

(2009) 04 DEL CK 0385

Delhi High Court

Case No: F.A.O. No. 341 of 1998

Smt. Mala Devi and Others

APPELLANT

Vs

Shri Ram Mehar and Others

RESPONDENT

Date of Decision: April 27, 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; D.K. Sharma, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 03/02/1997 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 91,600/- along with interest @ 12% per annum to the claimants.

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

3. On 14/08/1986 at about 9.00 p.m. the deceased was going on his cycle from Palam Mohr towards Western Command. When he was passing near Chambury Mehram Nagar, a maruti trailer bearing registration No. HYG 2877 driven by respondent No. 1, owned by the respondent No. 2 and 3 and insured with respondent No. 4 came from behind at a fast speed and in a zig zag manner without blowing any horn and hit the cycle of the deceased. As a result of this impact, the deceased and his cycle fell down and the trailer passed over the body of the deceased who died on the spot.

4. A claim petition was filed on 07/01/1987 and an award was passed on 03/02/97. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 976.50/- 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. 2,000/- 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 15 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 46 years of age only and would have lived for another 25 years had he not met with the accident. The counsel also stated that had the deceased not met with her untimely death he would have expanded her business and would have been earning much more in the near future. 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 12% 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. D.K. Sharma counsel for the respondents contended that the award passed by the Tribunal is just and fair and, therefore, no interference should be made in this regard.

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

8. As regards income of the deceased, PW2 deposed that the deceased was a cook in Air Force and was getting Rs. 2,000/- pm and was giving his entire salary to her for running the household. However, as per the salary certificate, Ex. X, the salary of the deceased was Rs. 976.50/- pm. 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. 976.50/- pm. Therefore, no interference is made in relation to income of the deceased by this court.

9. As regards the future prospects, I am of the view that considering that the deceased was a Government employee it is manifest that he must have been getting increments etc. Had he not died in the accident. Thus, applying the principle laid down in Sarla Dixit's case, the tribunal committed 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 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 1986 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 was of 50 years of age at the time of the accident and is survived by his widow and nine 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 the multiplier of 8 has been rightly applied by the tribunal.

11. As regards deduction, the Tribunal after considering that the deceased is survived by his widow and nine children made 1/8th deduction. In the facts of the case, I do not feel that the same warrant any interference, thus no interference is made in this regard.

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 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 @ 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 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. 45,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 25,000/- is awarded towards loss of consortium.

14. 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.

15. In view, of the foregoing, total loss of dependency comes to Rs. 1,23,039/- p.m. $(976.50 + 2 \times 976.50/2 \times 12 \times 7/8 \times 8)$. After considering Rs. 90,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,13,039/-.

16. In view of the above discussion, the total compensation is enhanced to Rs. 2,13,039/- from Rs. 91,600/-. The differential amount shall be paid to the appellants by the respondent No. 2 with upto date interest @ 7.5% pa from the date of filing of the petition till realization & within 30 days of this order.

17. With the above directions, the appeal is disposed of.