

**(2008) 07 DEL CK 0023**  
**In the Delhi High Court**  
**Case No : F.A.O. No. 94 of 2000**

Asha Garg and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

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**Date of Decision :** 28-07-2008

**Acts Referred:**

**Citation :** (2009) ACJ 1100

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

**Bench :** Single Bench

**Advocate :** Dushyant Swaroop, for the Appellant; Kanwal Chaudhary, for the Respondent

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## Judgement

Kailash Gambhir, J.—By way of this appeal, the appellants seeks to challenge the impugned award dated 10.10.1999 claiming enhancement over and above the compensation amount of Rs. 4,25,000 as awarded by the Tribunal. Brief summary of the facts to deal with the contentions of the parties are as under:

On 7.1.1991 at about 11.25 p.m., the deceased Yogendra Garg was driving his two-wheeler scooter bearing registration No. DAD 2496. While he was proceeding on Rohtak Road in order to go towards his residence in Karol Bagh, New Delhi and reached the outer gate of Transport Centre on Rohtak Road, a truck bearing registration No. PJK 337 came from behind and took a left turn abruptly to enter the Transport Centre from the outer gate, as a result, the truck struck against the rear side of the scooter. Due to forceful impact, Yogendra Garg along with the scooter was thrown on the road and sustained fatal injuries and succumbed to those injuries.

2. Mr. Dushyant Swaroop, counsel for the appellants, contended that the Tribunal has not taken into consideration the last income tax return and the assessment order placed on record. The contention of the counsel for the appellants was that the death in the present case had taken place on 7.1.1991 and the tax return was filed on 28.3.1992 and the assessment order in the case was passed on

3.6.1992. Counsel thus contended that immediately after the death of the deceased, steps were taken as per the requirement of Income Tax Act to file the return. Counsel further submitted that the amount as disclosed in the said income tax return cannot be said to be on higher side if income tax return of the preceding year is taken into account and on comparison it will be manifest that there was a very small increase in the subsequent year. Counsel thus contended that the Tribunal should have given weightage to the said income tax assessment order instead of ignoring the same. Learned Counsel for the appellants further contended that the deceased was 29 years of age at the time of accident and the appropriate multiplier according to the Second Schedule to the Motor Vehicles Act is 18 instead of 15 as applied by the Tribunal. The contention of the counsel for appellants is that although the death had taken place prior to insertion of Second Schedule in the Motor Vehicles Act but still the analogy of the same can be taken. Another contention of the counsel for the appellants is that the Tribunal has wrongly allowed deduction of 3rd for personal expenses although the deceased was survived by his young widow of 27 years of age, two sons and parents besides his sisters. Contention of learned Counsel for the appellants is that deceased was the sole breadwinner in the family, therefore, the said condition of large family could not have been ignored by the Tribunal. Counsel thus contended that at least deduction of 15th or 15th for the personal expenses should have been made by the Tribunal. Learned Counsel further stated that No. other amount towards loss of love and affection, loss of consortium, loss to estate, funeral expenses have been allowed in favour of the appellants.

3. Per contra, Mr. Kanwal Chaudhary, counsel for insurance company, respondent No. 1, refuted the said contentions of counsel for the appellants. The counsel further stated that the award is just and fair and requires No. interference or enhancement and thus the appeal must be dismissed.

4. I have heard learned Counsel for the parties and perused the award. As regards the contention of the counsel for appellants regarding income of the deceased, appellants have relied upon the income tax return of the year 1991-92, according to which the deceased's income was assessed at Rs. 32,010 p.a. The Tribunal assessed the income as per the income tax return brought on record by the appellants of the year 1990-91 and took income of the deceased at Rs. 2,500 p.m. On perusal of the award it is manifest that the accident took place on 7.1.1991, income tax return for the assessment year 1991-92, i.e., for the period from 1.4.1990 to 31.3.1991 was filed on 31.8.1992, meaning thereby that the said income of Rs. 32,010 as mentioned in 1991-92 income tax return was the income of the deceased till the death of the deceased, i.e., up to 7.1.1991. Learned Tribunal ought to have assessed the income of the deceased as per the income tax return of the year 1991-92 after considering the same to be the income of the deceased for 10 months, I, therefore, find infirmity in the award in this regard. Considering Rs. 32,010 as income of the deceased for 10 months, the income of the deceased would come to Rs. 3,201.

5. As regards the contention of learned Counsel for the appellants that "3rd deduction made by Tribunal is on the higher side as the deceased is survived by his widow, two sons and aged parents. In catena of cases the Supreme Court has in similar circumstances made 3rd deduction. I feel that the interest of justice will be best served if deduction is made to the tune of 3rd for personal expenses of the deceased. Therefore, I am inclined to interfere with the award on this ground and modify the award by deducting 4th expenses towards personal expenses.

6. The next contention raised by the counsel for the appellants is that the Tribunal has erred in applying the multiplier of 15 in the facts and circumstances of the case. This case pertains to the year 1991 and at that time Second Schedule to the Motor Vehicles Act was not brought on the statute book. 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 General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In the said judgment it was observed by the court that maximum multiplier of 16 could be applied by the courts, which after coming into force of the Second Schedule has risen to 18. The age of the deceased was 29 years at the time of the accident and was survived by his wife, aged 27 years, two minor sons and aged parents. As per the Second Schedule multiplier of 18 is applicable and the Tribunal assessed multiplier at 15. In the facts of the present case taking a balanced view and after looking at the age of the claimants and the deceased the multiplier of 16 should be applied. Therefore, the award is modified in this regard.

7. On the contention that the Tribunal has erred in not granting compensation towards non-pecuniary damages, I feel that the Tribunal erred in not granting the same. In this regard compensation towards loss of love and affection is awarded at Rs. 20,000, compensation towards funeral expenses is awarded at Rs. 10,000 and compensation towards loss to the estate is awarded at Rs. 10,000. Further, Rs. 50,000 is awarded for loss of consortium. As far as the contention pertaining to the award of amount towards mental pain and suffering caused to the appellants due to the sudden demise of their only son 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.

8. On the basis of the above discussion, the income of the deceased would come to Rs. 4,801.50 after doubling Rs. 3,201 to Rs. 6,402 and thereafter taking the mean of them. After making 3rd deduction the monthly loss of dependency will come to Rs. 3,601 and annual loss of dependency comes to Rs. 43,212 and after applying multiplier of 16 it comes to Rs. 6,91,392. Thus, total loss of dependency comes to Rs. 6,91,392. After considering Rs. 90,000 which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 7,81,392.

9. In view of the above discussion, total compensation is enhanced to Rs. 7,81,392 from Rs. 4,25,000. The differential amount shall be paid by the

respondent insurance company to the appellants along with interest at the rate of 7 per cent per annum from the date of institution of the petition till realization of the award.

10. With the above direction, the present appeal is remitted back to the Tribunal for apportionment of differential amount in favour of the appellants-claimants.