
(2009) 04 DEL CK 0557
In the Delhi High Court
Case No : FAO No. 552 of 2002

Babu Lal and Another

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0557

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 24/7/2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 89,200/- along with interest @ 9% per annum to the claimants.

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

On 17/2/1990 the deceased Ganesh Kumar was riding his bicycle near Kingsway camp when suddenly a mini bus bearing registration no. DEp 6404 being driven in a rash and negligent manner hit the said cycle. Resultantly, Ganesh fell on the road and later on died.

3. A claim petition was filed on 11/4/1990 and an award was passed on 24/7/2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. O.P. Goyal counsel for the appellants contended that the tribunal erred in assessing the income of the deceased at Rs. 2,000/- per month whereas after looking at the facts and circumstances of the case the tribunal should have assessed the income of the deceased after taking into consideration future prospects of the deceased at Rs. 4,000/- per month. The counsel submitted that the tribunal has erroneously applied the multiplier of 11 while computing

compensation when according to the facts and circumstances of the case multiplier of 15 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 20 yrs of age only and would have lived for another 40-50 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 her 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 @ 12% per annum in place of only 9% per annum. The counsel contended that the tribunal also erred in not awarding adequate 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. Nobody appeared for the respondents.

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

6. As regards income, the PW1 deposed that the deceased used to earn Rs. 1,200/- pm and PW2 father of the deceased deposed that the deceased was employed at Pamposh Electronics and apart from other part time jobs he used to earn Rs. 800-900/- Pm. The appellants claimants had not brought on record any documentary evidence to prove that the deceased was employer and as to what was the income of the deceased. After considering all these factors the tribunal has assessed the income of the deceased at Rs. 2,000/- pm. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. But considering that no dispute has been raised by the respondents in this regard no interference is made in relation to income of the deceased by this Court, in the interest of justice.

7. 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.

8. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 11 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1990 and at that time II 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

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 20 years and he is survived by his aged parents, whose age was 44 years and 42 years. 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, the multiplier of 12 shall be applicable.

9. 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 12% 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.

10. On the contention regarding that the tribunal has erred in not granting adequate compensation towards loss of love & affection and loss of estate, whereas, no compensation has been granted towards funeral expenses 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. 10,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

11. 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 their 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.

12. On the basis of the discussion, the income of the deceased would come to Rs. 2,000 as taken by the tribunal and after making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,400 as assessed by the tribunal and the annual loss of dependency comes to Rs. 16,800/- per annum and after applying multiplier of 12 it comes to Rs. 2,01,600/-. Thus, the total loss of dependency comes to Rs. 2,01,600/-. After considering Rs. 30,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,31,600.

13. In view of the above discussion, the total compensation is enhanced to Rs. 2,31,600/- from Rs. 89,200/- 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 appellants by the respondent insurance company in the same proportion as awarded by the tribunal.

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