the mean of them. After making $1/3^{\text{rd}}$ deductions the monthly loss of dependency comes to Rs. 325 and the annual loss of dependency comes to Rs. 3900 per annum and after applying multiplier of 16 it comes to Rs. 62,400/-. Thus, the total loss of dependency comes to Rs. 62,400/-. After considering Rs. 1,05,000/-, which is awarded towards non-pecuniary damages, the total compensation comes out as Rs. 1,67,400/-.

19. In view of the above discussion, the total compensation is enhanced to Rs. 1,67,400/- from Rs. 56,100/- 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 by the respondent insurance company, in the same ratio as awarded by the Tribunal.

20. With the above direction, the present appeal is disposed of.

13.4.2009

KAILASH GAMBHIR, J.