

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO APP No. 360/2000

Judgment reserved on 19.3.2008

Judgment delivered on: 20.4.2009.

Ram Mehar Singh Appellant.

Through: Mr.Sureh Sharma, Advocate.

Versus

The New India Assurance Ltd. & Ors. Respondents

Through: Mr. Kanwal Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | | |
|----|---|----|
| 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 6.6.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,26,000/- along with interest @ 12% per annum to the claimants.

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

3. On 11.7.94, the deceased Shri Vipin Kumar was going to sell milk on his bicycle loaded with milk canes. At about 6 A.M. when he was near red light on Gajipur, near Kalyanpuri, a half body truck bearing registration no. DBG-1620 being driven in a rash and negligent manner hit the cycle of Shri Vipin Kumar, as a result of which Shri Vipin Kumar sustained fatal injuries.

4. A claim petition was filed on 19.8.94 and an award was passed on 6.6.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh.Suresh Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at

Rs. 1977/- 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. 3,500/-per month as the deceased was into the business of selling milk. The counsel submitted that the tribunal erroneously applied the multiplier of 9 while computing compensation when according to the facts and circumstances of the case multiplier of 16 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 16 yrs of age only and would have lived for another 60 yrs had he not met with the accident. The counsel also submitted that had the deceased not met with his untimely death he would have expanded his business and would have been earning much more in the near future. 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 estate and loss of service which were being rendered by the deceased to the appellants. The

amount awarded towards funeral expenses and loss of love and affection is on the lower side, contended counsel for the appellant.

6. Per contra, Mr.Kanwal Chaudhary 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 of income 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 even in the absence of any evidence placed by the appellants with regard to the future loss of income no further enhancement can be claimed by the counsel for the appellants. Counsel for the respondent thus submits that this Court may not interfere in the compensation amount awarded by the Tribunal, which cannot be considered either as unjust or unfair

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

8. As regards the income of the deceased nothing has been brought on record to prove that the deceased was into selling business of milk and was earning Rs.3,500/- p.m. through it as is claimed by the appellants.

9. 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

10. 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. The Tribunal following the said principle assessed the income of the deceased in accordance with the MW Act at Rs. 1977 p.m. Therefore, no interference is made in relation to income of the deceased by this court.

11. Further, It has been the consistent view of this court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of

living and price index, the minimum wages are increased from time to time. 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.

12. It is evident from the award that the tribunal assessed compensation considering future increase in income of the deceased. Therefore, the tribunal committed no error, while assessing the income of the deceased while computing compensation towards loss of dependency and assessed it at Rs. 2965.50.

13. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 9 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 had already been brought on the statute books. The age of the deceased at the time of the accident was 13 years and age of the father of the deceased at that time was 52 years. It is no more *res integra*

that multiplier is chosen considering the age of the deceased or the claimants, whichever is higher. 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 11 should have been applied as per the II Schedule of M.V. Act. Thus, the Tribunal erred in applying the multiplier of 9 in the facts and circumstances of the present case and multiplier of 11 shall be applicable.

14. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection and funeral expenses and no compensation has been granted towards loss of estate 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 enhanced to Rs.20,000/- from Rs.10,000/-; compensation towards funeral expenses is enhanced to Rs.10,000/- from Rs.2,000/- and compensation towards loss of estate is awarded at Rs.10,000/-

15. 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.

16. In view of the above discussion, the total loss of dependency comes to Rs.2,60,964/- ($2965.50 \times \frac{2}{3} \times 12 \times 11$). After considering Rs. 40,000/- which is granted towards non pecuniary damages. The total compensation comes out as Rs. 3,00,964/-.

17. In view of the above discussion, the total compensation is enhanced to Rs.3,00,964/- from Rs. 2,26,000/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellants in equal proportion by the respondent insurance company.

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

20.4.2009

KAILASH GAMBHIR J.