

**(2009) 04 DEL CK 0542**

**Delhi High Court**

**Case No:** FAO No. 152 of 2000

Om Piari and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**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

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### **Judgement**

Kailash Gambhir, J.

The present appeal arises out of the award dated 31/1/2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,16,000/- along with interest @ 12% per annum to the claimants.

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

3. That the deceased was going on his two wheeler scooter bearing registration No. DDN-4341 from Palam Village to Gopi Nath Bazar Post Office side. At this time a military truck bearing registration No. BAN80C255731 came from opposite direction and took a sudden and sharp turn towards the right and hit the deceased with its front portion causing fatal injuries to him.

4. A claim petition was filed on 26/5/1988 and an award was passed on 31/1/2000. 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. 2,500/- 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. 5,000/- per month. The Counsel submitted that

the tribunal has erroneously applied the multiplier of 15 while computing compensation when according to the facts and circumstances of the case multiplier of 17 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 38 yrs of age only and would have lived for another 20-30 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 @ 15% 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 has been appearing for the respondents.

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

8. As regards the income of the deceased, father of the deceased PW8 deposed that his son was 38 years of age at the time of his death and he was working as taxi driver and was also doing the business of property broker in partnership in the name and style of Kamal Property Dealer. He also deposed that the deceased used to give Rs. 3,000/- pm to his wife for household expenses. He also deposed that the deceased was a matriculate and to prove the same he brought on record Ex. A-1, his matriculate certificate. Pw9 widow of the deceased also made consistent and corroborative statement. Pw4, 5 & 6 were also examined by the appellants in support of the fact that the deceased Ramesh was also working as commission agent besides driving his taxi. The appellants claimants had brought nothing on record to prove the income of the deceased. After considering all these factors, I am of the view that the tribunal has erred in assuming the income of the deceased at Rs. 2,500/- pm in the absence of there being any cogent evidence in this regard. However, considering that no dispute in this regard is raised by the Counsel for the respondents, 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 erred in applying the multiplier of 15 in the facts and circumstances of the case, I

feel that the tribunal has not committed error. This case pertains to the year 1988 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 age of the deceased at the time of the accident was 38 years and he is survived by his widow, aged parents and two children. In the facts of the present case, I am of the view that after looking at the age of the claimants and the deceased and after taking a balanced view considering the multiplier applicable as per the II Schedule to the MV Act and also considering that no dispute in this regard is raised by the respondents, the multiplier of 15 shall be applicable.

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 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 @ 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 consortium and loss of estate, whereas, no compensation has been granted towards funeral expenses, loss of love & affection 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. 40,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

13. 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 the deceased 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.

14. On the basis of the discussion, the total loss of dependency comes to Rs. 3,00,000/- ( $2,500/- \times 2/3 \times 12 \times 15$ ). After considering Rs. 1,10,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,10,000/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 4,10,000/- from Rs. 3,16,000/- 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 respondents jointly and severally in the same proportion as awarded by the tribunal within 30 days of this order.

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