

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 313/2001

Judgment reserved on 21.2.2008

Judgment delivered on: 13.4.2009

Kshitif Mohini & Ors. Appellant.
Through: Mr V.P. Chaudhry, Sr. Adv.
With Mr. Nitinjya Chaudhry, Adv.
versus

Shri Hari Parshad Aggarwal & Anr. Respondents
Nemo

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 6.1.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 5,70,816/-along with interest @ 12% per annum to the claimants.

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

On 23.11.94 at about 3.30 PM Shri Raj Kumar Rohilla while driving his two wheeler scooter bearing registration No. DAM-6946 was proceeding on GT Road while on his way from Ghaziabad to Delhi and was passing by the side of Modern Industries Ltd. situated within the jurisdiction of PS Sahibabad and the scooter at that time was proceeding on proper left side of the road at a moderate speed when a truck bearing Registration No. WB-11-7458 came from behind at a high speed being driven rashly and negligently the extreme left side of the road and struck against the scooter driven by Shri Raj Kumar Rohilla from behind as a result of which the scooterist and the scooter were thrown away on the road and the scooterist was run over by the front left wheel of the truck. Further, the driver of the truck absconded from the place of accident after leaving truck on the spot. The injured was rushed to Narender Mohan Hospital where he was declared as brought dead.

3 . A claim petition was filed on 6.2.95 and an award was passed on 6.1.01. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4 . The counsel submitted that the tribunal erred in making the deduction to the tune of Rs.1616/- PM of the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his wife, daughter, son and parents. The counsel submitted that the tribunal erroneously applied the multiplier of 12 while computing compensation when according to the facts and circumstances of the case multiplier of 16 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 39 yrs of age only. The counsel also stated that had the deceased not met with his untimely death he would have expanded his business and would have been earning much more in the near future. 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 @ 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, 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.

5 . Nobody has appeared for the respondents.

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

7 . The appellant No.1 widow of deceased deposed that her husband was working as a clerk at MCD and was drawing a monthly salary of Rs.3719/- p.m. the salary certificate proving the said deposition is marked as Ex. PW 2/A. Furthermore, PW 3 employed with MCD also supported her deposition. Considering these facts, I am of the view that the tribunal committed no error in assessing the income of the deceased at Rs.3719/- p.m.

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

9 . As regards the future prospects I am of the view that there was sufficient material placed on record to award future prospects. Therefore, the tribunal rightly granted future prospects in the facts and circumstances of the case. It has come in the deposition of both, appellant No. 1 and PW 3 that after implementation of 5th pay commission, the income of the deceased would have increased. Thus, no interference is made in this regard.

10 . As regards the contention of the counsel for the appellant that the deduction to the tune of Rs.1616/- is made by the tribunal after applying unit method is on the high side as the deceased is survived by his widow, two children and aged parents. In catena of cases the Apex Court has in similar circumstances applied unit system and no fault can be found with the same. Therefore, I am not inclined to interfere with the award on this ground.

11. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 12 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to November, 1994 and at that time II schedule to the Motor Vehicles Act had been

brought on the statute books. The said schedule came on the statute book in 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 deceased at the time of the accident was of 39 years of age and is survived by his widow two children and aged parents. 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 after considering applicable multiplier under the II Schedule to the M.V. Act, the multiplier of 16 should have been applied. Therefore, in the facts of the instant case the multiplier of 16 shall be applicable.

12 . 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.

13 . On the contention regarding that the tribunal has erred in not granting compensation towards loss of love & affection, funeral expenses and 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 to Rs. 40,000/-; 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.

14 . On the basis of the discussion, the income of the deceased would come to Rs.5578.50 after doubling Rs.3719/- to Rs.7438/- and after taking the mean of them. After making deductions to the tune of Rs.1616/- the monthly loss of dependency comes to Rs. 3964/- and the annual loss of dependency comes to Rs.47568/- per annum and after applying multiplier of 16 it comes to Rs. 7,61,088/-. Thus, the total loss of dependency comes to Rs.7,61,088/-. After considering Rs.1,10,000/-, which is granted towards the total compensation comes out as Rs.8,71,088/-.

15 . In view of the above discussion, the total compensation is enhanced to Rs.8,71,088/- from Rs.5,20,816/- with interest @ 7.5% per annum from the date of filing of the present petition till realization and the same should be paid to the appellants by the respondent insurance company in the same ratio as apportioned by the tribunal.

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

13.4.2009

KAILASH GAMBHIR,J.