(2008) 03 DEL CK 0263

Delhi High Court

Case No: MAC App. No. 166 of 2008

Smt. Uma Ojha and Another		APPELLANT
	Vs	
Sh. Sat Narain and Others		RESPONDENT

Date of Decision: March 17, 2008

Citation: (2008) 11 ILR Delhi 58

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: M.L. Mahajan, for the Appellant; Manjusha Wadhwa, for Respondent-3, for the Respondent

Final Decision: Allowed

Judgement

Kailash Gambhir, J.

Mr. M.L. Mahajan, counsel appearing for the appellant has confined his arguments only with regard to the multiplier which as per the counsel has been wrongly applied in the facts of the present case. Another grievance of the counsel for the appellant is that the Tribunal has directed deposit of entire compensation amount in a fixed deposit without leaving any amount for support and sustenance of the widow of the deceased.

2. Ms. Manjusha Wadhwa, counsel for the insurance company on advance notice on the other hand contends that the Tribunal has since taken into account the future prospects of the deceased, therefore, multiplier in such like cases can be reduced from the laid down multiplier of the IInd Schedule of the Motor Vehicles Act.

3. Ms. Wadhwa, however, leaves the issue with regard to the directions of the Tribunal to deposit the entire amount as awarded in favour of the widow in a fixed deposit to the discretion of the Court.

4. I have heard learned Counsel for the parties and have perused the record. The matter can be disposed of at the stage of admission itself.

5. I do not feel any necessity of directing notice of the present appeal to the respondent Nos. 1 and 2 the owner and driver of the offending vehicle as the offending vehicle was duly insured with respondent No. 3 insurance company. Insurance company is being duly represented by designated counsel, therefore, notice to respondent Nos. 1 and 2 is dispensed with.

6. Perusal of the award shows that the deceased was an advocate and is survived by his widow of 51 years as on the date of accident besides his mother of 80 years of age.

7. The appellant widow of the deceased has claimed future earnings of the deceased at Rs. 30,000/- per month, but except the bald statement made by the appellant no cogent or reliable evidence was placed by the appellant to substantiate grant of any benefit towards future prospects. In any event of the matter, the Tribunal has assessed income of the deceased at Rs. 9,000/- per month after taken into consideration future increase as takes place under the Minimum Wages Act.

8. Perusal of the award further shows that the Tribunal has not given any cogent reasons for reduction of multiplier except referring certain judgments of the Apex Court wherein the multiplier was reduced. It is, no doubt, true that in the given facts and circumstances of the case, multiplier can be increased or decreased but there has to be some rationale for such reduction or enhancement of multiplier from the multiplier laid down in the IInd Schedule of the Motor Vehicles Act. Mere reference to the judgments of this Court or the Supreme Court would be of no help unless given facts of the case in hand and that of the one being relied upon are identical, to some extent. I, therefore, do not find myself in agreement with the findings given by the Tribunal to reduce multiplier other than the multiplier laid down in the IInd Schedule of the Motor Vehicles Act. The Multiplier of 8 is accordingly increased to 11 as laid down in the IInd Schedule of the Motor Vehicles Act.

9. The contention of Ms. Wadhwa, counsel for the insurance regarding the age of one of the dependants i.e., 80 years old mother in the present case should have been taken into consideration to determine the correct multiplier seems to have no force as in the present case there is a wide gap between the age of the mother and the age of widow which was 51 years on the relevant date of accident. The multiplier of 11 as laid down in the IInd Schedule of M.V. Act shall be thus applicable.

10. With regard to the other grievance of the appellant, I find the approach of the Tribunal in directing deposit of the entire amount pertaining to the compensation awarded in favour of the widow in a fixed deposit as totally irrational and unrealistic. The sole bread earner in the family has died and the family cannot be left in lurch or on the road of starvation in the absence of any money available to them for their sustenance and support to meet their basic needs. I, therefore, modify the said

direction given by the Tribunal by allowing release of 50% of the amount in favour of the appellant widow. Remaining amount shall be kept in the fixed deposit for a period of five years.

11. With these directions, the appeal is allowed and the matter is remanded back to the tribunal for apportionment of the entire amount of compensation. The differential amount shall be paid by the respondent insurance company with up to date interest @ 7.5% per annum from the date of filing the petition till realization.