

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 505/2001

Judgment reserved on : 5.2.2008
Judgment delivered on: 20.4.2009

Smt. Malti Devi & Ors. Appellants.
Through: Mr. Y R Sharma, Adv.

versus

Dharam Pal Singh & Ors. Respondents
Through:

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 25.7.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,78,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 28.8.1992 deceased Shri Mahender Singh while driving three wheeler scooter bearing registration No: DL 1R 5517 at a slow speed on his proper side was going towards Vasant Kunj side from Vasant Vihar side and when at about 9.00 PM the scooter of the deceased reached near Hill view Apartment, Vasant Vihar on Nelson Mandela Road, New Delhi a tanker bearing registration No: DHL 2965 driven by respondent No: 1 rashly and negligently and at a very fast speed came from opposite side and after coming on the wrong side of the road struck against the deceased without blowing any horn or giving any signal. The deceased was removed to Safdarjung Hospital from the spot of the accident where he succumbed to injuries on the same day.
4. A claim petition was filed on 2.11.1992 and an award was passed on 25.7.2001. 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. 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. 3500/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of 1/3rd 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, four children and mother. The counsel submitted that the tribunal erroneously applied the multiplier of 10 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 29 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 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. 1994 ACJ SC & 1 (2003 ACC 272) 2001 ACJ 1636 DB

Madras.

2. 11 (2006) ACC 206 (DB).

3. 2005 ACJ 538 DH.

6. Nobody has been appearing for the respondents.

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

8. Appellant No: 1 has examined herself as PW-5. She deposed that her husband was 33 years of age at the time of

accident. He used to drive three-wheeler scooter and used to earn Rs. 125/- or Rs. 150/- per day. She further deposed that her husband used to give her his entire income for household expenses. PW 4 Shri Anand Singh, a three-wheeler driver supported the testimony of PW5. But no documentary evidence, in this regard was brought on record by the appellants.

9. After considering all these factors I am of the view that the tribunal has erred in assessing the income of the deceased at Rs.2,000/-.

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.

11. 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. Therefore, the Tribunal erred in not following the said thumb rule. But considering that no defence is raised by the appellants in this

regard, therefore, no interference is made in relation to income of the deceased by this court in the interest of justice.

12. 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.

13. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal are on the higher side as the deceased is survived by wife, four children and mother. Considering, the facts of the present case, I am inclined to interfere with the award on this ground and modify the award by deducting 1/5th expenses towards personal expenses. Thus the loss of dependency came to Rs. 2000-400 i.e. 1600/- per month, Rs. 19,200/- per annum.

14. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 10 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1992 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 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. AT the time of accident deceased was of 45 years of age and is survived by his widow, four children and an aged mother. 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 considering applicable multiplier under II Schedule to the Motor Vehicle Act and after taking a balanced view, the multiplier of 11 shall be applicable.

15. 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 Rs. 50,000/-; 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.

16. 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.

17. On the basis of the discussion and after taking income at Rs. 2,000 p.m. and deducting 1/5 towards personal expenses and after applying multiplier of 11 the loss of dependency comes to Rs. 2,11,200/-. Thus, the total loss of dependency comes to Rs. 2,11,200/-. After considering Rs. 1,30,000/-, which is granted towards non-pecuniary damages the total compensation comes out as Rs. 3,41,200/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 3,41,200/- from Rs. 1,78,000/- with interest @ 7.5% per annum from the date of filing of the petition till

realisation and the same should be paid to the appellants by the respondent No. 3 in the same proportion as awarded by the Tribunal.

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

20.4.2009

KAILASH GAMBHIR, J.