
(2009) 04 DEL CK 0292
In the Delhi High Court
Case No : FAO No. 415 of 1999

Smt. Preetam Devi Asija and Others

APPELLANT

Vs

Munish Khurana and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0292

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 19/5/1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 3,12,000/- along with interest @ 12% per annum to the claimants.

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

3. On 2.12.1990 the deceased was going on his three wheeler scooter, the respondent No. 1 came driving his Maruti car bearing registration No. DEG 5216 from North Avenue side in a rash and negligent manner and hit the scooter and caused fatal injuries to Jagdish Asija and he succumbed to his injuries.

4. A claim petition was filed on 7/1/1991 and an award was passed on 19/5/1999. 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 assessing the income of the deceased at Rs. 3,000/- 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. 6,000/- per month. The counsel further maintained that the tribunal erred in making the deduction to the tune of 1/3rd 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 13 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 40 yrs of age only and would have lived for another 20-25 years 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. 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. Nobody has been appearing for the respondents.

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

8. As regards income, the widow of the deceased deposed that the deceased was earning Rs. 3,000/- pm from his job as a three wheeler scooter driver. Nothing was brought on record to prove the income of the deceased except the bald assertions. After considering all these factors. The Tribunal assessed the income of the deceased at Rs. 3,000/- pm.

9. However, 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.

10. 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.

11. As regards the contention of the counsel for the appellant that the 1/3rd deduction made by the tribunal are on the higher side as the deceased is survived by widow, aged mother and three children. In the facts of the instant case, I feel that the interest of justice would be best served if 1/4 deductions is made herein. Therefore, I am inclined to interfere with the award on this ground and modify the award by deducting 1/4 towards personal expenses of the deceased.

12. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier of 13 in the facts and circumstances of the case, I feel that the tribunal has committed no 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 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. 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 13 has been rightly applied by the tribunal.

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 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.

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. On the basis of the discussion, the total loss of dependency comes to Rs. 3,51,000/- (3,000/- x $\frac{3}{4}$ x 12x 13). After considering Rs. 1,10,000/-, which is

granted towards non-pecuniary damages, the total compensation comes out as Rs. 4,61,000/-.

17. In view of the above discussion, the total compensation is enhanced to Rs. 4,61,000/- from Rs. 3,12,000/- 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.

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