

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

+ FAO No.676/2003

% Judgment reserved on: 14.3.2008

Judgment delivered on: 27.4.2009

Smt. Geeta & Ors. Appellants

Through: Mr. Dinesh Kumar, Adv.

versus

M/s United India Insurance Co. Ltd. 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.

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1. The present appeal arises out of the award dated 05/08/2003 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,30,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 14/05/2000 the deceased was in Jhakhira Mandi for purchasing bhoosa. The truck bearing registration No. HR-15-4535 fully loaded with Bhoosa was taking turn towards Nav Bharat Dharam Kanta. In the meantime, truck bearing registration No. PB-13C-1849 owned by R-2, M/s Vikas Pipes and driven by respondent No. 3, Sewa Singh in a rash and negligent manner and at a high speed reached there and hit against truck bearing registration No. HR-15-4535. Consequently, truck bearing registration No. HR-15-4535 fell upon public people including deceased Pradeep Kumar. Police reached the spot and removed Pradeep Kumar to Hindu Rao Hospital where he was declared dead.
4. A claim petition was filed on 21/07/2000 and an award was passed on 05/08/2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. Dinesh Kumar, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs.2,736/- 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. 8,000/- per month. The counsel submitted that the tribunal erroneously applied the multiplier of 14 while computing compensation when according to the facts and circumstances of the case multiplier of 20 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 32 yrs of age only. The counsel also stated that had the deceased not met with his untimely death she would have expanded her 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 @ 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 appeared for respondents.

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

8. As regards income, PW2 Smt. Geeta stated that yearly income of her husband was about Rs. 1 lac from the fodder work done by him. But no documentary evidence was brought on record to prove the same. 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. After considering all these factors and considering that no dispute in this regard is made by the respondents, I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 2,736.20/-pm on the basis of minimum

wages notified under MW Act by taking the difference in the wages at the time of the accident and at the time when the award was made. Therefore, no interference is made in relation to income of the deceased by this court.

9. 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 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. Thus, the tribunal erred in this regard and same should be considered herein.

10. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 14 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 2000 and at that time II schedule to the Motor Vehicles Act had already been

brought on the statute book. At the time of the accident deceased was of 32 years of age and was survived by his widow, aged parents but later father died and three 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 17 should have been applied as per the II schedule to the MV Act.

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 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% 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 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 awarded at Rs. 25,000/-; 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.

13. 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.

14. Therefore, the total lo of dependency come to Rs. 5,58,184.80 $(2736.20 + 2 \times 2736.20/2 \times 2/3 \times 12 \times 17)$ And after

considering Rs. 95,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 6,53,184.80.

15. In view of the above discussion, the total compensation is enhanced to Rs. 6,53,185/- from Rs. 3,30,000/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellants by the respondent insurance company in the same proportion as awarded by the tribunal within 30 days of this order.

16. With the above directions, the present appeal is disposed of.

April 27, 2009

KAILASH GAMBHIR, J.