

**(2009) 04 DEL CK 0536**

**Delhi High Court**

**Case No:** FAO No. 573 of 1999

Mahender Singh

APPELLANT

Vs

Tej Pal Singh Tyagi and Others

RESPONDENT

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**Date of Decision:** April 20, 2009

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 171

**Hon'ble Judges:** Kailash Gambhir, J

**Bench:** Single Bench

**Advocate:** Y.R. Sharma, for the Appellant; Nemo, for the Respondent

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### **Judgement**

Kailash Gambhir, J.

The present appeal arises out of the award dated 15/9/1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 20,485/- along with interest @ 9% per annum to the claimant.

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

3. On 2.6.95 at about 5. A.m. Deen Dayal deceased was sitting on the bullock-cart which was being driven by Shri Gir Raj. They were coming from Ashok Niketan to Loni Road and when they reached at T point G.T. Road near Telephone Exchange, Dilshad Garden, New Delhi, they were hit from behind by truck bearing registration No. DEL-1929 which was being driven by its driver Brij Mohan and was being driven at a very fast speed and in a rash and negligent manner. As a result of this impact the bullock-cart over turned and the deceased and Shri Gir Raj received injuries on their person, which also resulted into the death of Deen Dayal.

4. A claim petition was filed on 8.8.1995 and an award was passed on 15/9/1999. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma Counsel for the appellant contended that the tribunal erred in assessing the financial loss for a period of three months only and that too on the basis of minimum wages of Rs. 1,495/- pm instead of awarding the same for 6 months @ Rs. 3,000/- pm. The Counsel further maintained that the tribunal erred in making the award @ Rs. 16,000/- only on account of damage to the cart and death of the bullock, when the appellant spent Rs. 15,000/- on purchase of cart and Rs. 7,000/- on purchase of bullock. The Counsel submitted that the tribunal erred in not allowing Rs. 3,000/- spent on treatment of bullock. 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 in place of only 9% per annum.

6. Nobody has been appearing for the respondents.

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

8. The appellant had deposed as PW2 that he had bought cart at Rs. 10,000/- and bullock at Rs. 6,000/-. He also said that due to the accident he had to again purchase cart at Rs. 15,000/- and bullock at Rs. 7,000/-. He also deposed that he had spent about Rs. 3,000/- on treatment of the bullock. He also deposed that he remained out of work due to damage caused to the bullock cart in the accident for 6 months and suffered loss @ Rs. 100/- per day. After considering all these factors, I am of the view that the tribunal has not erred in assessing the compensation for purchase of cart and bullock at Rs. 16,000/-, in the absence of any documentary evidence. It is no more res integra that mere bald assertions are of no help to the claimants in the absence of any reliable evidence being brought on record.

9. Therefore, no interference is made in this regard by this Court.

10. As regards the issue that no amount has been awarded towards the treatment of the bull, I feel that even in the absence of any documentary evidence in this regard, Rs. 1,000/- should have been allowed by the tribunal in this regard.

11. As regards the financial loss for a period of 6 months, nothing has come on record to prove the said period, but still the tribunal assessed the loss of income for 3 months, although, the tribunal erred in assessing the same as per the rates of minimum wages for unskilled persons instead of skilled person. Thus, the compensation in this regard is enhanced to Rs. 5757/- (1919 x 3).

12. As regards the issue of interest that the rate of interest of 9% 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 @ 9% pa by the tribunal and the same is not interfered with.

13. On the basis of the discussion, the total compensation comes out as Rs. 22,757/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 22,757/- from Rs. 20,485/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondent insurance company.

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