

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

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FAO No. 380/2001

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Judgment reserved on: 05.02.08

Judgment delivered on: 6.4.2009

Shri Hirdey Narain & Ors. Appellants
Through: Mr. Y.R. Sharma, Adv.

versus

Ravinder Kumar & Ors. Respondent
Through: Ms. Fizani Hussain, 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 4th May 2001 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,35,000/- along with interest @ 9% per annum to the claimants.

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

3. The deceased Sh. Ram Nath Roy, aged around 19 yrs was working privately with Globe Security Services, earning Rs. 411/- P.M. On 23rd November 1985 at around 7:45 A.M. the deceased was travelling by a bus bearing registration No. DEP 7328 and while trying to alight the bus, the deceased fell down and was run over by the rear wheel of the said bus. The bus had stopped when the deceased started to get down from it but then before he could get down from the bus the driver started the bus and that caused the deceased to fall from the bus which, resulted in his death on the spot itself. A claim petition was filed on 14th February 1986 and an award was made on 4th May 2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. The appellant has assailed the said award on the quantum of the compensation. Counsel for the appellants contended that the tribunal erred in assessing the income of the appellant at Rs. 411/- 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. 2,000/- considering the future

prospects of the deceased as the deceased had just started his career. The counsel submitted that the tribunal has erroneously applied the multiplier of 18 while computing compensation when according to the facts and circumstances of the case multiplier of 25 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 only 19 yrs of age at the time of the accident. The counsel also urged that the tribunal has allowed interest only for 10 years instead of the date of filing of the petition till realisation. The counsel contended that the tribunal erred in not awarding compensation towards loss of estate; the counsel has claimed a sum of Rs. 50,000/- instead of Rs. 5,000/- as awarded by Tribunal

5. Counsel for the respondents has simply denied all the claims made by the appellants in the present appeal and has sought dismissal of the appeal. The counsel submitted that the award is just, fair and reasonable in the facts and circumstances of the present case and requires no interference by this court.

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

7. The appellants claimants had examined Sh. Ram Moorat Yadav, PW2, who deposed that the deceased was working as a guard with Globe Security Services and was earning Rs. 411/- P.M. The said witness also deposed that the deceased was getting other benefits like uniform, bonus etc. of about Rs.100-200 pm apart from the salary of Rs. 411/-pm. He also stated that had the deceased not met with his untimely death, he would have been promoted to the post of a Supervisor and would have been drawing a sum of Rs. 5,000-6,0000/- pm as he was a matriculate. The appellant claimant also deposed that the deceased was working as a guard and was sending Rs. 300 pm towards household expenses. On perusal of the record it is manifest that there was no cogent evidence regarding the income of the deceased, but still the tribunal believed the said averments and assessed the income of the deceased at Rs. 411/-pm. and after making deductions, the loss of dependency was assessed at Rs. 300 and after considering future prospects, which was not duly proved on record, the notional income was assessed at Rs.600.

8. 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. Thus, the tribunal should have assessed the income of the deceased at Rs. 414 pm, which was the prevalent income for an unskilled workman on the date of the accident as per the minimum wages notified under the Minimum Wages Act. However no interference in the award is made out in this regard in the interest of justice and also because no defence is raised by the respondent in this regard.

9. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 18 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1985 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. The deceased was of 19 years of age and the mother of the deceased was of 50 years of age at the time of the accident. 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 12 should have been applied. But in the interest of justice, since no defence is raised by the respondents in this regard no interference is made in the award on this account as well as the compensation will fall to a very small sum and thus, the multiplier of 18 as applied by the tribunal shall be maintained.

10. On the question whether the Tribunal correctly awarded interest only for 10 years, when in fact the matter took almost 15 years to litigate, as per counsel for the appellant the tribunal grossly erred in awarding interest for only 10 years instead of from the date of filing of the petition till realisation of the award. The tribunal observed that the appellant took number of adjournments and took a long time in concluding the proceedings, which resulted in delay of the trial and thus the tribunal restricted the interest to a period of 10 years. I feel that in this regard no interference is called for.

11. Compensation cannot be granted on the whims and fancies of the appellant. Legislature and Courts have laid down a proper formula and method to be followed in quantifying amount of compensation.

12. On the contention regarding that the tribunal has erred in not awarding adequate compensation towards loss of estate and expectation of life to the tune of Rs. 5,000 and that the tribunal has erred in not allowing compensation towards loss of love & affection, funeral expenses and the loss of services, which were being rendered by the deceased to the appellants, I feel that the same should be awarded. In this regard compensation towards loss of love and affection is awarded at Rs. 20,000/-; compensation towards funeral expenses is awarded at Rs. 5,000/- and compensation towards loss of estate is enhanced to Rs. 10,000/-.

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 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 are not conventional heads of damages. Therefore, after considering Rs. 600/- p.m. or Rs. 7200 p.a. as the loss of dependency and after applying multiplier of 18 the compensation towards pecuniary damages comes to Rs. 1,29,600/- and after considering Rs. 35,000/- towards non-pecuniary compensation, the total compensation comes to Rs. 1,64,600/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 1,64,000/- from Rs. 1,35,000/-. The same should be paid to the appellant by the respondents with upto date interest @ 7.5% p.a. on the enhanced compensation from the date of filing of the present petition till final realisation.

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

6.4.2009

KAILASH GAMBHIR, J