

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 304/2000

Judgment reserved on: 7th March, 2008.

Judgment delivered on: 13.4.2009

Manpreet Singh & Ors. Appellant.

Through: Mr.Y.R. Sharma, Advocate.

Versus

Sukhvinder Singh & Ors. Respondents

Through: Mr. Pradeep Gaur, Advocate.

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 4.5.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs.3,94,000/- along with interest @ 12% per annum to the claimants.

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

On 2.4.97, Sardar Avtar Singh was driving his two wheeler scooter and his wife and daughter Km. Gurmeet Kaur were sitting on the pillion seat of the said scooter. They were coming back to their residence and when they reached at Ring Road near Naroji Nagar at about 9 P.M. a bus bearing registration no. DL-1P-4455 driven by the driver of the said bus in a rash and negligent manner hit the two wheeler scooter, as a result of this impact Gurmeet Kaur died at the spot and Sardar Avtar Singh received fatal injuries.

A claim petition was filed on 6.5.1997 and an award was made on 4.5.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh.Y.R. Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 4000/- 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. 17,000/- per month. The counsel further 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, two minor children, one son and mother. The counsel submitted that the tribunal erroneously applied the multiplier of 12 while computing compensation when according to the facts and circumstances of the case multiplier of 13 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 and would have lived for another 22 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 urged 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 erred in not awarding compensation towards loss of love and affection, loss of estate and loss of service which were being rendered by the deceased to the appellants.

4. Per contra, Mr. Pradeep Gaur, counsel for the respondent submitted that the appellants are not entitled to any further amount of compensation over and above the amount already granted by the Tribunal. The counsel also contended that for claiming any increase in the future, cogent and sufficient grounds/reasons have to be disclosed by the claimants and in the absence of the same, future increase cannot be taken into account for determining loss of financial dependence. Counsel for the respondent further contended that in the absence of any evidence placed by the appellants with regard to the future loss of income, this Court may not interfere in the compensation amount awarded by the Tribunal, which can not be considered either as unjust or unfair.

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

6. To prove the income of the deceased PW3 Smt. Tejinder Kaur, wife of the deceased deposed that the deceased and his family were living for the past many years in the Gurudwara at Green Park, where free accommodation was given to them and besides that he was being paid Rs.1300/- p.m. and above that he used to earn income by performing ceremonies at marriages etc., from which he used to earn around Rs.17,000/- p.m. She also deposed that had he not met with the accident then he would have earned much more in the near future. She deposed that the deceased used to give her Rs.10,000/- for household expenses. She deposed that he had accounts in Canara Bank and Punjab National Bank in Green Park and a house worth Rs.8 lacs was purchased a year ago before the death by way of instalments and had also purchased a plot for Rs.1,43,000/-. She had brought on record the documents in support of the said statements as exhibits PW1/3 to Ex.PW1/40. The claimants also examined PW1, Shri Gurmit Singh who is working as Granthi in Gurudwara. He deposed that he was earning Rs.12,000/- to Rs.13,000/- per annum and he produced a certificate Ex.PW1/1 signed by Secretary

Sardar Amir Singh Chawla which shows that the salary of the deceased was Rs. 1300/- and was provided with a rent free accommodation including water and electricity. The said certificate also mentions that the deceased was permitted to perform other religious activities on his own at religious functions. Another witness PW2 Shri Madan Singh, Head Granthi in Green Park, Gurudwara, was also examined who supported the fact that the deceased was earning Rs.17,000/- per annum though his regular salary was Rs.1300/- . He has admitted that the deceased was not an income tax assessee.

7. In my considered view the Tribunal committed no error in assessing the income of the deceased at Rs.4,000/- p.m. The monthly salary of the deceased was duly proved on record at Rs.1300/- p.m. as per Exhibit PW-1. Besides the said monthly salary, the Tribunal rightly took into consideration the additional source of his income after noticing the fact that the deceased was a Head Granthi at a Gurudwara and it is a matter of common knowledge that a Granthi apart from performing religious ceremonies at

Gurudwara also performs Akhand Path, Ardaas, Khula Path, marriage ceremonies at other functions.

8. I therefore do not find any ground for further enhancement in the income that to the extent of Rs.17,000/- per month without there being any cogent evidence to support. No interference in this regard is warranted.

9. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 12 in the facts and circumstances of the case, I feel that the tribunal has committed an error. The deceased was of 48 years of age at the time of the accident and is survived by his widow, two minor children, a son and his mother. I am of the view that after looking at the age of the claimants and the deceased the multiplier of 13 ought to be applied in accordance with the II Schedule to the M.V. Act, therefore, the award is modified to the said extent.

10. As regards the issue of deduction to the tune of $\frac{1}{3}$ rd made by the Tribunal being on lower side as the deceased is survived by his widow, two minor children, a son and his aged mother, I am of the view that the interest of justice

would be best served if $\frac{1}{4}$ deduction is made herein. Thus, the award is modified to the said extent.

11. The other contention of the counsel for the appellant is that the tribunal erred in not granting adequate compensation towards loss of consortium and funeral expenses and no compensation has been granted towards loss of love and affection and loss of estate. In this regard compensation towards loss of love and affection is awarded at Rs.40,000/- the compensation towards loss of consortium and funeral expenses to the tune of Rs.10,000/- shall be considered as compensation towards funeral expenses and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

12. As far as the contention pertaining to the award 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.

13. The total loss of dependency comes to Rs. 4,68,000/-. After considering Rs. 1,10,000/- which is granted towards non-pecuniary damages the total compensation comes out as Rs. 5,78,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 5,78,000/- from Rs. 3,94,000/-. The differential amount shall be paid with interest @ 7% per annum from the date of filing of the present 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.

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

13.4.2009
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KAILASH GAMBHIR J.