

**(2009) 04 DEL CK 0348**

**Delhi High Court**

**Case No:** FAO No. 433 of 2002

Smt. Murti Devi and Others

APPELLANT

Vs

Shri Raj Kumar and Others

RESPONDENT

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**Date of Decision:** April 20, 2009

**Hon'ble Judges:** Kailash Gambhir, J

**Bench:** Single Bench

**Advocate:** Y.R. Sharma, for the Appellant; Shobha Bhist, for the Respondent

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### **Judgement**

Kailash Gambhir, J.

The present appeal arises out of the award dated 8.5.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,41,500/- along with interest @ 9% per annum to the claimants.

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

3. On 19.10.1992 Shri Rishi Pal was going to his office on his bicycle. At about 9.30 AM, the deceased reached near Gulab Home, Maya Puri Road and suddenly a Crane bearing registration No: DBL 3624 driven by its driver rashly and negligently came from behind and struck against the deceased without any signal or horn. Due to the impact, the deceased alongwith his cycle fell down and received serious injuries on his person. He succumbed to the said injuries on 25.10.1992.

4. A claim petition was filed on 12.1.1993 and an award was passed on 8.5.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1500/- 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. 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 27 yrs of age only and would have lived for another 30-40 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 contended that the tribunal 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. The Counsel has relied on following judgments in support of his contentions:

1. [Smt. Sarla Dixit and another Vs. Balwant Yadav and others, .](#)
2. [New India Assurance Co. Ltd. Vs. Amaresh Kumari and Others, .](#)

Ms. Shobha Bhist, Advocate appeared on behalf respondents No. 2 submitted that the award passed by the Id. Tribunal is just and fair and requires no interference by this Court.

6. I have heard Learned Counsel for the parties and perused the record.

7. PW-5 Smt. Murti Devi testified that deceased was her husband who was working in a factory and earning Rs. 2,000/- per month. He used to give his entire salary to her for running the household expenses. She also deposed that the deceased was a qualified mechanical engineer. PW 3 Shri D.V. Sardha, Senior Personal Manager of Metal Forgings Pvt. Ltd. stated that the deceased was working as an Inspector (Machine Shop) and was drawing Rs. 1500/- p.m.

8. 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. 1500/-.

9. Therefore, no interference is made in relation to income of the deceased by this Court.

10. As regards the future prospects I am of the view that there was sufficient material on record to award future prospects and therefore, the tribunal committed no error in granting future prospects in the facts and circumstances of the case.

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. 10,000/-; compensation towards funeral expenses is enhanced to Rs. 10,000/- and compensation towards loss of estate is enhanced to 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. Taking into account the income of deceased at Rs. 1500/- p.m. and considering the future prospects the income of the deceased comes to Rs.  $(1500 + 3000/2)$  i.e. Rs. 2250 p.m. 1/3rd is required to be deducted on the personal expenses. Thus the loss of dependency comes to Rs.  $2250 - 750$  i.e. Rs. 1500/- p.m. or Rs. 18,000/- per annum. The multiplier of 18 adopted by the Tribunal also seem to be just and fair. Thus the loss of dependency comes to  $18,000 \times 18$  i.e. Rs. 3,24,000/-.

14. After considering Rs. 90,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,14,000/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 4,14,000/- from Rs. 3,41,500/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondent No. 3 in the same proportion as awarded by the Tribunal.

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