

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 538/2001

Judgment reserved on: 5.2.2008
Judgment delivered on: 20.4.2009

Smt. Paramjit Kaur & Ors. Appellants.
Through: Mr O P Mannie, Adv.

versus

Shri Ayub Khan & Ors. Respondents
Through: 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 9.7.2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 12,27,800/- along with interest @ 10% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 20.11.1991 deceased Shri Harpal Singh commenced journey at about 10.11 AM from Karol Bagh on his way back to his house situated at Tilak Nagar via Inder Puri on his scooter bearing registration No: DL USA 0646 and was going on the correct side of the road at a normal speed and had reached in front of Krishi Kunj Flats on Main Todapur road when all of a sudden a trailer truck bearing registration No: HYU 8463 being driven by its driver respondent No: 1 rashly, recklessly and negligently, came from Inderpuri side at a very fast speed and all of a sudden swerved the vehicle to its right side without giving any signal or horn and hit against the scooter of the deceased. Due to the impact the deceased fell down and received multiple injuries. He succumbed to the injuries on the same day.
4. A claim petition was filed on 22.1.1992 and an award was passed on 9.7.2001-. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. O P Mannie, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs.

8,700/- 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. 19,000- 20,000/- 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 and two children. 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 40 yrs of age only and would have lived for another 30-40 yrs had he not met with the accident. It was also contended 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.

6. Nobody has been appearing for the respondents.

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

8. The appellant No: 1 Smt. Paramjeet Kaur, widow of the deceased deposed that her husband was working as Manager (Inspection) in a Government of India Undertaking for a monthly salary of Rs. 9,000/- and he used to give his entire salary to her for running the household expenses.

9. The appellants claimants had brought on record certain documents . PW-1 has also brought the entire salary register of the deceased. 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. 8,700/- after considering the salary register brought on record by PW1.

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

11. As regards the future prospects I am of the view that there was sufficient material on record to award future prospects. Therefore, the tribunal committed no error in granting future prospects in the facts and circumstances of the case.

12. As regards the contention of the counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased is survived by widow and two children. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

13. 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 no 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 the accident the age of the deceased was 40 years and he is survived by his widow and 2 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 the multiplier of 12 has been rightly applied by the Tribunal. Thus, no interference is made in the Award in this regard.

14. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses, 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. 20,000/-; 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. Thus, the total non-pecuniary damages comes to Rs. 90,000/-.

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 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. Therefore, the loss of dependency comes to Rs. 12,52,800/- $(8700 + 17400/2) \times 12 \times 12 \times 2/3$).

16. In view of the above discussion, the total compensation is enhanced to Rs. 13,42,800/- from Rs. 12,27,000/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondents.

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

20.4.2009

KAILASH GAMBHIR, J.