

(2009) 04 DEL CK 0390

Delhi High Court

Case No: F.A.O. No. 421 of 1999

Smt. Lajwanti Devi and Others

APPELLANT

Vs

Vinod Kumar Aggarwal 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. Goyal, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 26/05/99 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 60,000/- along with interest @ 12% per annum to the claimants.

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

3. The deceased Sh. Suresh Kumar Sharma was driving two wheeler scooter bearing registration No. DIJ-2960 slowly on his proper side on Marshal Tito Marg, Central School Chowk, Defence Colony and in the meantime, truck bearing registration No. DLL-5881 came at a very fast speed, being driven rashly and negligently as a result, therefore, the deceased received serious injuries and he succumbed to the injuries on the same day in All India Institute of Medical Sciences, New Delhi.

4. A claim petition was filed on 11/12/84 and an award was passed on 26/05/99. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal, counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 1400/- 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. 1656/- per month. The counsel submitted that the tribunal erroneously applied the multiplier of 5 while computing compensation when according to the facts and circumstances of the case multiplier of 25 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 22 yrs of age only and would have lived for another 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 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. Nobody appeared for the respondents.

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

8. As regards income, PW7 Sh. P.R. Krishnan, Asst. Manager (Personal), Modi Xerox deposed that the deceased was appointed as a draftsman with Modi Xerox Ltd. And was getting a gross salary of Rs. 1,656/- pm and produced the salary certificate, Ex. PW7/2. He deposed that the deceased was appointed on 1/9/1984 and died on 22/10/1984, so he could not complete his probation period. PW6 Rajwati Devi mother of the deceased deposed that the deceased was working as a draftsman and was earning Rs. 1,500/--1,600/- 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. 1,400/- 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 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 5 in the facts and circumstances of the case, I feel that the tribunal has not committed 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 deceased was of 22 years of age at the time of the accident and mother of the deceased was aged 70 yrs. 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 5 has been rightly applied by the tribunal.

11. 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.

12. 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. 20,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. 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.

13. Therefore, the total loss of dependency comes to Rs. 60,000/- ($1400 \times \frac{2}{3} \times 12 \times 5$) and after considering Rs. 40,000/-, which is awarded towards non-pecuniary damages, the total compensation comes out as Rs. 1,00,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 1,00,000/- from Rs. 60,000/- 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.

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