

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 255/2002

Judgment reserved on 14.3.2008

Judgment delivered on: 20.4.2009

Smt. Bhagwati Devi & Ors. Appellants.

Through: Mr. O.P. Mannie, Adv.

Versus

Sh. Manjit Singh & Ors. Respondents

Through: Nemo.

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 16/3/2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,88,016/- along with interest @ 9% per annum to the claimants.

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

3. On 10/4/1993 Sh. Rajdev was sitting on the pillion seat on the two wheeler scooter bearing registration no. DDP 4958 which was driven by Sh. Virender Kumar Sharma. When the said scooter reached Raja Garden Chowk red light, suddenly a truck bearing registration no. DIG 8247 being driven rashly and negligently by its driver hit the said scooter. Resultantly, both of the above said persons fell on the road of with the scooter and died.

4. A claim petition was filed on 27/7/1993 and an award was passed on 16/3/2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 2172/- 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. 3,000 per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of 1/3 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, widow and daughter. The counsel submitted that the tribunal 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 22 yrs of age only and would have lived for another 30-40 yrs had he not met with the accident. 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 an 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. Nobody appeared for the respondents.

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

8. As regards the income, the mother of the deceased deposed that the deceased was a rickshaw puller and was earning Rs. 100/- daily and used to give Rs. 2,500/- pm for household expenses. Same was deposed by PW2 Sh. Radhey Shyam the employer of the deceased. The appellants claimants had brought nothing on record to prove the said assertions. 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. 1328/- pm after considering rates of minimum wages notified for a skilled workman.

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. 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.

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

10. Furthermore, 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. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. 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. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same

rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

11. The tribunal took difference of the minimum wages notified for the skilled workman in 1993, when the accident took place and the year 2002 when the award was passed. I feel that the tribunal erred in doing the same. The tribunal ought to have doubled the said Rs. 1328 and then taken mean of them. But considering that no dispute is raised by the respondents in this regard. Thus, in the interest of justice, the award is not modified.

12. As regards the contention of the counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased is survived by his aged mother, widow and daughter. 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.

13. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 16 in the facts and

circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1993 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 age of the deceased at the time of the accident was 22 years and he is survived by his aged mother, widow and daughter. 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 taking a balanced view considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 16 has been rightly applied by the tribunal.

14. 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 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.

15. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses, loss of estate, 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. 20,000/-; 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.

16. 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.

17. On the basis of the discussion, the income of the deceased would come to Rs. 2,172/- and after making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,448 and the annual loss of dependency comes to Rs. 17,376/- per annum and after applying multiplier of 16 it comes to Rs. 2,78,016/-. Thus, the total loss of dependency comes to Rs. 2,78,016/-. After considering Rs. 90,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 3,68,016/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 3,68,016/- from Rs. 2,88,000/- with interest on the differential amount @ 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 proportion as awarded by the tribunal.

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

20.4.2009

KAILASH GAMBHIR,J.