

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 188/2000

Judgment reserved on: 13.3.2008
Judgment delivered on: 27.4.2009

Sushma Sharma & Anr. Appellants.
Through: Mr. Sanjeev Sharma, Adv.

versus

Raja Ram & Ors. Respondents
Through: Mr. D.K. Sharma, 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 8.2.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,62,000 along with interest @ 12% per annum to the claimants.

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

3. On 8.5.97 at about 8.30 PM deceased Jeet Pal Sharma was driving Jonga Jeep bearing registration No: PBN 7689. He had taken a turn to his left from Madhuban Chowk and was driving on the left of the road at a slow speed. In the meanwhile, his jeep was hit by a truck bearing registration No: DHG 5157 which was being driven by R1 in a rash and negligent manner. The speed of the truck was so high that it dragged the jeep alongwith it to a distance of 100 paces. As a result deceased Jeet Pal Sharma received serious injuries and died in the ESI Hospital after about half an hour of the accident.

4. A claim petition was filed on 4.11.1987 and an award was passed on 8.2.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Sanjiv Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 780/- 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. 6,000/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of Rs 270/- 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 and two children. The counsel submitted that the tribunal erroneously applied the multiplier of 15 while computing compensation when according to the facts and circumstances of the case multiplier of 17 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 she was of 32 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 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. The counsel has relied on following judgments in support of his contentions:

1. Brijnandan Vs. PEPSU IV (2005) ACC 820 paras 3 & 4.

**2. U P State Road Transport Corp. Vs. Trilok Chandra
1996 ACJ 831 paras 17 & 18.**

**3. Concord of India Ins. Co. Ltd Vs. Nirmala Devi 1980
ACJ 55 para 2.**

6. Shri D K Sharma, Advocate appeared on behalf of respondent No:3 and submitted that the award passed by the learned Tribunal is just and fair and requires no interference by this court.

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

8. As regards income, the widow of the deceased deposed that the deceased had his own business in the name & style of M/s Krishna Water Supply Co. and was earning Rs. 5,000/- p.m. by being 15% partner in it. She also deposed that of M/s Water well Drilling Company he was the sole proprietor. However, no cogent evidence has been placed on record in this regard.

9. 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. 781/- p.m. in accordance M.W. Act for graduate.

10. 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.

11. 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.

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

13. However, 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. The tribunal has rightly considered the same.

14. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal are on the higher side as the deceased is survived by wife and two children. 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.

15. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 15 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1987 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. At the time of the accident deceased was of 32 years of age and is survived by his widow and two children. 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 15 as applied by the tribunal does not require any interference.

16. On the contention regarding that the tribunal has erred in not granting 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.

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. Therefore, total loss of dependency comes to Rs. 1,40,580/- ($781 + 1562/2 \times 2/3 \times 12/15$).

18. After considering Rs. 90,000/-, which is granted towards non pecuniary damages the total compensation comes out as Rs. 2,30,580/-.

19. In view of the above discussion, the total compensation is enhanced to Rs. 2,30,580/- from Rs. 1,62,000/- 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.

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

April 27, 2009

KAILASH GAMBHIR, J.