

(2009) 04 DEL CK 0509
In the Delhi High Court
Case No : FAO No. 156 of 2000

Smt. Raj Rani and Others

APPELLANT

Vs

Shri Kuldip Singh and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0509

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 19.1.2000 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 75,600/- along with interest @ 12% per annum to the claimants.

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

That on 7.12.1980 at about 1.15 p.m. the deceased Shri Jit Singh was driving a motorcycle bearing registration No. DEW 5851 at a slow speed and on the correct side of the road. When he reached a place opposite Rajputana Rifle Centre on the ring road, a truck bearing registration No. RRG-9358 came at a fast speed from behind and struck against the Motorcycle of the deceased. The truck dragged the motorcycle up to a considerable distance. The deceased fell down and received injuries and he succumbed to his injuries.

A claim petition was filed on 18.3.1981 and an award was made on 19.1.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. O.P. Mannie, counsel for the appellants assailed the said award on the ground of quantum of compensation. Counsel for the appellants contended that the tribunal has erred in assessing the income of the deceased at Rs. 600/- 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. 1200/- per month. 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 and after considering that the deceased was of 32 years of age and the deceased was supporting a large family at the time of accident and is survived by his wife, two sons and three daughters, therefore, multiplier of 17 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 32 yrs of age only and would have lived for another 30 yrs had he not met with the accident. The counsel also stated that had the deceased not met with his untimely death he would have expanded his business and would have been earning much more in the near future. 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.

4. Nobody has been appearing for the respondents.

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

6. The appellants claimants had brought nothing on record to prove the income of the deceased. Merely, Smt. Raj Rani, the widow of the deceased had asserted that the deceased was an electrical contractor and was earning Rs. 1200/- pm and out of the said amount, he was giving Rs. 1000/- to her for the household purposes. Since, nothing had come on record to prove the income of the deceased, therefore, the learned Tribunal determined the 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 committed no error in assessing the income of the deceased at Rs. 600 p.m.

7. 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.

8. 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.

9. Therefore, no interference is made in the award in relation to income of the deceased by this Court.

10. As regards the future prospects, 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. The deceased was of 32 years of age at the time of the accident and thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Future increase in income is not akin to future prospects, though the method followed for the computation of income while awarding future prospects and increase in the minimum wages are the same, therefore, the computation is not affected.

11. 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 committed error. This case pertains to the year 1980 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 deceased was of 32 years of age and was supporting a large family at the time of accident and is survived by his wife, two sons and three daughters. 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 applicable multiplier under the M.V. Act the multiplier of 15 should have been applied. Therefore, in the facts of the instant case the multiplier of 15 shall be applicable.

12. On the contention regarding that the tribunal has erred in not granting compensation towards non-pecuniary damages, I feel that the same should have been awarded. In this regard compensation towards loss of love and affection is awarded at Rs. 50,000/-; compensation towards funeral expenses is awarded at Rs. 5,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-. Further, Rs. 50,000/- is awarded towards loss of consortium.

13. 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 their only son 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.

14. On the basis of the above discussion, the income of the deceased would come to Rs. 900 after doubling Rs. 600/- to Rs. 1800/- and then taking the mean. After making deductions the monthly loss of dependency comes to Rs. 675/- and the annual loss of dependency comes to Rs. 8100/- per annum and after applying multiplier of 15 it comes to Rs. 121500/-. Thus, the total loss of dependency comes to Rs. 121500/-. After considering Rs. 1,15,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,36,500/-.

15. In view of the above discussion, the total compensation is enhanced to Rs. 2,36,500/- from Rs. 75,600/- with interest @ 7.5% per annum from the date of filing of the petition till realisation and the same should be paid to the appellant No. 1, as the Tribunal in it's award has mentioned that other LR's had already given their no objection, by the respondent insurance company.

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