

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 106/2003

Judgment Reserved on : 29.2.2008

Judgment delivered on: 20.4.2009

Ran Singh & Ors. Appellants.
Through: Mr. O.P.Goyal, Adv.

versus

Oriental Insurance Co. & 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 1/10/2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,32,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 26.4.90 at about 10.30 a.m, Satish son of appellant with another Satish s/o Chander Bhan were going sitting on the pillion seat of two wheeler scooter no. GAA-9531 being driven by one Ram Rattan from Dhansa side towards Najafgarh Road on correct left side of the road at a slow speed. It is stated that truck no. DIG 7043 being driven by R3 rashly, recklessly and negligently came from behind and while overtaking the scooter from the left side of the scooter the truck knocked down the scooter with its front portion and dragged the scooter and Satish Kumar to some distance due to which Satish Kumar sustained fatal injuries. FIR no. 138/90 dated 26.4.90 was registered at PS Najafgarh, Delhi
4. A claim petition was filed on 30/7/1990 and an award was passed on 1/10/2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. O.P. Goyal counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 3,000/- 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. 7,000/- per month. The counsel submitted that the tribunal has erroneously applied the multiplier

of 11 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 16 yrs of age only and would have lived for another 40-50 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.

6. Nobody has been appearing for the respondents.

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

8. As regards the income, the case of the appellants is that the deceased was of 16 years of age and had completed his matriculate and was taking training in radio and T.V. repairing from Sewa Bharti Vocational Training Centre and would have soon started his own business.

9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents. . In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents' establish that

they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of **Taff Vale Rly. v. Jenkins (1913) AC 1**, and Lord Atkinson said thus:

...all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See Lata Wadhwa and Ors. v. State of Bihar and Ors. [MANU/SC/0456/2001](#))

10. In **Lata Wadhwa and Ors. v. State of Bihar and Ors. – (2001) 8 SCC 197**, while computing compensation, the Apex Court made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years. In the said case, the Apex Court had awarded Rs. 1,50,000/- as pecuniary damages and Rs. 50,000/- towards non-pecuniary damages to the claimants of the deceased children falling within the age group of 5 to 10 years and in case of the children falling within the age group of 10 to 15 years, the Court decided that the multiplier method should be applied and the contribution of the

children to the family was taken to be at Rs. 24,000/-pa and then a multiplier of 15 was applied and over and above that the conventional compensation of Rs.50,000/- had been added to it, making the total compensation as Rs. 3,60,000/-.

11. The tribunal assessed the income of the deceased as Rs.3000/- per month after taking into account the future prospects. No dispute has been raised by the respondent in this regard, therefore, no interference is made.

12. The Tribunal in the instant case has assessed the net loss of dependency as one-third of the total income of the deceased. I consider that in the given facts and circumstances of the case $\frac{1}{2}$ deduction would meet the ends of justice.

13. Also, considering that this case pertains to the year 1990 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. The age of

the deceased at the time of the accident was 16 years and he is survived by his parents and the age of the father at the time of the accident was 52 years. 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 considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 11 has been generously applied by the tribunal and the same is not interfered with since no dispute has been raised by the respondents in this regard.

14. Also, 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/-.

15. On the basis of the discussion, the income of the deceased is assessed at Rs.3000/- p.m and after making $\frac{1}{2}$ deductions the monthly loss of dependency comes to Rs. 1,500 and the annual loss of dependency comes to Rs. 18,000 per annum and after applying multiplier of 11 it comes to Rs. 1,98,000/-. Thus, the total loss of dependency comes to Rs. 1,98,000/-. After considering Rs. 40,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,38,000/-.

16. In view of the above discussion, the total compensation is enhanced to Rs. 2,38,000/- from Rs. 1,32,000/- 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 in equal proportion by the respondent insurance company.

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

20.4.2009

KAILASH GAMBHIR, J