

**(2008) 02 DEL CK 0286**

**Delhi High Court**

**Case No:** MAC APP No's. 193-95 of 2006

Smt. Raj Bala and Others

APPELLANT

Vs

Shri Rajendra Singh and Others

RESPONDENT

**Date of Decision:** Feb. 19, 2008

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

**Bench:** Single Bench

**Advocate:** O.P. Mannie, for the Appellant; Chandra Prakash and Lakshmi Ramamurthy for Respondents 1-2 and P.R. Sikka, for the Respondent

### **Judgement**

Kailash Gambhir, J.

By way of the present appeal, the appellant seeks to challenge the impugned order dated 15.10.2005 so as to claim enhancement in the compensation amount over and above the amount of Rs. 5,71,600/- as awarded by the Tribunal.

2. Brief summary of the facts of the present case is as under:

The deceased Sh. Sarvender Singh was going on his motorcycle from Mukhmailpur Village on 23.8.2003 at about 9 a.m. and when he reached Nangli-Mukhmail Road, Hiranki Village crossing, Alipur, Delhi, a truck bearing registration No. HR-69-0337 came from the side of Hiranki Village driven by the R1 at a very high speed in a rash and negligent manner and hit the motorcycle of the deceased as a result of which the deceased received fatal injuries.

3. Mr. O.P. Mannie, learned Counsel for the appellant states that the Tribunal has wrongly taken into consideration the age of the deceased as 40 years instead of 35 years. Second contention raised by the counsel for the appellant is that the Tribunal has granted a lower amount of compensation for non-pecuniary damages.

4. Ms. Lakshmi Ramamurthy and Mr. Chandra Prakash, Advocates, are present for respondent Nos. 1 and 2 and Mr. P.R. Sikka, counsel for respondent No. 3 insurance company has put in appearance.

5. I have heard learned Counsel for the parties and have perused the record.

6. The Tribunal has assessed the age of the deceased as 40 years after placing reliance on the Postmortem Report in which the age of the deceased is stated to be 40 years as on the said date. The contention of counsel for the appellant is that in the claim petition, age of the deceased has been stated as 35 years and the same age has been stated by the appellant who has been examined as PW2 before the Tribunal. In support of his argument, counsel for the appellant has placed reliance on the judgment of Kerala High Court reported in 1991 AC 182 Binny v. United India Insurance Co. Ltd.

7. Mr. P.R. Sikka, counsel for respondent No. 3 insurance company, on the other hand, states that the said judgment as cited by the counsel for the appellant may not be applicable to the facts of the present case. The contention of the counsel for the respondent is that in para 23 of the claim petition, which was initially filed, age of the deceased was stated as 37 years. Counsel further contends that in the cross examination, age of the deceased as disclosed by PW2 as 35 years was disputed by the respondent. Counsel further contends that the deceased was duly working as a security guard with the private placement company, posted at the telephone exchange, and therefore, the best evidence of disclosing the correct age could have been the office record of the deceased. The counsel thus contends that in view of such inconsistency on the part of the appellant, age as mentioned in the Postmortem Report was correctly believed by the tribunal. It is an admitted fact that the appellant in para 23 of the claim petition, has disclosed age of the deceased as 37 years although in para 3 of the claim petition, age of the deceased has been shown as 35 years. The deceased was working as a security guard with some private security agency and he was placed at the said telephone exchange as security guard. Although there is no documentary evidence on record to show that the deceased was of 35 years of age at the relevant time of accident, yet at best, age as stated by the appellant herself in para 23 of the claim petition disclosing the same to be 37 years, can be believed to be correct.

8. The judgment of the Division Bench in Binny (Supra) cited by the counsel for appellant may not be applicable to the facts of the present case as in that case, there was no dispute with regard to age of the deceased in the pleadings as well as in the evidence. Same is not the case here as the respondents have denied age of the deceased in the pleadings and have also disputed the age in the cross examination of PW2. Since the multiplier between the age of 35 to 40 years remains 16 alone, therefore, even if the age of the deceased is treated as 37 years, the multiplier will remain the same.

9. In the light of the above discussion, therefore, the multiplier as applied by the Tribunal cannot be interfered with although the age of the deceased is accepted as 37 years as disclosed in the claim petition.

10. With regard to the other contention raised by the counsel for the appellant that the Tribunal has not granted adequate amount under the non-pecuniary damages i.e. Rs. 10,000/- has been granted for loss of consortium, Rs. 10,000/- for loss of love and affection, Rs. 10,000/- for loss of expectancy of life of the deceased and Rs. 4,000/- towards funeral expenses, I feel that amount towards loss of consortium should be enhanced to Rs. 50,000/-, amount towards loss of love and affection should be enhanced to Rs. 20,000/- and amount towards funeral expenses shall be enhanced to Rs. 5,000/-. The tribunal has awarded Rs. 10,000/- towards loss of expectancy of life of the deceased, which cannot legally be sustained. This is only a different way of looking at the same thing which is legally impermissible. Shri Sarvender Singh died after suffering pain due to the injuries, compensation is legitimately admissible under the head loss to estate but in fatal accident cases compensation is not awarded for loss of expectancy of life. The tribunal has awarded Rs. 10,000/- towards the same. The amount of Rs. 10,000/- towards loss of expectancy of life needs no enhancement and the same is restored under the head of loss to estate.

11. In view of the above discussion, the compensation is enhanced from Rs. 5,71,600/- to Rs. 6,22,600/-. The differential amount of Rs. 51,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization shall be paid by respondent No. 3 insurance company.

12. With these directions, this appeal is disposed of.