

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO. No.198/2000

Judgment reserved on: 7.1.2008

Judgment delivered on: 13.4.2009

Harish Chand & Ors.

..... Appellants.

Through: Mr. J.S. Kanwar, Advocate

versus

Balkishan and Others

..... 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 2/12/1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 66,608/- along with interest @ 12% per annum to the claimants.

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

On 26/11/1992 at about 10:50 pm, the deceased, Sh. Kishori Lal, was traveling in the mini bus bearing registration no. DL 1B 0097 from ISBT, Delhi to Seelampur. The said mini bus was being driven by Sh. Bal Kishan, in a rash and negligent manner. When the bus reached at red light of chowk Shastri Park, ISBT Bridge, the driver lost control of the bus and it struck against the central fencing and turned turtle as a result of which, many passengers received greivous and fatal injuries and Sh. Kishori Lal died on the spot.

A claim petition was filed on 15/3/1993 and an award was made on 2/12/1999. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3 . Sh. J.S. Kanwar, counsel for the appellants assailed the said award on quantum of damages. Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased as per the Minimum Wages Act 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 submitted that the tribunal erroneously applied the multiplier of 8 while computing compensation when according to

the facts and circumstances of the case multiplier of 8 is on the lower side. 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 25 yrs of age only and would have lived for another 40-50 yrs had he not met with the accident. 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 an year and hence, the deceased would have earned much more in her 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 from the date of filing of the petition till realisation instead of deducting interest for the period 4/1/1995 to 10/11/1998. The counsel contended that the tribunal erred in not awarding compensation towards loss of love & affection, funeral expenses,

loss of estate, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants.

4 . Nobody has been appearing for the respondents.

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

6 . The appellant no.1 entered the witness box as a witness and deposed that the deceased was his son and was working at a flour Chakki shop and was earning Rs. 3,000 pm and used to give Rs. 2,000 at home. Nothing was brought on record to prove the above deposition; therefore the tribunal took aid of the Minimum Wages Act to assess the income of the deceased.

7 . 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.

8 . 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 . After considering all these factors I am of the view that the tribunal has committed no error in assessing the income of the deceased in accordance with the Minimum Wages Act.

10 . As regards the future prospects I am of the view that there is no sufficient material on record to award future prospects.

11 . 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. 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 awarding increase in minimum wages while computing compensation.

12 . As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 8 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1992 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 25 years and that of the claimant father was 55 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 also after considering the applicable multiplier under the M.V. Act & then taking a balanced view, the multiplier of 8 should have been applied. Therefore, in the facts of the instant case the multiplier of 8 as awarded by the tribunal is not interfered.

13 . As regards the issue of interest that the rate of interest should have been awarded by the tribunal from the date of filing of the petition in place deducting interest for the period 4/1/1995 to 10/11/1998. I feel that the deduction of the rate of interest awarded by the tribunal is unjust and unfair and requires no interference. The tribunal observed that the issues were framed on 4/1/1995, while appellant took a long time, almost 4 years, to conclude the evidence on 10/11/1998.

14 . 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 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. 5,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. No compensation under other heads of damages can be allowed in the present case.

15 . On the basis of the above discussion, the income of the deceased would come to Rs. 1513.50 after doubling Rs. 1009 to Rs. 2018 and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1009 and the annual loss of dependency comes to Rs. 12108 per annum and after applying multiplier of 8 it comes to Rs. 96864/-. Thus, the total loss of dependency comes to Rs. 96864/-. After considering Rs. 35,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,31,864/-.

16 . In view of the above discussion, the total compensation is enhanced to Rs. 1,31,864/- from Rs. 66,608/- with interest @ 12% per annum from the date of filing of the petition till realisation but

excluding the period from 4/1/1995 to 10/11/1998 and the same should be paid to the appellants in equal proportion by the respondent insurance company.

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

13.4.2009

KAILASH GAMBHIR, J