

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 516/2001

Judgment reserved on: 1st April, 2008.

Judgment delivered on: 13.4.2009.

Ram Pal. Appellant.

Through: Mr. O.P. Goyal, Advocate.

Versus

Banwari Lal & Ors. Respondents

Through: Mr. Amarjit Bedi, Adv. for R-1
to 3.

Ms. Seema Sharma, Adv. for
R-4.

Mr. Pankaj Seth, Adv. for R-6.

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? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. :

1. The present appeal arises out of the award dated 8.8.2001 of the Motor Accident Claims Tribunal whereby the

Tribunal awarded a sum of Rs.1,25,000/- along with interest @ 9% per annum to the claimants. Appellant is the father of the deceased Sh. Jatinder Prakash @ Jatinder Prasad.

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

That on 09.2.97 deceased Sh. Jatinder Prakash @ Jatinder Prasad was travelling in Maruti Van bearing registration no. DAE-3681 driven by one Rakesh Khandelwal. Smt. Alka, wife of Sh. Jatinder Prakash @ Jatinder Prasad, Smt. Santra, wife of Sh. Ram Pal and Smt. Suresh, wife of Sh. Pratap Singh were also travelling in the said maruti car, which was going from Mathura to Delhi at a slow speed. At about 9:30PM, when the Maruti van reached near village Samri under Police Station Chhatta, District Mathura (U.P) and was on its extreme left side, a truck trailer bearing registration no. NL-01-A-2072 being driven by R1 rashly, recklessly and negligently in due course of his employment under R2 & R3 came from the direction of Delhi and after coming on the wrong side, hit the Maruti van with a great force with the front of the trailer and the Maruti van was taken by the truck trailer to the left side of the road coming from Mathura and going towards Delhi. The vehicle

driven by R1 was loaded with Maruti vehicles and it came over the maruti van in which the deceased alongwith others was travelling and caused the death of abovesaid four occupants of the maruti van alongwith its driver.

A claim petition was filed on 29.8.97 and an award was passed, on 8.8.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. O.P. Goyal, counsel for the appellants contended that the compensation of Rs.1,25,000/- awarded by the tribunal is on the lower side and needs to be revised considering the various judicial decisions. It is stated that Ld. Tribunal did not notice various judicial decisions relevant in the instant case. The Ld. Tribunal ought to have awarded compensation of Rs.7,50,000/- by taking the salary of the deceased @ Rs.2500/- per month for a period of 25 years, the counsel contended. It is further urged that Ld. Tribunal should have awarded compensation for loss of services rendered by the deceased to the appellants @ Rs.3000/- per month. The counsel further submitted that Ld. Tribunal should have awarded Rs.15,00,000/- towards economic loss suffered by the appellant on account of death of late Sh.

Jatinder Prakash @ Jatinder Prasad. 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 25 yrs of age only. In this regard the Ld. Counsel for the appellant placed reliance on the following cases:

- (i) Arun Sondhi vs. DTC, 1 (2201) ACC Page 615.
- (ii) All India Lawyers' Union Vs. Union of India, 2000 ACJ Page 1006.
- (iii) M.S. Grewal & Ors. Vs. Deep Chand Sood & Ors. JT 2001 (7) SC Page 159
- (iv) Lata Wadhwa & others Vs. State of Bihar, 2001 (5) SCALE Page 286.
- (v) Spring Medos Hospital Vs. Harjol Ahluwalia decided by Hon'ble Supreme Court.

4. 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 @ 18 per annum in place of only @ 9% per annum. The counsel contended that the tribunal has erred in not awarding

compensation towards pain and sufferings undergone by the appellant due to death of his son.

5. Per Contra Mr. Pankaj Seth, counsel for respondent insurance company submitted that there is no illegality in the impugned award. Counsel further contended that award passed by the Tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

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

7. The assessment of damages to compensate the dependants is beset with difficulties because while doing so, many imponderables have to be taken in to account, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The

manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase. In this relation, the Apex Court has held in plethora of judgments that the multiplier method is the best method.

8. In this regard in **G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176** the Hon'ble Apex Court observed as under:

"12. There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies case*³ and the second in *Nance v. British Columbia Electric Railway Co. Ltd.*

13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum

should also be consumed-up over the period for which the dependency is expected to last.

16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years — virtually adopting a multiplier of 45 — and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier-method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and

extraordinary circumstances and very exceptional cases.”

9. In a decision of the Apex Court in **Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643**

“12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique¹ the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression “legal representative”. As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai² a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal

representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent.

In the impugned judgment the High Court has correctly drawn a distinction between “right to apply for compensation” and “entitlement to compensation”. The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation.”

10. In view of the above discussion, as regards the income of the deceased it has come on record as per deposition of PW3, father of the deceased that the deceased was studying in the final year of graduation. Vide Ex. PW3/A, statement of marks of the deceased obtained in B.A. (I & II) were proved also. The deceased was giving tuitions and through it he used to earn Rs. 3,000/- pm. 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. 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 ought to have assessed

the income of the deceased as that of a matriculate on the basis of the minimum wages notified under the Minimum Wages Act prevailing at the time of the accident i.e. at Rs. 2,232/- pm.

11. 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.

12. Also, in the facts of the present case considering that prior to the accident the family of the appellant comprised of the deceased son, deceased wife and appellant himself, I feel that 1/3 rd deductions should be made towards personal expenses of the deceased.

13. As regards the multiplier, this case pertains to the year 1997 and at that time II schedule to the Motor Vehicles act was already brought on the statute book. The age of the deceased at the time of the accident was 24 years and he is survived by his aged father who at the time of the accident was of 51 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 and after considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 11 shall be applicable.

14. 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 9% 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.

15. As regards non-pecuniary damages, compensation towards loss of love and affection is awarded at Rs. 10,000/- ; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

16. On the basis of the discussion, the income of the deceased would come to Rs. 3,348/- after doubling Rs. 2,232/- to Rs. 4,464/- and after taking the mean of them. After making $1/3^{\text{rd}}$ deductions the monthly loss of dependency comes to Rs. 2,232/- and the annual loss of dependency comes to Rs. 26,784/- per annum and after applying multiplier of 11 it comes to Rs. 2,94,624/-. Thus, the total loss of dependency comes to Rs. 2,94,624/-. After considering Rs. 30,000/-, which is granted towards non-

pecuniary damages, the total compensation comes out as Rs. 3,24,624/-.

17. In view of the above discussion, the total compensation is enhanced to Rs. 3,24,624/- from Rs. 1,25,000/- 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.

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

13.4.2009

KAILASH GAMBHIR J.