

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

+ **FAO No. 455/2003**

Judgment reserved on: 29.2.2008
% Judgment delivered on: 13.4.2009

Smt. Majidan And Ors. Appellants
Through: Mr. B.S. Sharma and Mr.
R.K. Saini, Advocates

versus

New India Assurance Co. Ltd. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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 10.4.2003 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,16,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 19.6.1989 at about 6.00 p.m. late Shri Baljeet Singh was going on a cycle on his left side when a private bus bearing registration No. DEP 7258 driven in a rash and negligent manner struck against him due to which he received grievous injuries and died.
4. A claim petition was filed on 25.8.1989 and an award was passed on 10.4.2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. The appellants have assailed the said award on quantum of compensation. Shri B.S. Sharma, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1000/- 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. 5000/- per month. The counsel submitted that the tribunal erroneously applied the multiplier of 15 while computing

compensation when according to the facts and circumstances of the case multiplier of 17 should have been applied. 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 @ 12% 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, 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 appeared for the respondents.

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

8. The appellants claimants examined PW5 Sh. Beer Singh who stated that the deceased was employed as a driver of the Oil Tanker of Sudama Enterprises Corporation. The said witness had produced on record a salary certificate of the deceased as Ex. PW5/1 according to which salary of the deceased at the time of accident was Rs. 5000/- per month. But on perusal of the award as well as the record, it is manifest that the said salary certificate was not duly proved and further no cogent evidence was brought on record regarding the income of the deceased. Therefore, the Tribunal assessed the income of the deceased according to the Minimum Wages Act. 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. 1,000/- (after taking aid of the MW Act).

9. 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.

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

11. As regards the future prospects no sufficient material was placed on record by the appellant yet 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. 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.

12. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 15 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1989 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 35 years and he is survived by his widow, two daughters and one son. 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 15 has been correctly applied by the Tribunal. Therefore, no interference is made in relation to the multiplier of 15 applied by the Tribunal.

13. 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 12% 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% p.a. by the tribunal and the same is not interfered with.

14. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection, funeral expenses and loss of estate, whereas, no compensation has been granted towards 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 enhanced to Rs. 30,000; compensation towards funeral expenses is enhanced to Rs. 5,000/- and compensation towards loss of estate is enhanced to Rs.10,000/- Further, Rs. 50,000/- is awarded towards loss of consortium.

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.

16. On the basis of the discussion, the income of the deceased would come to Rs. 1,500/- after doubling Rs. 1,000/- to Rs. 2,000/- and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,000/- and the annual loss of dependency comes to Rs. 12,000/- per annum and after applying multiplier of 15, it comes to Rs. 1,80,000/- Thus, the total loss of dependency comes to Rs. 1,80,000/- After considering Rs. 95,000/- which is awarded towards non-pecuniary damages, the total compensation comes out as Rs.2,75,000/-.

17. In view of the above discussion, the total compensation is enhanced to Rs. 2,75,000/- from Rs.

2,16,000/- 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 by the respondent insurance company in the same proportion as awarded by the Tribunal.

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

April 13, 2009
'raj'

KAILASH GAMBHIR, J