

+ **FAO No. 315/2000**

Smt. Sushma Mehta & Ors. Appellants
Through: Ms. Manu, Advocate

Mr. Raju & Ors. Respondents
Through: Mr. Pradeep Gaur, Advocate.

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 18.4.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 6,73,000/- along with interest @ 12% per annum to the claimants.

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

3. On 25.10.1994 at about 4.45 p.m. at Patel Road near bus stop of West Patel Nagar, the two wheeler scooter driven by the deceased Netar Prakash Mehta was hit by a speeding bus bearing registration no. DL 1P 1392 driven by Sh. Raju in a rash & Negligent manner. Mr. Mehta died on the spot. A claim petition was filed on 21.1.1995 and an award was made on 18.4.2000 Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Ms. Manu, counsel for the appellants has assailed the said award on quantum of compensation. Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 6,453/- 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.8,344/- per month. 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 40 should have been applied. It was urged by the counsel that

the tribunal erred in considering future increase at Rs. 8,226/- while computing compensation as it failed to appreciate that the deceased would have earned much more in near future as he was of 45 yrs of age only and would have lived for another 40 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 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 @ 18% per annum in place of only 12% per annum. The counsel contended that the tribunal has 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 and a lower amount has been awarded towards loss of consortium at Rs.15,000/-.

5. Mr. Pradeep Gaur counsel for the respondent Insurance Company refuted the submissions of counsel for the appellants and contended that the award is just and fair and requires no indulgence by this court. The tribunal has already been generous and assessed the income of the deceased as Rs. 8,226/- after considering the further prospects of the deceased. The counsel relied on (1) **TSRTC vs S. Rajapriya & Ors**; (2) **TSRTC vs K.S. Bindu**, (3) **New India Assurance Co. Ltd. vs Kalpana & Ors**; (4) **Sarla Dixit vs Balwant Yadav**- 1996 ACJ.581

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

7. The appellants claimants had brought on record Ex PW3/1 the salary certificate of the deceased. According to the said salary certificate the income of the deceased was Rs. 6,453/- p.m. I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 6,453/-.

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

9. As regards the future prospects, I am of the view that there is sufficient material on record to grant the future prospects. The tribunal committed no error in granting future prospects and after considering future prospects, it assessed income of the deceased at Rs. 8,226/- in the facts and circumstances of the case. While awarding future prospects the Tribunal rightly considered the judgment in **Sarla Dixit's case** and also after considering that the deceased was a Government employee. Thus, no interference is made in the award on this count.

10. As regards deductions, the plea of the claimants was that the deceased is survived by his widow, minor son and aged parents, therefore, 1/3rd deduction is on the higher side. 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.

11. 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 committed error. This case pertains to the year 1994 and at that time II schedule to the Motor Vehicles act has been brought on

the statute books. 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 should have been applied. Therefore, in the facts of the instant case the multiplier of 15 shall be applicable.

12. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 18% 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, 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 @ 12% pa by the tribunal and the same is not interfered with.

13. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection and funeral expenses, whereas an amount of Rs.15,000/- has been granted towards loss of consortium, loss of expectation of life and loss of estate,. In this regard compensation towards loss of love and affection is awarded at Rs.30,000/-; compensation towards funeral expenses is awarded at Rs. 5,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium. The amount of Rs. 15,000/- awarded towards loss of consortium, loss of expectation of life and loss of estate shall be adjusted towards loss to estate alone.

14. 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.

15. On the basis of the discussion, the total loss of dependency comes to Rs. 9,87,120/-. After taking into account Rs. 1,00,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 10,87,120/-.

16. In view of the above discussion, the total compensation is enhanced to Rs. 10,87,120/- from Rs. 6,73,000/- with interest @ 7.5% per annum on enhanced compensation from the date of filing of the present petition till realisation payable to the appellant by the respondent insurance company.

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

6.4.2009

KAILASH GAMBHIR, J