**(2008) 03 DEL CK 0197**

**In the Delhi High Court**

**Case No :** MAC APP No. 731 of 2007

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| Smt. Ranjana Jain and Another | APPELLANT |
| Vs | |
| Sh. Aditya Singh and Others | RESPONDENT |

**Date of Decision :** 17-03-2008

**Acts Referred:**

**Citation :** (2008) 2 ILR Delhi 968

**Hon'ble Judges :** Kailash Gambhir, J

**Bench :** Single Bench

**Advocate :** S.P. Jain, for the Appellant; D.K. Sharma, for the Respondent

## Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellant seeks to challenge the impugned award dated 9.8.2007 so as to claim enhancement in the compensation amount over and above the amount of Rs. 3,36,800/- granted by the Tribunal.

2. To deal with the contentions of the counsel for the parties, it would be appropriate to give brief facts of the case as under:

On the intervening night of 29/30th August, 2003, the deceased Shri Nikhil Jain was riding on the motorcycle bearing registration No. UP-13-E-8412 along with his friend Shri Lalit Sharma and was proceeding towards ring road from the side of Jia Sarai, Delhi and when they took a turn towards IIT Flyover, suddenly a car bearing registration No. DL-2CM-5604 being driven by its driver at a very high speed, rashly and negligently came and hit the motorcycle. As a result of that the deceased fell down on the road and sustained grievous injuries and succumbed to the injuries.

3. Mr. S.P. Jain, counsel for the appellant contends that the deceased in the present case was a bright student of B.Tech, Second Year who died at the young age of 21 years. Counsel for the appellant further contends that the deceased was earning a sum of Rs. 5,000/- per month by imparting tuitions to the students. Counsel for the appellant further contends that the Tribunal has

wrongly assessed the income of the deceased as that of a matriculate fixed under the Minimum Wages Act. Counsel for the appellant further contends that the Tribunal has not taken into consideration the future increase in the minimum wages. Counsel for the appellant has placed reliance on the judgment of this Court in FAO No. 416/2002, entitled as Smt. Tripta Rani v. Surender Pal.

4. The other grievance raised by the counsel for the appellant is that the Tribunal has also not applied the correct multiplier which should have been 15 taking into consideration the young age of the deceased and his family members. The father of the deceased was around 42 years of age and mother was around 37 years at the time of the accident of the deceased and if age of both of them is taken into consideration then the appropriate multiplier would be 15 as laid down under the Second Schedule of the M.V. Act. Counsel for the appellant further contends that the Tribunal has granted lower rate of interest @6% p.a. which in any case should not have been below 7.5% p.a.

5. Per contra, Mr. D.K. Sharma, counsel for the respondent contends that the appellant had failed to place on record any evidence so as to prove the income of the deceased @5,000/- pm and therefore, the Tribunal rightly assessed the income of the deceased in accordance with the Minimum Wages Act. As regards the other contentions of the counsel for the appellants also, the counsel for the respondent submits that the impugned award is just and fair and requires no interference.

6. I have heard learned Counsel for the parties and have perused the record.

8. As regards the contention of the counsel for appellants pertaining to the income of the deceased, I feel that the Tribunal committed no error in assessing the income of the deceased in accordance with the Minimum Wages Act as no cogent evidence was brought on record to prove the income of the deceased from tuitions. But in any case the Tribunal erred in not awarding future increase in income.

9. It has been the consistent view of this Court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. 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 gets more than double after every 10 years. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

10. Therefore, the tribunal erred in not considering increase in minimum wages, while assessing the income of the deceased and same should be considered while computing compensation towards loss of dependency.

11. As regards the contention of the counsel for the appellants that the Tribunal

 

ought to have applied the multiplier of 15 instead of 12, I feel that the Tribunal has erred in applying the multiplier of 12. The law in this regard is well settled that the multiplier should be applied in accordance with the IInd Schedule to the Motor Vehicles Act according to the age of the deceased or that of the claimants, whichever is higher and any deviation from the IInd Schedule shall be made due to the peculiarity of the case. The learned Tribunal did not reveal any peculiarity in the matter and applied multiplier of 12, when in the facts of the case multiplier of 15 should have been applied. Thus, the multiplier is modified to 15 in the present case.

12. As regards the rate of interest, I feel that the same is on the lower side and it should be enhanced from 6% p.a. to 7.5% pa.

13. In view of the above discussion, the income of the deceased after considering future increase in income shall come to Rs. 4,950/- pm or Rs. 59,400/- p.a and after making 1/3rd deductions, the loss of dependency comes to Rs. 39,600/- p.a. and on application of multiplier of 15 the total loss of dependency comes to Rs. 5,94,000/- After considering general damages, the total compensation comes to Rs. 6,14,000/-.

14. In view of the above discussion, the respondent No. 3 shall pay the differential amount to the appellants in equal proportion with upto date interest @ 7.5% p.a.

15. With these directions, the appeal is disposed of.

 