

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 351/2001

Judgment reserved on: 21.2.2008
Judgment delivered on: 27.4.2009

Mohd. Aslam & Ors. Appellants.
Through: Mr. Y.R. Sharma,Adv.

versus

M/s. Northern Hatcheries (P)Ltd. Respondents
Through: Mr. A.K.De, 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 24.4.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs.1,41,600/- along with interest @ 9% per annum to the claimants.

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

3. On 11.8.96, Mohd. Imran was sitting on two wheeler scooter bearing registration no. DBF-7419 which was being driven by Mohd. Saud and was proceeding towards ITO flyover at about 12.30 A.M. and when the scooter reached in front of IP Estate, DTC Depot, one tempo bearing registration no. HR-46-1448 being driven by the driver of the said offending vehicle in a rash and negligent manner hit the scooter. As a result of which the occupants of the two wheeler scooter came under the wheels of the said tempo and received grievous injuries. Mohd. Imran was removed to the JPN Hospital, where he succumbed to his injuries on 12.8.96.

4. A claim petition was filed on 18.10.96 and an award was passed on 24.4.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1784/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased at Rs2208/- per month. The counsel further maintained that the tribunal

erred in making the deduction to the tune of $1/3^{\text{rd}}$ for eight years and $2/3^{\text{rd}}$ for four years, from 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 aged parents and two sisters. The counsel submitted that the tribunal has erroneously applied the multiplier of 12, 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 20 yrs of age only. 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 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.

6. Per contra Mr. A.K. De counsel for the respondent NO. 2 contended that the award passed by the learned Tribunal is already on the higher side and no further enhancement is warranted.

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

8. As regards the income, the appellants case is that the deceased was 20 years of age and was earning Rs. 5,000/- p.m. while working as sales representative at M/s Lilly Exports. According to Ex PW 1/11, the post mortem report the deceased was of 17 years of age at the time of the accident and considering the same the Tribunal held that in the absence of any documentary evidence on record proving the work done and earnings of the deceased, the income shall be assessed as per the rates of minimum wages and assessed the income at Rs. 1784/- p.m.

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

11. The Tribunal correctly followed the said thumb rule and therefore, no interference is made in relation to income of the deceased by this court.

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 erred in not considering increase in minimum wages, while assessing the income of the deceased and same should be considered while computing compensation towards loss of dependency.

14. As regards the contention of the counsel for the appellant that the $\frac{1}{3}$ deduction for 8 years and $\frac{2}{3}$ for 4 years made by the tribunal are on the higher side as the deceased is survived by his aged parents and two sisters. In the facts of the instant case, I am inclined to interfere with the award on this ground and modify the award by deducting $\frac{1}{5}$ expenses for 8 years and $\frac{2}{5}$ for five years towards personal expenses of the deceased.

15. As regards the contention of the counsel for the appellant that the tribunal has 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 the year 1996 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute book. The deceased was of 17 years at the time of the accident and his parents were of 48 years and 43 years of age. In the facts of the present case I

am of the view that after looking at the age of the claimants and the deceased the multiplier of 13 should have been applied as per the II Schedule to Motor Vehicles Act.

16. On the contention regarding that the tribunal has erred in not granting compensation towards loss of love & affection, funeral expenses, loss of estate, 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. 40,000/- compensation towards funeral expenses is awarded at Rs. 10,000/- 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 the deceased 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. 2676 after doubling Rs. 1784 to Rs. 3568 and after taking

the mean of them. After making 1/5 deductions for 8 years and 2/5 deductions for 5 years the monthly loss of dependency comes to Rs. 2140.80 + Rs. 1605.60 and the annual loss of dependency comes to Rs. 25680/- + Rs. 19267/- per annum and after applying multiplier of 825 respectively it comes to Rs. 2,05,440/- + Rs. 96336/-. Thus, the total loss of dependency comes to Rs. 3,01,776/-. After considering Rs. 60,000/- which is granted towards non-pecuniary damages the total compensation comes out as Rs.3,61,776/-.

19. In view of the above discussion, the total compensation is enhanced to Rs. 3,61,776/- from Rs. 1,41,600/- 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 appellants by the respondent insurance company in the same proportion as awarded by the Tribunal and within 30 days from the date of this order.

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

April 27, 2009

KAILASH GAMBHIR, J.