

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 643/2002

Judgment reserved on 14.03.2008

Judgment delivered on: 13.4.2009

Smt. Satya Rani & Ors. Appellants.
Through: Mr. Deepak Khadaria, Adv.

versus

Lekh Raj & Ors. Respondents
Through: Shri Kanwar Chaudhary, 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 12.9.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,61,000/- along with interest @ 6% per annum to the claimants.

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

On 26.2.1993 deceased late Shri Jagdish Rajpal was coming from Subash Nagar to DDA Flats Gulabi Bagh and after crossing Shastri Nagar traffic lights, the deceased kept his scooter right near the entrance of DDA flats, Gulabi Bagh, where a half body truck No: DL 1G 6199 was being driven at tremendous speed in a rash and negligent manner without applying horn by its driver and the said truck hit Shri Jagdish Raj on the left side whereas his wife fell on the rear wheel of the said truck on the right side crushed the head of the deceased resulting into instantaneous death.

3 . A claim petition was filed on 20.3.1996 and an award was passed on 12.9.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4 . Sh. Deepak Khadaria, counsel for the appellants has assailed the said award on five grounds. Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 2,000/- 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. 8,000/-

per month. The counsel submitted that the tribunal has erroneously applied the multiplier while computing compensation, and according to the facts and circumstances of the case multiplier of 12% 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 49 yrs of age only and would have lived for another 20-30 yrs had he not met with the accident. It was also urged 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 @ 12% per annum in place of only @ 6% 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. The counsel has relied on following judgments in support of his contentions:

1. 1990 ACJ 545 II (2002) ACC 610 (DB).

2. 2001 ACJ 474 I (2004) SLT 886

3. 1988 ACJ 1052

5 . Shri Kanwar Chaudhary, Advocate appeared on behalf of respondent and submitted that the award passed by the Id. Tribunal is just and fair and requires no interference by this court.

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

7. PW-1 Smt. Satya Rani (Appellant No: 1) has testified that the deceased used to give his entire earnings to her for the household expenses. She has filed copy of statement of the assessable income for the years 1988-89; 1989-90 and 1990-91, which are Exhibits PW 1/4, PW 1/5 and PW 1/7. Copy of assessment order for the assessment year 1988-89 is Ex. PW 1/6 and th self assessment tax receipt for the years 1989-90 and 1990-91 are Ex. PW 1/2 and PW 1/3. The Tribunal after considering the aforesaid documents assessed the income of

deceased at Rs.19,285/- pa and after considering future prospects assessed it at Rs.24,000/- p.a.

8 . As regards the future prospects I am of the view that there is no sufficient 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.

9. As regards the contention of the counsel for the appellant that the tribunal 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 1982 and at that time II schedule to the Motor Vehicles act was not brought on the statute book. 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 49 years of age and is survived by his widow and two 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 the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 11 should have been applied. Therefore, in the facts of the instant case the multiplier of 11 shall be applicable.

10 . As regards the issue of interest that the rate of interest of 6% 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 not/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, 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 @ 12% pa by the tribunal and the same is not interfered with.

11 . 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 enhanced to Rs. 20,000/-; compensation towards funeral expenses is enhanced to Rs. 10,000/- and compensation towards loss of estate as awarded by the tribunal at Rs.15,000/- is not interfered with. Further, Rs.50,000/- is awarded towards loss of consortium.

12 . 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.

13 . On the basis of the discussion, the income of the deceased would come to Rs.24,000/- pa. After making 1/3rd deduction the annual loss of dependency comes to Rs.16,000/- pa and after applying multiplier of 11 it comes to Rs.1,92,000/-. Thus, the total loss of dependency comes to Rs.1,92,000/-. After considering Rs.95,000/- which is granted towards non-pecuniary damages, the total compensation comes out as Rs.2,87,000/-.

14 . In view of the above discussion, the total compensation is enhanced to Rs. 2,87,000/- from Rs. 1,61,000/- 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 by the respondent No.3, in the same ratio as awarded by the tribunal.

15 . With the above direction, the present appeal is disposed off.

13.4.2009

KAILASH GAMBHIR, J.