

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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FAO No. 323/2003

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Judgment reserved on: February 25, 2008
Judgment delivered on: 13.4.2009

Smt. Neha Gupta

..... Appellant

Through: Mr. Amit Kumar Pandey, Adv.

versus

Dharamvir Singh & Anr.

..... Respondents

Through: Mr. Kanwal Chaudhary, Adv.

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 13.1.2003 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,87,200/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 12.9.98 at about 10:00 P.M., Shri Jagdish Prasad Gupta was coming in his scooter bearing registration no. DL-85-H-9496 from Madhuban Chowk, Pitam Pura and while turning towards right side on road no. 44 towards Lok Vihar, Delhi the offending vehicle bearing registration no. DL-2C-K-0534 which was coming from road no. 44 being driven by respondent no. 1 in a rash and negligent manner hit the scooter of Shri Jagdish Prasad Gupta. Due to that the Shri Jagdish Prasad Gupta sustained severe injuries and was immediately taken to nearby Sarvodaya Hospital and then to AIIMS where he succumbed to his injuries on 13.9.98.
4. A claim petition was filed on 27.7.1999 and an award was made on 13.1.2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. Amit Kumar Pandey, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs.3,500/ 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. 5,500/- 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, while the deceased was supporting a large family at the time of accident and is survived by his wife and two minor sons and mother. The counsel submitted that the tribunal erroneously applied the multiplier of 12 while computing compensation, whereas, 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 only 37 yrs of age and would have lived for another 50 yrs had she not met with the accident. The counsel also stated that had the deceased not met with untimely death he would have expanded his business and would have been earning much more in the near future. 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 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 @ 10% per annum in place of only 9% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants.

6. Mr. Kanwal Chaudhary, counsel for respondent no. 3 contended that the award passed by the learned tribunal is just and fair and requires no interference by this court.

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

8. With regard to the income of the deceased the case of the appellants is that the deceased was 37 years of age at the time of the accident and was working as a Manager with M/s Incan India Pvt. Ltd. at a salary of Rs. 3,500/- p.m. PW2 Rajiv Gupta proved the salary certificate Ex PW2/1 of the deceased and deposed that he was earning Rs.3,500/- p.m. at the time of the accident. He also deposed that the deceased would have been

promoted to the post of Sr. Manager had he not met his untimely death.

The tribunal took mean of Rs.3,500/- p.m., the income of the deceased at the time of his death and Rs.4,200/- P.M. notional future income of the deceased. However, the tribunal erred in assessing the future prospects of the deceased. The tribunal instead of taking mean of Rs.3,500/- and Rs. 4,200/- ought to have taken mean of Rs.3,500/- and double of Rs.3,500/- i.e. 7,000/- which would come to Rs.5,250/- p.m. Thus, the income of the deceased after considering future prospects comes to Rs.5,250/- p.m. Thus, the award is modified to this extent.

9. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal is on the higher side as the deceased is survived by his wife, two minor sons and aged mother. Considering the facts of the instant case, I feel that the interest of justice would be best served if 1/4th deductions towards personal expenses is made herein. Thus after deduction of 1/4th on account of the personal expenses, net loss of dependency comes to (5250-1312.50) i.e. Rs.3937.50 p.m. Therefore, the award is modified to this extent.

10. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 12 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1998 when II Schedule to the Motor Vehicles Act had been brought on the statute books. 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 16 should have been applied as per the II Schedule. Therefore, in the facts of the instant case the multiplier of 16 shall be applicable.

11. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 10% 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 into 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.

12. On the contention regarding that the tribunal has erred in not granting adequate compensation towards funeral expenses and loss of love & affection, 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 affections is Rs.30,000/-; compensation towards funeral expenses is rightly awarded by tribunal 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 instead of Rs.10,000/- as awarded by the tribunal.

13. On the basis of the discussion, the income of the deceased would come to Rs. 5,250/- after doubling Rs.3,500/- to Rs. 7,000/- and after taking the mean of them. After making 1/4th deductions

the monthly loss of dependency comes to Rs. 3,937.50 and the annual loss of dependency comes to Rs.47,250/- per annum and after applying multiplier of 16 it comes to Rs. 7,56,000/-. Thus, the total loss of dependency comes to Rs.7,56,000/-. After considering Rs.1,00,000/-, which is granted towards non pecuniary damages, the total compensation comes out as Rs.8,56,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 8,56,000/- from Rs. 3,87,200/- 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/insurance company. The enhanced compensation be apportioned amongst the appellants in the same ratio as done by the tribunal.

13th April,2009

KAILASH GAMBHIR, J

