**(2009) 04 DEL CK 0250**

**In the Delhi High Court**

**Case No :** F.A.O. 182 of 1998

Bhateri Devi and Others — APPELLANT

Vs

Ranbir Singh and Others — RESPONDENT

**Date of Decision :** 27-04-2009

**Acts Referred:**

Evidence Act, 1872 — Section 102
Motor Vehicles Act, 1988 — Section 171

**Citation :** (2009) 04 DEL CK 0250

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

**Bench :** Single Bench

**Advocate :** Rupesh Kumar, for the Appellant; P.K. Seth, for the Respondent

## Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 11/03/98 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 33,120/- along with interest @ 12% per annum to the claimants.

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

3. On 11/04/81 at about 2.40 PM, Nand Kishore was travelling in Bus bearing registration No. DEP-2824 plying on route No. 928. The bus had stopped at a bus stand near Haryana Power House in order to allow some passengers to alight from the same. While, Nand Kishore, deceased was in the process of getting down from the bus from its front gate when R-1, the driver of the bus suddenly, without giving any warning or indication, moved the bus with jerk at a fast speed. As a result, Nand Kishore fell down and was run over under the wheels of the bus and died on the spot.

4. A claim petition was filed on 07/07/1981 and an award was passed on 11/03/1998. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Rupesh Kumar, counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 345/- 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. 2,000/- per month. The counsel submitted that the tribunal has erroneously applied the multiplier of 12. 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 40 years 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. As regards liability of the insurance company, he contended that although, the offending vehicle was insured with the respondent No. 3 insurance company but still the insurance company alone is not liable to pay in this case as DTC admitted in its written statement that the said bus was running under the operation of the DTC bus but later denied it and submitted that an agreement was executed between DTC and the owner of the bus that he would take the insurance policy covering third party risk. He urged that since the vehicle was plying under permit by the corporation, therefore, the DTC should be taken as its owner. He further contended that in issue No. 4, whether respondent No. 4 DTC is not liable in view of the preliminary objections, the Ld. Tribunal in unequivocal terms held that since the said issue was not pressed by the respondents thus, it is decided against them. The counsel maintained that therefore, even respondent No. 4 DTC is also liable to pay herein. 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. Mr. P.K. Seth counsel for the respondent insurance company contended that the award passed by the Ld. Tribunal is just and fair and does not require any interference by this court.

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

8. As regards the income of the deceased, in the claim petition the case of the appellants was that the deceased was a shopkeeper and was dealing in bardana/ gunny bags and was earning Rs. 2,000/- pm. PW6 R.K. Garg, the brother-in-law of the deceased deposed that the income of the deceased was not more than 400-500/- pm. PW 17 Bhateri Devi deposed that the deceased used to earn Rs. 3,000/- pm and out of it Rs. 1,500/- was given to her towards household expenses. The appellants claimants had not brought on record any document showing the income of the deceased. 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. After considering all these factors, I am of the view that the tribunal has not erred in assessing the income of the deceased at Rs. 345/- pm by taking aid of minimum rates of wages notified under MW Act. 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.

10. However, a perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

11. Therefore, the tribunal erred in not considering the same. Thus, the award is modified to this extent in this regard.

12. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 12 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1981 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. At the time of the accident, the deceased was of 40 yrs of age and he is survived by his widow and five 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, the multiplier of 14 shall be applicable.

13. 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.

14. On the contention regarding that the tribunal has erred in not granting adequate compensation towards non-pecuniary damages, I feel that the same needs some consideration. In this regard compensation towards loss of love and affection is awarded at Rs. 50,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Rs. 50,000/- is awarded towards loss of consortium.

15. 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.

16. In view of the above discussion, the total loss of dependency comes to Rs. 57,960/- (345 + 2 x 345/2 x 2/3 x 12 x 14) and after considering Rs. 1,20,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,77,960/-.

17. As regards liability of DTC, rightly, in issue No. 4, whether respondent No. 4 DTC is not liable in view of the preliminary objections, the Ld. Tribunal in unequivocal terms held that since the said issue was not pressed by the respondents thus, it is decided against them. Herein, the respondents did not include DTC. As it was the DTC which took this preliminary objection. Be that as it may, as per Section 102, Indian Evidence Act, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Also considering the agreement entered into between respondent Nos. 2 and 4 it is clear that the DTC is not liable to compensate in this case.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,77,960/- from Rs. 33,120/- 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 respondent Nos. 1 to 3, jointly and severally liable to the extent mentioned by the tribunal in the award, in the same proportion as awarded by the tribunal within 30 days of this order.

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