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IN THE HIGH COURT OF DELHI AT NEW DELHI
FAO No. 628/2002

% Judgment reserved on: 14.03.2008
Judgment delivered on: 27.04.2009

Kamli Devi

..... Appellant

Through: Mr. Prem Kumar Sharma, Adv.

Versus

Jamshed Alam

..... 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 28/7/1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,00,000/- along with interest @ 9% per annum to the claimant.

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

3. The son of the appellant namely Ram Parvesh, aged 22 years had died untimely in a road accident on 28.7.1999. At the time of accident the offending vehicle tempo DL1LC 9533 was being driven by the respondent no.1 and the tempo was owned by the respondent no.2 at the relevant time. The offending vehicle was insured with the respondent no.3 at the relevant time. The accident was caused due to the rash and negligent act of the respondent no.1, who drove the offending vehicle in a very high speed.

4. A claim petition was filed on 28.9.1999 and an award was passed on 17.4.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Prem Kumar Sharma counsel for the appellant contended that the tribunal erred in assessing the income of the deceased at Rs. 2400 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. 2800 per month. The

counsel submitted that the tribunal has erroneously applied the multiplier of 3 while computing compensation when according to the facts and circumstances of the case multiplier of 17 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 22 yrs of age only and would have lived for another 30-40 yrs 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 9% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium,

mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants.

7. Nobody appeared for the respondents.

8. I have heard the learned counsel for the appellant and perused the record.

9. As regards income, the case of the appellant claimant is that the deceased was of 22 yrs of age and was working as a labourer and was earning Rs. 2800/- per month. But nothing had been brought on record to prove the same. After considering all these factors, I am of the view that the tribunal has not erred in assessing the income of the deceased as per the rates of minimum wages but erred in considering wages notified for an unskilled person instead of skilled person at Rs. 2772/- per month.

10. 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. 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.

11. Therefore, the award is modified to the said extent.

12. Furthermore, 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. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

13. Therefore, the tribunal did not err in considering increase in minimum wages.

14. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 3 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1999 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 22 years and he is survived by his aged mother aged 48yrs. 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 multiplier applicable as per the II Schedule to the MV Act, the multiplier of 12 shall be applicable.

15. 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.

16. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses and loss of estate, whereas, no compensation has been granted towards 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. 10,000/-; compensation

towards funeral expenses is awarded at Rs. 27,200/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

17. 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 her 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.

18. On the basis of the discussion, the income of the deceased would come to Rs. 4,158/- after doubling Rs. 2,772/- to Rs. 5,544/- and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 2,772/- and the annual loss of dependency comes to Rs. 33,264/- per annum and after applying multiplier of 12 it comes to Rs. 3,99,168/-. Thus, the total loss of dependency comes to Rs. 3,99,168/-. After considering Rs. 47,200/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,46,368/-.

19. In view of the above discussion, the total compensation is enhanced to Rs. 4,46,368/- from Rs. 2,00,000/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellant by the respondent insurance company as directed by the tribunal and within 30 days of this order.

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

April 27, 2009.

KAILASH GAMBHIR, J.