

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

+ **FAO No. 615/2002**

% Judgment reserved on: 21st Feb., 2008
Judgment delivered on: 13.4.2009

Raj Kumari & Ors. Appellant
Through: Mr. O. P. Mainee, Advocate.

versus

Shri Satnam Singh & Ors. Respondents
Through: Mr. Pankaj Seth, Adv.

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 18.8.93 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 25,000/- along with interest @ 9% per annum to the claimants.

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

That the deceased was crossing the road when a tempo bearing registration no. DL-1L-7493 driven by respondent no.1 in a rash and negligent manner struck against the deceased who fell down and received fatal injuries and when the injured was taken to hospital, he was declared as brought dead.

3. A claim petition was filed on 27.8.95 and an award was passed on 3.8.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Shri O.P.Mannie counsel for the appellants while assailing the said award contended that the tribunal awarded only Rs.25,000/- to the claimants as no fault liability compensation and dismissed the petition on the ground that the appellants could not prove the negligence of the tempo driver. The counsel submitted that the appellants had brought on record ample evidence to prove negligence of respondent no.1. The counsel urged that the tribunal ought to have awarded Rs.4,95,000/- compensation towards loss of dependency by taking income of the deceased at Rs.5,000/- making deductions of $\frac{1}{4}$ towards personal expenses of the deceased and by applying multiplier of 11. The counsel also urged that the tribunal also erred in not awarding non-pecuniary

damages and claimed Rs.1,75,000/- under the said head of damages.

5. Per contra, Mr. Pankaj Seth, counsel appearing for the respondent insurance company submitted that there is no illegality in the impugned award. Counsel further contended that award passed by the tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

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

7. PW-1 widow of the deceased deposed that the deceased was working at shoe store at Pitampura and used to earn Rs.3000/- p.m. The tribunal erred in holding that the appellants could not prove the negligence on the part of the respondent no.1. It has come on record that the driver of the tempo was challaned by the police under Section 279/304-A IPC vide FIR No. 253/93, P.S. Sarai Rohilla, which is Ex. PC. Furthermore, PW-2 Anil Kumar who an eye witness and was not known to the appellants stated that the tempo bearing registration no. DL 1L 7943 which was being driven by respondent no.1 caused the accident. Further charge sheet Ex. PA and copy of seizure memo, Ex. PD clearly prove the involvements of the tempo in the accident which led to death of the

deceased. As regards the negligence, the site plan, Ex.PB statement of PB coupled with principle of res ipsa loquitur point at the negligence of the tempo driver. It was held by the Apex Court in **N.K. V. Bros. (P) Ltd., Vs. M. Karumai Ammal-1980 ACJ 435 (SC)** that the degree of culpable rashness required to be proved under criminal law is more drastic than the degree of negligence required to be proved under the law of torts to create liability. In the instant case the aforesaid documents are sufficient to prove the negligence on the part of the driver supported by the deposition of eye witness PW-2. Therefore, the tribunal erred in holding that the negligence of respondent no.1 was not proved.

8. The appellants claimants did not bring on record any document to prove income of the deceased.

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 at the time of the

accident on the basis of the minimum wages notified under the Minimum Wages Act.

11. Therefore, income of the deceased as on 18.8.93 as notified under the M.V. Act for a skilled workman shall be Rs. 1369/-.

12. As regards the future prospects, it is no more res integra that mere bald assertions regarding the future prospects of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

13. As regards the contention of the counsel for the appellant that the $\frac{1}{4}$ deduction should be made as the deceased is survived by his wife and three children. In catena of cases the Apex Court has in similar circumstances made $\frac{1}{3}$ rd deductions. Therefore, deductions to the tune of $\frac{1}{3}$ rd expenses towards personal expenses is made.

14. As regards the contention of the counsel for the appellant multiplier of 11 is applicable in the facts and circumstances of the case. This case pertains to the year 1993 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 at the time of the accident was of 55 years of age and is survived by his widow and three children. 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 applicable multiplier under the II Schedule to the M.V. Act, the multiplier of 11 can be applied. Therefore, in the facts of the instant case the multiplier of 11 shall be applicable.

15. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 12% 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 into consideration relevant factors including inflation, change of economy, 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 @ 9% p.a by the tribunal and the same is not interfered with.

16. On the contention regarding that the tribunal has erred in not granting compensation towards loss of love and affection, funeral expenses, loss of estate, loss of consortium 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 awarded at Rs.30,000/- compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

17. On the basis of the above discussion, the income of the deceased would come to Rs. 2053.50 after doubling Rs. 1369/- to

Rs. 2738/- and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1369/- and the annual loss of dependency comes to Rs. 16,428/- per annum and after applying multiplier of 11 it comes to Rs. 1,80,708/-. Thus the total loss of dependency comes to Rs. 1,80,708/-. After considering Rs. 1,00,000/- which is granted towards non-pecuniary damages, the total compensation comes out as Rs.2,80,708/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 2,80,708/- from Rs.25,000/- with interest @ 7.5% per annum from the date of filing of the petition till realization and the same should be paid to the appellants by the respondent no.3. Out of the enhanced compensation 50% be paid to the widow of the deceased and remaining be distributed equally amongst the remaining appellants.

19. With these directions, the present appeal stands disposed of.

13.4.2009

KAILASH GAMBHIR, J