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**(2009) 04 DEL CK 0155**

**In the Delhi High Court**

**Case No :** FAO No. 447 of 1998

Shri Subhash Rastogi and Others — APPELLANT

Vs

Jai Pal and Others — RESPONDENT

**Date of Decision :** 06-04-2009

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 171

**Citation :** (2009) 04 DEL CK 0155

**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 is preferred against the award of compensation passed by the Learned Motor Accident Claim Tribunal on 16.7.96. The learned Tribunal awarded a total amount of Rs. 56,000/- with an interest @ 12% PA for the death of late Sh. Ram Karan Dass due to injuries suffered by him in the motor accident.

2. The brief conspectus of facts is as under: On 19.2.82, deceased Ram Karan Dass boarded the bus bearing registration No. DLP-5981 from Chander Nagar to Kailash Nagar and at Kailash Nagar, the bus had come to a halt as passengers wanted to get down from the bus. When deceased was in the process of alighting the bus, R1 who was driving the said bus, all of a sudden started the bus. As a result, the deceased was dragged alongwith the bus. He received severe injuries and eventually succumbed to his injuries.

3. A claim petition was filed on 15/4/1985 and an award was made on 16.7.96. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. O.P. Goyal, counsel for the appellants urged that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He submitted that deceased was 52 years of age and tribunal ought to

have assessed the economic loss suffered by the appellants for a period of at least 18 years. He further submitted that the tribunal has not considered the law laid down by the Hon?ble Supreme Court while considering the monetary deprivation to which the heirs of the deceased are subjected as well as the life expectancy of the deceased. Ld. Counsel for the appellants further submitted that tribunal erred in fixing the dependency of the claimants only for a period of 7 years. It is further submitted that tribunal has not considered future prospects of the deceased. Ld. Counsel for the appellants has further averred that tribunal erred in ordering the amount payable to the appellants to be kept in FDR for a period of 7 years. Further, the counsel pleaded that the tribunal erred in awarding an interest @ 12% pa instead of 15% pa.

5. Nobody has been appearing for the respondents.

6. I have heard the counsel for the appellants and perused the record.

7. The case of the appellants claimants is that the deceased was earning Rs. 1400-1500 pm from the shop as a general merchant. The appellants in order to prove the same, examined PW2 Sh. Om Prakash who was a fellow shopkeeper who stated that the deceased used to earn Rs. 250-300 daily. Pw 5 widow of the deceased deposed that the deceased used to give her Rs. 1200/- pm for household expenses. But no documentary evidence as regards the income of the deceased was brought on record by the appellants. The tribunal assessed the income of the deceased at Rs. 1000/- pm after considering the aforesaid circumstances. 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 erred in assessing the income of the deceased at Rs. 1,000/- pm without there being any proof in this regard. But considering that no dispute has been raised as regards the income of the deceased being assessed at Rs. 1,000/- pm by the respondents even before the tribunal and if the income under the Minimum Wages Act is assessed the same will further go down, therefore, I do not feel inclined to interfere with the award at this stage in the interest of justice. Therefore, no interference is made in relation to income of the deceased by this court.

8. As regards the future prospects I am of the view that there is no 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.

9. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 7 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1982 and at that time II schedule to the Motor Vehicles Act was not brought on the

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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. In the instant case, at the time of the accident deceased was of 52 years of age and he is survived by his widow and one daughter. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 11 should have been applied. Therefore, in the facts of the instant case the multiplier of 11 shall be applicable.

10. 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.

11. On the contention regarding that the tribunal erred in not granting compensation towards non-pecuniary damages. 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/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

12. As far as the contention pertaining to the award 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.

13. As regards the contention that the tribunal erred in making a direction of depositing a portion of the compensation amount in FDR for 7 years, I feel that the same does not suffer from any infirmity. The purpose of such direction is that there should not be any misapplication of money. Be that as it may, in case of any exigency, the appellants are at liberty to make an application before the tribunal for withdrawal of the same.

14. On the basis of the above discussion, the income of the deceased as

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assessed by the tribunal remains at Rs. 1,000/- and after making 1/3rd deductions the monthly loss of dependency comes to Rs. 667/- pm and the annual loss of dependency comes to Rs. 8,004/- per annum and after applying multiplier of 11 it comes to Rs. 88,044/-. Thus, the total loss of dependency comes to Rs. 88,044/-. After considering Rs. 80,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 1,68,044/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 1,68,044/- from Rs. 56,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the present petition in this Court till realisation and the same should be paid to the appellant by the respondent No. 4. The enhanced compensation be apportioned amongst the appellants in the same ratio as apportioned by the Tribunal.

16. Disposed of.

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