

+ **FAO No. 180/2000**

Smt. Hardevi & Others. Appellants
Through: Mr. J.S. Kanwar, Advocate

Dhanpat Singh and others. Respondent
Through: Nemo.

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

1. The present appeal arises out of the award dated 25.11.1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,10,960/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 30.1.1989 at about 8.30 a.m., the deceased Ram Niwas was plying on the offending bus from Yamuna Vihar to NCRT via AIIMS. When the bus stopped at the red light after 1 ½ km away from Khajuri Khas bus stand. The deceased was standing on the last staircase of the bus. The said bus was being driven in a rash and negligent manner and the bus driver in an attempt to overtake the other vehicles on the road collided with the other vehicle, as a result of which the deceased fell from the bus and received fatal injuries.
4. A claim petition was filed on 5.5.1989 and an award was made on 25.11.1989. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. The appellants have assailed the said award on quantum of compensation. The counsel 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 wife, four sons and one daughter. The counsel submitted that the tribunal has erroneously applied the multiplier of 10 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 48 yrs of age only. The counsel also stated that had the deceased not met with his untimely death he 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 her life span. The counsel also raised the contention that the tribunal has withheld the interest for the period from 21.1.94 to 23.4.1999 and the tribunal should have allowed simple interest @ 12% per annum for this period also. The counsel also contended that the tribunal erred in not awarding compensation towards loss of love &

affection, 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. The tribunal has awarded Rs.2000/- towards funeral expenses which is also on the lower side.

6. Nobody has been appearing for the respondents.

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

8. The tribunal has assessed the income of the deceased at the rate of Rs. 1362/- p.m. on the basis of salary certificate proved by the petitioners. 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.

9. As regards the contention of the counsel for the appellant that 1/3rd deduction made by the tribunal is on the higher side as the deceased is survived by his wife, four sons and one daughter, I feel that the tribunal erred in making 1/3rd deductions. Therefore, I am inclined to interfere with the award on this

ground and modify the award by deducting 1/5th expenses towards personal expenses. Thus after deducting 1/5th from the income of the deceased i.e. (1362-272), the net income comes to Rs.1090/- p.m.

10. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 10 in the facts and circumstances of the case, I feel that the tribunal has not committed any error. This case pertains to the year 1989 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. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 10 should have been applied. Therefore, in the facts of the instant case the multiplier of 10 shall be applicable and the same has already been applied by the Tribunal.

As regards the issue of interest, that no interest has been awarded to the appellants from 21/1/1994 to 23/4/1999, The tribunal observed that the appellants took a long time to conclude his evidence. The issues were framed on 21/01/1994 and Petitioner evidence was closed on 21.01.1999. The approach in awarding compensation has to be broadly based on the principles of justice, equity and good conscience and technicalities in the decision-making should be avoided. The Motor Vehicles Act, 1988 is a beneficial legislation. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, has introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident. But at the same time the appellants cannot claim benefit of their own faults. The tribunal after considering that the appellants themselves were negligent and liable for such a long delay of about 5 years in concluding evidence, did not allow the interest for the said period. I feel that by not awarding interest from 21/1/1994 to 23/4/1999, the tribunal has committed no error thus no interference is made in this regard.

11. 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 to Rs. 10,000/- each, meaning thereby a total of Rs. 40,000/-. Compensation towards funeral expenses is enhanced to Rs. 5,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

12. 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 their only son 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.

13. On the basis of the discussion, the total loss of dependency comes to Rs. 1,56,960/-. After taking into account Rs. 95,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,51,960/-

14. In view of the above discussion, the total compensation is enhanced to Rs. 2,51,960/- from Rs. 1,10,960/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the present petition till realisation. However, as regard to the interest awarded by the tribunal in its order shall continue to be the same on the award of the tribunal.

15. Out of the enhanced compensation, 50% be released in favour of the widow of the deceased and remaining be distributed equally amongst the children of the deceased.

06.04.2009

KAILASH GAMBHIR, J