

(2016) 06 DEL CK 0073

DELHI HIGH COURT

Case No: Mac. App. 159 of 2008.

Parveen and Others - Appellants
@HASH Sohtas and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: June 2, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, Section 168, Section 173

Citation: (2016) 4 ACC 1

Hon'ble Judges: R.K. Gauba, J.

Bench: Single Bench

Advocate: Mr. O.P. Mannie, Advocate, for the Appellant; None, for the Respondent

Final Decision: Disposed Off

Judgement

R.K. Gauba, J. (Oral)—Salimuddin, aged 45 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 08.05.2006 involving negligent driving of truck bearing No. DL 1GB 5390 by the first respondent (dirver). His dependent family members (the appellant) instituted an accident claim case (petition No.172/07) on 09.07.2007 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading the driver and Municipal Corporation of Delhi (MCD), the second respondent in appeal, as party respondents, on the averment that the death had occurred due to accident caused by negligent driving of the truck. The tribunal after notice held inquiry and on that basis passed judgment on 01.09.2007 upholding the case of the claimants that Salimuddin had died in the accident due to negligent driving of the offending vehicle. This finding has attained finality as it was not challenged.

2. The tribunal by the above-mentioned judgment awarded compensation in the sum of Rs. 4,80,000/- with interest at 7% per annum, the said amount being inclusive of Rs. 44,550/- as loss of dependency, Rs. 5,000/- towards funeral expenses and Rs.

15,000/- each towards loss of consortium and loss of love & affection.

3. The claimants are in appeal seeking enhancement of the compensation, their basic grouses being that the loss of dependency has been wrongly worked out while the non-pecuniary damages awarded and rate of interest are inadequate.

4. By order dated 26.03.2008, notice was issued only to the second respondent (MCD), it being the owner of the offending vehicle and also the employer of its driver. The second respondent was duly served and appeared through counsel seeking time for inspection of the trial court record. Thus, the matter was adjourned. The subsequent proceedings show that the matter was referred to Lok Adalat but the parties were unable to resolve the dispute amicably. By order dated 27.04.2009, the matter was put in the category of regular list. The appeal was taken up earlier on 11.08.2011 but had to be adjourned as none would appear on behalf of the respondent. The situation remains same even today when the matter is called out. This appeal being one of the oldest on board of this Court there is no reason why it should be deferred yet again.

5. Having heard the learned counsel for the claimant, this Court finds the grievances agitated to be correct.

6. Since the deceased was 45 years old, per the dictum in **Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121**, the multiplier of 14 would apply. Thus, the loss of dependency on the income of Rs. 3,300/- (as calculated by the tribunal), after deduction to the extent of 4th towards personal & living expenses (again correctly so done by the tribunal), is recomputed as $(3,300 \times 3 \times 4 \times 12 \times 14)$ Rs. 4,15,800/- rounded off to Rs. 4,16,000/-. Following the view taken in **Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54** and **Shashikala v. Gangalakshamma (2015) 9 SCC 150**, compensation in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(4,16,000 + 2,50,000)$ Rs. 6,66,000/-.

7. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 Oriental Insurance Co. Ltd v. Sangeeta Devi & Ors.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

8. The award is modified accordingly.

9. The tribunal had apportioned the award amongst the different claimants by specifying the amounts falling to their respective shares. Having regard to the amounts already released in favour of other claimants, it is directed that the entire enhanced portion of the award with proportionate interest shall fall to the share of the second claimant (wife) Parveen only. It shall, however, be released after being invested in a fixed deposit receipt in a nationalised bank of her choice for a period of

seven years with right to draw monthly interest.

10. The second respondent, Municipal Corporation of Delhi (MCD) is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, making it available to be released to the claimant.

11. Statutory deposit, if made, shall be refunded after confirming that the award has been satisfied.

12. The appeal is disposed of in above terms.

13. Since the award has been modified, a copy of this judgment shall be sent by the registry to the respondents by registered post at the given address.