

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 155/2000

Judgment reserved on 24.1.2008

Judgment delivered on: 20.4.2009

Smt. Rajinder Kumari Saraswat & Anr. Appellants.

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

Versus

Prahlad Singh & Ors. Respondents

Through: Mr. Ajay Majithia, 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 7/1/2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of

Rs. 60,000/- along with interest @ 10% per annum to the claimant petitioner no.1, appellant no. 1 herein.

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

3. On 11/9/1987 at about 1:10 pm, the deceased Sh. Pankaj Kumars going on a two wheeler scooter bearing registration no. DEF 7086 from Darya Ganj towards Exhibition Ground to drop one of his colleagues Sh. Soban Singh. When he was about to reach the railway line level crossing on the Ring Road near the petrol pump, a bus bearing registration no. DLP 5816 driven rashly and negligently by respondent no.1 and hit against the scooter driven by the deceased and caused the death of Sh. Pankaj.

4. A claim petition was filed on 11/3/1988 and an award was passed on 7/1/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal counsel for the appellants contended that the Tribunal erred in assessing the income of the deceased at Rs. 600/- 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 for the first five years and thereafter 2/3 deduction has been made for the next 10 years, when the deceased was a bachelor at the time of accident and is survived by his mother and brother. The counsel submitted that the tribunal has erroneously applied the multiplier of 15 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 20 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 10% 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, Sh. Ajay Majithia counsel appearing for the respondent no. 3 refuted the submissions made by the counsel for the appellants. 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.

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

8. The appellant no. 1 mother of the deceased deposed as PW5 that the deceased was working in a private firm, in the name & style of Neelam Enterprises, as a sales man. She further stated in her deposition that he was getting Rs. 1,500/-pm as salary & commission and at the time of his death he was getting Rs. 400/- to Rs.500/- as commission apart from his salary. She also stated that the deceased used to supply taps to P.K. Enterprises, apart from working with Neelam Enterprises and was earning Rs. 2500/- to 3,000/- over and above Rs. 1,500/- from this work. She also produced salary certificate from Neelam Enterprises as Ex. PW5/1. The appellants claimants had

neither brought any other evidence on record nor did they produce any witness to prove the salary certificate. After considering all these factors, the tribunal awarded Rs. 600/- pm as the income of the deceased in accordance with the minimum wages notified under the Minimum Wages Act.

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. 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. In the backdrop of the foregoing discussion, I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 600/- pm. Therefore, no interference is made in relation to income of the deceased by this court.

10. As regards the future prospects I am of the view that there is no sufficient material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case. However, 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. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

11. Therefore, the tribunal erred in not considering increase in minimum wages, while assessing the income of the deceased in accordance with Minimum Wages Act and same should be considered while computing compensation towards loss of dependency.

12. As regards the contention of the counsel for the appellant that the $\frac{1}{3}$ deduction for the first five years and thereafter $\frac{2}{3}$ deduction has been made for the next 10 years by the tribunal, which are on the higher side as the deceased is survived by his mother and brother. Considering the fact that the deceased was of 20 years and was a bachelor and he was survived by his old mother and a brother, I feel that ultimately only mother would have been dependant on the

deceased. Also, considering as to what the tribunal has considered that the deceased would have been married after 5 years at the age of 25 years and thus, would have been giving even less to his mother and brother, is also correct. 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 15 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1988 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 20 years of age and his mother was of 49 years and brother was of 23 years at the time of the accident. 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 that the II Schedule was not in force at that time, the multiplier of 15 as applied by the tribunal requires no

interference. The tribunal has been generous enough to take the multiplier of 15 looking at the facts and circumstances of the case. Therefore, in the interest of justice, considering that no dispute is raised by the respondents in this regard, no interference is made in the award.

14. As regards the issue of interest that the rate of interest of 10% 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, change of economy, 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 @ 10% pa by the tribunal and the same is not interfered with.

15. On the contention regarding that the tribunal erred in not granting compensation towards non-pecuniary damages, I feel that the tribunal erred in not awarding the same. 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/-.

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. 900/- after doubling Rs. 600/- to Rs. 1,200/- and after taking the mean of them. After making $\frac{1}{3}$ rd deductions for 5 years and $\frac{2}{3}$ rd deductions for 10 years, and applying multiplier of 15 the annual loss of dependency comes to Rs. 72,000/- per annum. Thus, the total loss of dependency comes to Rs. 72,000/-. After considering Rs. 40,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,12,000/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,12,000/- from Rs. 60,000/-. The differential amount shall be paid to the appellant no.1 by the respondent insurance company with upto date interest @ 7.5% pa from the date of filing of the petition till realization.

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

20.4.2009

KAILASH GAMBHIR, J.