(2009) 05 DEL CK 0302

Delhi High Court

Case No: F.A.O. No. 259/94

Smt. Basmati and Others		APPELLANT
	Vs	
Sh. Rajkumar and Others		RESPONDENT

Date of Decision: May 4, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 171

Citation: (2009) 05 DEL CK 0302

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Sanjay Goswami, for the Appellant; Pankaj Seth, for the Respondent

Judgement

Kailash Gambhir, J.
The present appeal arises out of the award dated 5/7/1994 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,53,600/- along with interest @ 6% per annum to the claimants.

2. The brief conspectus of facts is as under:

3. On 19.12.84 at about 4.40 p.m deceased Bhagwat Saroop alongwith his brother Bishan Prakash boarded bus No. DEP 4902 route No. 320 to go to the house of his brother. He was to get down at Jagatpuri bus stop. When he was getting down from the said bus, the bus was abruptly started by its driver respondent No. 1 due to which deceased lost his control and fell down from the bus. He was crushed under the rear wheel of the bus.

4. A claim petition was filed on March 1985 and an award was passed on 5/7/1994. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Sanjay Goswami Counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 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. 8,000/- per month. The Counsel submitted that the tribunal has erroneously applied the multiplier of 16 while computing compensation when according to the facts and circumstances of the case multiplier of 17 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 35 yrs of age only and would have lived for another 30-35 yrs had he not met with the accident. It was also contended 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 @ 12% per annum in place of only 6% 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. Per contra, Mr. P.K. Seth, Counsel for the respondent insurance company submitted that the award passed by the tribunal is just and fair and does not require any interference by this Court.

7. I have heard the Counsel for the parties and perused the award.

8. The case of the appellants claimants was that the deceased was an agriculturist having 2 ï¿½ acres of land and used to earn Rs. 800/-pm. But widow of the deceased deposed as PW2 that the income of the deceased was 8000/- to 9000/- pm. No documentary evidence in this regard was brought on record. But considering that no dispute in this regard is made by the respondents, no interference is made in the award in this regard.

9. As regards the future prospects, I am of the view that there is no sufficient 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 tribunal has erred in applying the multiplier of 16 in the facts and circumstances of the case, I feel that the tribunal has committed no error. This case pertains to the year 1984 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 age of the deceased at the time of the accident was 35 years and he is survived by his widow and four children. 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 and also considering that no deduction has been made by the tribunal towards personal expenses and no dispute in this regard is made by the respondents in this regard, the multiplier of 16 shall be applicable in the peculiar facts of the case.

11. As regards the issue of interest that the rate of interest of 6% 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 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, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. The tribunal observed in the award that the petition was filed in March 1985 and respondents were served in April 1986, issues were framed in November 1986 and petitioners closed their evidence in February 1994. No doubt that the MV Act is a beneficial piece of legislation, legislated with the purpose of giving relief to the victim of the motor accident but at the same time, a victim of the motor accident cannot be allowed to gain benefit out of his own faults and negligence due to which delay was caused in disposal of the case. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 6% pa by the tribunal and the same is not interfered with.

12. 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. 40,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

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 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.

14. On the basis of the discussion, the income of the deceased would come to Rs. 800/- pm as assessed by the tribunal or Rs. 9,600/- per annum and after applying multiplier of 16 it comes to Rs. 1,53,600/-. Thus, the total loss of dependency comes to Rs.

1,53,600/-. After considering Rs. 1,10,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,63,600/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 2,63,600/- from Rs. 1,53,600/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellants by the respondent insurance company in the same proportion as awarded by the tribunal within 30 days of this order.

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