
(2009) 04 DEL CK 0278

Delhi High Court

Case No: FAO No. 256 of 2003

Smt. Geeta Devi and Others

APPELLANT

Vs

DTC

RESPONDENT

Date of Decision: April 13, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 168, 171

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Y.R. Sharma, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 22nd January 2003 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 4,08,800/- along with interest @ 8% per annum to the claimants.

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

3. The deceased Mr. Ram Bachan Singh, aged about 33 years was working as a T.V. Mechanic with M/s ASN Electronics. On 30th September 1998, at around 9:30 A.M., the deceased was going on his cycle on the left side of the road via Mother Dairy, Shakarpur Fly Over. In the mean while, DTC Bus bearing licence No. DL 1P 9981 came at a fast speed in a rash and negligent manner and hit the cycle from behind. Because of the impact, the cyclist Sh. Ram Bachan sustained fatal injuries and died on the spot.

4. A claim petition was filed on 5th January 2001 and an award was passed on 22nd January 2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, counsel for the appellants assailed the said award on quantum of compensation. Counsel for the appellants contended that the tribunal erred in

assessing the income of the deceased at Rs. 2,800/- 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. 5,600/- per month after considering the future prospects as per the Hon"ble Supreme Court's Judgment in 1994 SCC (Cri) 335 G.M., Kerala SRTC v. Sussama Thomas on the point of future increase. 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, whereas the deceased was supporting his family at the time of accident and is survived by his widow, daughter and mother. The counsel submitted that the tribunal erroneously applied the multiplier of 17 while computing compensation when according to the facts and circumstances of the case multiplier of 25 should have been applied. 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 8% per annum. The counsel also contended that the non-pecuniary damages allowed to them by the tribunal are on the lower side.

6. Nobody has appeared for the respondents.

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

8. As regards the contention of the counsel regarding the income of the deceased PW1 Smt. Geeta Devi, widow of the deceased made the statement that the deceased was employed as a TV mechanic having monthly salary of Rs. 2800/-. The appellants claimants had examined PW2 Sh. Hukam Singh, who is an employee of A.S.N. Electronics, Laxmi Nagar, the firm where the deceased was employed as a T.V. Technician. He averred that the deceased was drawing a salary of Rs. 2800/- at the time of the accident. He had brought on record the salary certificate of the deceased, exhibited as PW2/A. After considering all these factors I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 2800/- pm.

9. As regards the future prospects I am of the view that there is no material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case.

10. 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 widow, daughter and mother. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground and modify the award.

11. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 17 in the facts and circumstances of the case, I feel that the tribunal has committed no error. The age of the deceased at the time of the accident was 32 yrs of age and the multiplier of 17 adopted by the tribunal is as per the II Schedule to the Motor Vehicles Act, 1988. In plethora of cases the Hon"ble

Apex Court has held that the II Schedule can be taken as a guide in computing compensation and any deviation therefrom, should take place only on the peculiar facts and circumstances of the case. In this regard in [Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another](#), the Hon"ble Apex Court has observed as under:

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

12. The age of the deceased was 32 years, age of the widow was 25 years, daughter was 3 years and mother was 55 years of age at the time of the accident. In my view, in the instant case the tribunal has correctly applied 17 as the multiplier.

13. As regards the issue of interest that the rate of interest of 8% 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 u/s 171 of the Motor Vehicles Act, 1988. The Interest is a 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 @ 8% pa by the tribunal and the same is not interfered with.

14. On the contention regarding that the tribunal erred in not granting adequate compensation towards non-pecuniary damages. On perusal of the award it is manifest that the tribunal awarded Rs. 3000 towards funeral expenses and a lumpsum amount of Rs. 25,000/- towards non-pecuniary damages. In this regard compensation towards loss of love and affection is awarded at Rs. 20,000/-; compensation towards funeral expenses is enhanced to Rs. 5,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium. Thus, the non-pecuniary damages are enhanced to Rs. 85,000 from Rs. 28,000/.

15. As far as the contention pertaining to the award 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. In view of the above discussion, the total compensation is enhanced to Rs. 4,65,800/- from Rs. 4,08,800/- 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/DTC in the same proportion as awarded by the tribunal.

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