(2009) 04 DEL CK 0351

In the Delhi High Court

Case No : F.A.O. No. 549 of 1999

Smt. Kashmir Kaur and Others APPELLANT

Vs

Sh. Mohinder Paul and Others RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0351

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 4.8.1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,36,000/- along with interest @ 12% per annum to the claimants.

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

3. The appellants are the widow and sons of Shri Dalip Singh, who died in a motor vehicle accident which took place on 23.3.1983. The Deceased Shri Dalip Singh was sitting as a passenger in three-wheeler scooter bearing registration No. DER-2242 from Quarter No. HPT-17 Sarojni Nagar towards Patel Nagar with Shri Pargat Singh when the three wheeler scooter was hit by a two wheeler scooter bearing registration No. DHX-2314. Both the vehicles were being driven at a fast speed and on account of the fast speed at which the three wheeler scooter was going the three wheeler scooter over-turned as a result of which the deceased received fatal injuries and later on succumbed to his injuries.

4. A claim petition was filed on 9.9.1983 and an award was passed on 4.8.1999. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal counsel for the appellants contended that the tribunal erred in

making the deduction to the tune of 1/3 of the income of the deceased towards personal expenses when the deceased was supporting a large family at the time of accident and is survived by his widow, aged mother and three children. The counsel submitted that the tribunal has erroneously applied the multiplier of 14 while computing compensation when according to the facts and circumstances of the case multiplier of 16 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 40 yrs of age only and would have lived for another 15-20yrs had he not met with the accident. 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 @ 18% 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. Nobody has been appearing for the respondents.

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

8. As regards the contention of the counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased is survived by his widow, aged mother and three children. In catena of cases the Apex Court has in similar circumstances made 1/4th deductions. Therefore, I am inclined to interfere with the award on this ground and modify the award by deducting 1/4 towards personal expenses.

9. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 14 in the facts and circumstances of the case, I feel that the tribunal has not committed error. This case pertains to the year 1983 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 40 years and he is survived by his widow, aged mother and three 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 has been rightly applied by the tribunal.

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, 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. 40,000/-; 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. On the basis of the discussion, the income of the deceased would come to Rs. 3,000/- and after making 1/4 deductions the monthly loss of dependency comes to Rs. 2,250/- and the annual loss of dependency comes to Rs. 27,000/- per annum and after applying multiplier of 14 it comes to Rs. 3,78,000/-. Thus, the total loss of dependency comes to Rs. 3,78,000/-. After considering Rs. 1,10,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,88,000/-.

14. In view of the above discussion, the total compensation is enhanced to Rs. 4,88,000/- from Rs. 3,36,000/- 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 respondents in the same proportion as awarded by the tribunal.

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