

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

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MAC APP 65/2005

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Judgment reserved on: 14.3.2008
Judgment delivered on: 27.4.2009

Smt. Santosh

..... Appellants

Through: Mr. S.N. Parashar, Adv.

versus

Sh. Babu Lal

..... Respondent

Through: Mr. Pradeep Gaur, 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 21/08/2004 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs.5,18,400/- along with interest @ 7% per annum to the claimants.

2. The brief conspectus of the facts is as follows:
3. On 09/04/2003 at about 9.15 p.m, the deceased, Sh. Kewal Kishan Chopra was driving TSR bearing registration No. DL-1W-0235 and was proceeding towards his house after filling gas in his TSR. When the deceased reached at road between Q Pocket and park Dilshad Garden then a RTV bearing registration No. DL-1V-8539 driven by its driver at a very high speed, rashly, negligently and without caring for the rules of the traffic came from front side and hit the TSR. As a result of the forceful impact the deceased sustained serious/grievous injuries all over the body.
4. A claim petition was filed on 02/07/2003 and an award was passed on 21/08/2004. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. S.N. Parashar, counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 4200/- 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. 5,000/- per month. The counsel submitted that the tribunal has erroneously applied the multiplier of 13 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 44 yrs of age only. 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 her 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 @ 15 % per annum in place of only 7% 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. Mr. Pradeep Gaur for the respondent insurance company refuted the contentions of counsel for the appellants and

contended that the award passed by the 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. As regards income, Pw2 deposed that the deceased was her husband and was earning Rs. 5,000/- pm. She also deposed that the deceased was owning and was a driver of the TSR. She further stated that the deceased used to give his entire salary to her for household purposes. 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. The appellants claimants had not brought on record any document showing the income of the deceased. The tribunal assessed the income of the deceased as per the wages notified for unskilled workman at Rs. 2,800/-. After considering all these factors, I am of the view that the tribunal has not erred in assessing the income of the deceased under the MW Act but

erred in taking deceased as an unskilled person. Thus, the income of the deceased is assessed at Rs. 3,207/- pm. Therefore, the modification is made to the said extent in this regard.

9. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 13 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 2003 and by 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 45 years and he is survived by his widow and two 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 and considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 15 shall be applicable.

10. As regards the issue of interest that the rate of interest of 7% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% 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 @ 7% pa by the tribunal and the same is not interfered with.

11. 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. 20,000/-; 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.

12. 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.

13. In view of the foregoing discussion, the total loss of dependency comes to Rs. 5,77,260/- ($3207 + 2 \times 3207/2 \times 12 \times 2/3 \times 15$) and after considering Rs. 90,000/-, which is granted towards non-pecuniary damages, which were being rendered by the deceased, the total compensation comes out as Rs. 6,67,260/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 6,67,260/- from Rs. 5,18,400/- 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.

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

April 27, 2009

KAILASH GAMBHIR,J.