

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 695/2002

Judgment reserved on 14.03.2008

Judgment delivered on:13.4.2009.

Smt. Krishna Kohli & Ors. Appellants.
Through: Mr. O P Goyal, Adv.

versus

Narender Singh & Ors. Respondents
Through: Shri P K 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. Oral:

1 . The present appeal arises out of the award dated 12.8.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,83,160/- along with interest @ 9% per annum to the claimants.

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

On 21.4.1994 deceased Shri Rajinder Kumar Kohli was going from Maya Puri Road towards Hari nagar on his motorcycle bearing registration No: PUA 5436. He had crossed more than 3/4th of the Maya Puri Road when Crane bearing registration No: DL 1G 4309 driven rashly, recklessly and negligently came in front of the Crane and hit the rear wheel of the motorcycle. As a result of the forceful impact, deceased Rajinder Kumar Kohli was thrown away and was injured and became unconscious. Immediately after the accident the deceased was taken to Din Dayal Upadhaya Hospital, where he was declared 'brought dead'.

A claim petition was filed on 17.10.1994 and an award was passed on 12.8.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3 . Sh. O P Goel, counsel for the appellants assailed the said award on five grounds. Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1741.2/- 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. 6,500/- per month. The counsel submitted that the tribunal erroneously applied the multiplier of 11 while computing compensation when according to the facts and circumstances of the case multiplier of 15 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 54 yrs of age only and would have lived for another 10- 20 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 9% per annum. The counsel contended that the tribunal 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 relied on the judgment in **1994 ACJ I SC (Sussamma Thomas)** support of his contentions.

4 . Nobody has appeared on behalf of the respondents.

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

6 . Appellant No:1 Smt. Krishna Kohli examined herself as PW-3. She deposed that deceased Rajinder Kumar Kohli was her husband and was 54 years of age at the time of the accident. She further deposed that her husband was running a registered Bureau and was providing service / employment to boys and girls as nurses in various Nursing Homes. She stated that her husband was earning Rs. 6,000/- to Rs. 7,000/- per month. Besides this her husband was also working with Mr. V P Sehgal and was earning Rs. 3500/- per month. She also deposed that she was given Rs.6000—7000/per month by her husband for household expenses. The appellants produced Ex.A, photocopy of Form 16 for the period, 1.4.1993 to 31.3.1994 and as per it, the gross salary of the deceased was Rs.42,000/- per annum. The tribunal rightly did not find the same reliable as there is nothing

on record to prove the said Ex.A. Furthermore, the appellants brought the bill book; Ex. PW ¾ of the firm M/s Care Well Nursing Bureau according to which the deceased was earning Rs.1741/- per month.

7 . After considering all these factors I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs.1741/-.

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, no interference is made in the award in relation to income of the deceased by this court.

11 . As regards the future prospects I am of the view that there 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 tribunal erred in applying the multiplier of 11 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to April 1994 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 November, 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 age of the deceased at the time of the accident was 54 years and he 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 the applicable multiplier under II Schedule to the M.V. Act, the multiplier of 11 should have been applied. Therefore, in the facts of the instant case the tribunal committed no error.

13 . 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 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 @ 9% pa by the tribunal and the same is not interfered with.

14 . On the contention regarding that the tribunal 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. 30,000/-; compensation towards funeral expenses is enhanced to Rs. 10,000/- and compensation towards loss of estate is enhanced to Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

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 . The tribunal also awarded Rs.10,000/- towards loss of expectation of life, the same is not a conventional head of damages in fatal accident cases and thus same is disallowed.

17 . Therefore, after considering income of the deceased at Rs.1741/- and after applying unit method the loss of dependency as assessed by the Tribunal comes to Rs.1255/- per month and annual dependency comes to Rs.15,060/- per month. After applying multiplier of 11, the total loss of dependency comes to

Rs.1,65,660/-. After considering Rs.1,00,000/- which is granted towards non-pecuniary damages the total compensation comes out as Rs.2,65,660/-.

18 . In view of the above discussion, the total compensation is enhanced to Rs. 2,65,660/- from Rs.1,83,160/- with interest @ 7.5% per annum from the date of filing of the present petition till realisation and the same should be paid to the appellants by the respondent No.3, in the same ratio as awarded by the tribunal.

Disposed of.

13.4.2009

KAILASH GAMBHIR, J.