

(2009) 04 DEL CK 0367

Delhi High Court

Case No: F.A.O. No. 190 of 1995

Jagrati and Others

APPELLANT

Vs

Randhir Singh and Others

RESPONDENT

Date of Decision: April 6, 2009**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 171

Hon'ble Judges: Kailash Gambhir, J**Bench:** Single Bench**Advocate:** O.P. Goyal, for the Appellant; Pankaj Seth, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 28.4.95 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 57,000/- along with interest @ 12% per annum to the claimants.

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

3. On 16.9.79, deceased Sh. Lakhi Ram, aged about 55 years was going on his cycle towards his village when a truck bearing registration No. DRO-5575 driven rashly and recklessly by R1 under the employment of R2 came from behind and hit him. He suffered fatal injuries and died.

4. A claim petition was filed on 12.12.79 and an award was made on 28.4.95. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal, counsel for the appellants submitted that Ld. Tribunal has not awarded compensation in the instant case as per the law applicable and same should have been Rs. 1,50,000/- with costs and interest from the date of filing of the petition till payment as deceased Sh. Lakhi Ram was 55 years old and was working as an agriculturist and was also doing business as a broker of land & plots and was

also selling milk. It was submitted that Ld. Tribunal erred in assessing the dependency of the appellants for a period of 8 years. The deceased being an agriculturist would have lived upto 75-80 years and Ld. Tribunal should have capitalized the economic loss suffered by the appellants for a period of 20 years. In this regard, Ld. Counsel referred to the case reported as [Jyotsna Dey and Others Vs. State of Assam and Others,](#) . Counsel for the appellants contended that the tribunal has also erred in assessing the dependency of the appellants as Rs. 800/- per month as deceased has left behind five daughters and two minor sons. It was urged by the counsel that the tribunal erred in not considering future prospects while computing compensation as it failed to appreciate that deceased would have been earning much more in the near future had he not met with the accident. 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 from the date of filing of the petition till payment in view of the Supreme Court case reported as [Rukmani Devi and Others Vs. Om Prakash and Others,](#) . The counsel also contended that the tribunal erred in not awarding non-pecuniary damages in the facts and circumstances of the present case.

6. Per Contra Mr. Pankaj Seth, counsel appearing for respondent insurance company submitted that there is no illegality in the impugned award. Counsel further contended that award passed by Tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

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

8. One of the son of the deceased deposed as PW3 that the deceased was a property dealer and also a milk vendor and was running a dairy shop. He also deposed that the deceased used to earn Rs. 2500-3000/- pm. But no documentary evidence was brought on record to prove the same. 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. In the present facts and circumstances of the case, no interference is called for in the finding of the Tribunal in this regard.

9. As regards the future prospects I am of the view that there is no material on record to award future prospects. It is no more res integra that mere bald assertions regarding the future prospects of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. 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 1/4 deduction made by the tribunal is on the higher side as the deceased is survived by his five daughters and two sons. Considering the circumstances of the case, I feel that the deduction to the tune of 1/5th towards personal expenses would be just and fair.

Thus the loss of dependency comes to Rs. 640/- p.m. (800-160).

11. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 8 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1979 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 at the time of the accident was of 56 years of age and is survived by his five daughters and two sons. 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 after taking a balanced view considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 8 shall be applicable.

12. As regards the issue of interest that the rate of interest of 12% 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 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 @ 12% pa by the tribunal and the same is not interfered with.

13. On the contention regarding that the tribunal has erred in not granting compensation towards non-pecuniary damages, In this regard compensation towards loss of love and affection is awarded at Rs. 35,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

14. On the basis of the discussion, the income of the deceased would come to Rs. 800/- and after making 1/5 deduction, the monthly loss of dependency comes to Rs. 640/- and the annual loss of dependency comes to Rs. 7,680/- per annum and after applying multiplier of 8 it comes to Rs. 61,440/-. Thus, the total loss of dependency comes to Rs. 61,440/-. After considering Rs. 55,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,16,440/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 1,16,440/- from Rs. 57,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the present petition in this Court till the realisation of the award and the same should be paid to the appellants by the respondent No. 3. The enhanced compensation be distributed equally amongst the L.R.'s of the deceased.

16. In view of the foregoing, disposed of.