

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 25/2003

Judgment reserved on: 28.2.2008
Judgment delivered on: 20.4.2009

Tody Singh & Ors. Appellants.
Through: Mr. J S Kanwar, Adv.

versus

Ram Bharose & 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 10.9.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,87,440/- along with interest @ 9% per annum to the claimants.

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

3. On 27.3.1998 Vijay Kumar along with deceased and one Dharmender was going towards Khora colony via National Highway on their bicycle. In the meantime at about 7.15 PM in front of Gazipur stand a truck bearing registration No: HR 29 D 4616 came in a rash and negligent manner in a high speed and struck against Megh Raj who was on his own cycle and was run over by the said truck. He died on the spot.

4. A claim petition was filed on 29.10.1998 and an award was passed on 10.9.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. J S kanwar, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 2130/- 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 $\frac{1}{4}^{\text{th}}$ of the income of the deceased towards personal expenses when the deceased was a bachelor at the time of accident and is survived by his aged parents. The counsel submitted that the tribunal 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 20 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 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 appeared for the respondents.

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

8. As regards income, PW4 deposed that the deceased used to give 3500/- p.m. for household expenses and PW 6 deposed that income of the deceased at the time of the accident was Rs. 4,000/- p.m. No documentary evidence was brought on record in this regard.

9. After considering all these factors, I am of the view that the tribunal has not erred in assessing the income of the deceased as that of a skilled workman at Rs. 2130/- by taking aid of Minimum Wages Act.

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

12. As regards the future prospects, 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. Therefore, the Tribunal erred in not considering the same.

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 aged parents. 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.

14. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 11 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1998 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute book. The age of the deceased at the time of the accident was 20 years and that of his aged parents was 56 years and 54 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 the multiplier of 11 as per the II schedule to Motor Vehicles Act as applied by the Tribunal is just and fair and, therefore, no interference is made.

15. On the contention regarding that the tribunal has erred in not granting adequate compensation towards non-pecuniary damages. In this regard compensation towards loss of love and affection is rightly awarded at Rs. 20,000/- by the Tribunal; compensation towards funeral expenses is enhanced to Rs.

10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

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 their only son 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 total loss of dependency comes to Rs. 2,81,160/- ($2130 + 4260/2 \times 12 \times 2/3 \times 11$).

17. After considering Rs. 40,000/-, which is granted towards non-pecuniary damages the total compensation comes out as Rs. 3,21,160/-.

18. In view of the above discussion, the total compensation is enhanced to Rs. 3,21,160/- from Rs. 1,87,440/- 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 equal proportion.

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

20.4.2009

KAILASH GAMBHIR, J.