
(2009) 04 DEL CK 0271
In the Delhi High Court
Case No : F.A.O. 224 of 1998

Smt. Anita and Others

APPELLANT

Vs

Shri Krishan Lal and Others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0271

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

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

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 05/01/9 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,40,000/- along with interest @ 12% pe annum to the claimants.

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

3. On 19/07/94 at about 1.50 PM Sh. Gyansi Ram was coming on two wheeler scooter bearing registration No. DL-4S-G-4399 from Mangolpuri side and was going to Tri nagar, Delhi via Parmarth Mission Hospital road, and when he reached near Petrol Pump, Pitam Pura, Delhi he was driving his scooter at a slow speed on his proper left hand side at that very time a Tanker bearing registration No. DHL-2830 driven by the respondent No. 1 rashly and negligently and at a very fast speed came from behind and took a sudden turn towards his left without giving any signal or blowing any horn and struck against the scooter of the deceased.

4. A claim petition was filed on 05/11/94 and an award was passed on 05/01/98. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie, 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 erroneously applied the multiplier of 12 while computing compensation when according to the facts and circumstances of the case multiplier of 24 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 36 yrs of age only. 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 24% 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 appeared for the respondents.

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

As regards income, the case of the appellants is that he was doing business in the name and style of M/s. Maruti Plastic and was earning a sum of Rs. 5,000/- pm. The appellants had brought on record the income tax returns of the deceased from 1985 to 1995 and according to it; income of the deceased for the year 1994-1995 was Rs. 40,370/- pa and for 1993-94 his income was Rs. 29,040/-. 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. 30,000/- pa or 2,500/- pm by considering the income of the deceased as per the income tax returns filed by the deceased prior to his death for the year 1993-94. 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 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.

9. 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 July 1994 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 November 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 36 years and he is survived by his widow, aged mother 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, the multiplier of 15 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 24% 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 has erred in not granting compensation towards loss of love & affection, funeral expenses, loss of estate, loss of consortium 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. 30,000/-; 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 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.

13. Therefore, the total loss of dependency comes to Rs. 3,00,000/- ($2,500 \times \frac{2}{3} \times 12 \times 15$) and after considering Rs. 1,00,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,00,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 4,00,000/- from Rs. 2,40,000/- 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 respondent insurance company in the same proportion as awarded by the tribunal within 30 days of this order.

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