

(2009) 04 DEL CK 0280

Delhi High Court

Case No: FAO No. 293 of 2002

Smt. Kamla and Others

APPELLANT

Vs

Sh. Vishwanath and Others

RESPONDENT

Date of Decision: April 13, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 171

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: O.P. Mannie, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 16/2/2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,13,872/- along with interest @ 9% per annum to the claimants.

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

3. On 29/5/1996 at about 9:00 a.m., the deceased Sh. Ramji Lal was in the process of boarding a D.T.C. bus at Britannia stand, Britannia Chowk, when another bus bearing registration No. DL 1P 1784, being driven in a rash and negligent manner hit Sh. Ramji Lal while trying to overtake the DTC bus from the wrong side and dragged him. From the accident site he was rushed to ESI Hospital, where he was declared dead.

4. A claim petition was filed on 24/9/1996 and an award was made on 16/2/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie, counsel for the appellants assailed the said award on quantum of damages. Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 2515/- 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. 4,000/- 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 16 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 40 yrs of age only and would have lived for another 20-25 yrs had he not met with the accident. 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 18% @ 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. The counsel has relied on following judgments in support of his contentions:

(1) Mohinder Kaur and Ors. v. Hira Nand sindhi (Ghoriwala) and Ors. 2007 ACJ 2123 (SC);

(2) [Lekh Raj and Another Vs. Suram Singh and Others](#) ;

(3) An unreported judgment of Delhi High Court in United India Insurance Co. Ltd. v. Surjeet Kaur in MAC APP No. 40/2004 decided on 25/1/2007;

(4) 2007 VI AD 730 (Delhi); and

(5) United India Insurance Co. Ltd. v. Sulochana and Ors. III (2007) ACC 50 (Mad) (DB).

7. Nobody has been appearing for the respondents.

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

9. The appellants claimants had not brought on record any cogent evidence to substantiate that the deceased was earning Rs. 4000/- pm while working in a sewing factory. The Appellant No. 2 has merely asserted in his deposition that his father was earning Rs. 4000/- pm while working in a sewing factory, but nothing has been brought on record to prove the same.

10. 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.

11. The thumb rule is that in the absence of any 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.

12. Therefore, the tribunal has not erred in taking the income of the deceased as per the minimum wages notified for a skilled workman as on the date of the accident, i.e. 29/5/1996 i.e. 1677/- p.m.

13. As regards the future prospects I am of the view that there is no material on record to award future prospects.

14. However, 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. The deceased was of 40 years of age at the time of the accident and thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Future increase in income is not akin to future prospects, though the method followed for the computation of income while awarding future prospects and increase in the minimum wages are the same, therefore, the computation is not affected.

15. 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 1996 and at that time II schedule to the Motor Vehicles Act had been 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 age of the deceased at the time of the accident was 40 years and that of his wife was also about 40 years, his mother was aged 85 years and his children were aged 20 years, 10 years, 15 years and 6 years. 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 16 should have been applied. Therefore, in the facts of the instant case the multiplier of 16 shall be applicable.

16. 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 18% 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 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.

17. On the contention regarding that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium and the loss of services, which were being rendered by the deceased to the appellants, I am of the view that the same should have been awarded. In this regard compensation towards loss of love and affection is awarded at Rs. 60,000/-; compensation towards funeral expenses is awarded at 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.

18. 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 as the same are not conventional heads of damages.

19. On the basis of the discussion, the income of the deceased would come to Rs. 2515.50 after doubling Rs. 1677 to Rs. 3354 and after taking the mean of them. After making 1/5th deductions the monthly loss of dependency comes to Rs. 2012.40 and the annual loss of dependency comes to Rs. 24,149 per annum and after applying multiplier of 16 it comes to Rs. 3,86,384/-. Thus, the total loss of dependency comes to Rs. 3,86,384/-. After considering Rs. 1,25,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 5,11,384/-.

20. In view of the above discussion, the total compensation is enhanced to Rs. 5,11,384/- from Rs. 3,13,872/- with interest @ 7.5% per annum from the date of filing of the claim petition till realisation and the same should be paid to the appellants by the respondent insurance company. The enhanced compensation be apportioned amongst the respondents in the same ratio as awarded by the Tribunal.

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