

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 453/2000**

% Judgment reserved on: 7th January, 2008
Judgment delivered on: 13.4.2009

Shiv Charan Dass Rastogi Appellant
Through: Mr. Sumit Gupta , Advocate.

versus

Rattan Singh & Ors. Respondents
Through: None.

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 1/8/2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 85,000 along with interest @ 12% per annum to the claimants.

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

On 8/12/1986 at about 5:45pm, the deceased Sh. Vijay Kumar Rastogi was riding his motorcycle bearing registration no. DIW 7233 along with Sh. Virender Yadav, who was pillion riding. At the Outer Ring Road near Meera Bagh, the aforesaid motorcycle met with an accident with a truck bearing registration no. DBL 4611, which was being driven in a rash and negligent manner by the driver. Sh. Vijay Kumar received fatal injuries and succumbed to his injuries.

3. A claim petition was filed on 29.6.87 and an award was made on 1/8/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. Sumit Gupta, counsel for the appellant assailed the said award on quantum of compensation. Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1200 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. 5000-6000 per month. The counsel further maintained that the tribunal erred in

making the deduction to the tune of 1/3 of the income of the deceased towards personal expenses, which is on the higher side. The counsel submitted that the tribunal has erroneously applied the multiplier of 10 while computing compensation, whereas, 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 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 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 @15% 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, mental pain and sufferings and the

loss of services, which were being rendered by the deceased to the appellants. It was also averred by the counsel that the amount of Rs. 5000/- awarded towards loss of estate is on the lower side.

5. Nobody has been appearing for the respondents.

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

7. The appellants claimants had not brought anything on record to prove the income of the deceased. Sh. Shiv Charan Dass Rastogi, father of the deceased, entered the witness box as PW2 and in his deposition stated that the deceased was 30 years of age and was doing his own business in the name and style of M/s. Northern India Electrical Co. and was earning Rs. 5000-6000/-pm. He also deposed that he was of 60 years of age and his wife was 55 years old, as on 19/8/1994, meaning thereby that the appellants claimants were aged about 52 years and 47 years at the time of incident. It was deposed by the said witness that the deceased was an income tax assessee. But no documents

were brought on record to prove the same. Sh. Virender Yadav, PW3, deposed that the deceased was an electrical contractor and working with him. On perusal of the award, it comes in to light that the tribunal has assessed the income of the deceased as per the income exempted from the income tax during the assessment year 1987-88, which was Rs. 12,000 pa. After considering all these factors, I am of the view that the tribunal has erred in assessing the income of the deceased at Rs. 12,000pa, without there being any cogent evidence on record regarding that.

8. 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.

9. 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.

10. Therefore, the tribunal ought to have took the aid of the Minimum Wages Act and should have assessed the income of the deceased as per the wages notified for a skilled workman at the relevant time, which was Rs.552 pm. But since, the tribunal has assessed the income of the deceased at Rs. 12,000 pa and on assessing the income according to the minimum wages, the quantum of compensation will further dwindle down, therefore, in the interest of justice, the income of the deceased as assessed by the tribunal is not interfered with.

11. As regards the future prospects I am of the view that there is no material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case.

12. 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 his parents alone and was a bachelor, so definitely he must have not been spending 1/3rd amount on himself. In catena of cases the Apex Court in similar

circumstances has made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

13. 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 1986 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 deceased was aged about 35 yrs at the time of the accident and is survived by his mother and father, who were aged 52 years and 47 years of age at that time. 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 after taking a balanced view considering the applicable multiplier under the II Schedule to the M.V. Act, the multiplier of 12 should have been

applied. Therefore, in the facts of the instant case the multiplier of 12 shall be applicable.

14. 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 15% 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.

15. On the contention regarding that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants and that the compensation towards loss of estate is on the lower side, I feel that the same should have been awarded by the tribunal. 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 enhanced to Rs. 10,000/-.

16. 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.

17. On the basis of the discussion, the income of the deceased is taken as Rs. 12,000/- pa. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 8,000/-pa and after

applying multiplier of 12 it comes to Rs. 96,000/-. Thus, the total loss of dependency comes to Rs. 96,000/-. After considering Rs. 35,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,31,000/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,31,000/- from Rs. 85,000 /- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant in equal proportion by the respondent insurance company.

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

13.4.2009

KAILASH GAMBHIR, J