

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**MAC APP NO. 490/2006**

Judgment reserved on: November 03, 2007

Judgment delivered on: 20.12.2007

Oriental Insurance Co.Ltd. .... Appellant.

Through: Mr.R.N.Sharma, Advocate

versus

Smt.Kanak Lata Bhunia & Ors. .... Respondents

Through: Mr.D.D.Singh for respondents.

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?  | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J.**

The present appeal preferred under Section 173 of The Motor Vehicles Act, 1988, arises out of the award dated 19<sup>th</sup> April, 2006 of the Motor Accident Claims Tribunal, whereby the Tribunal

awarded a sum of Rs. 6,32,000/- along with interest @ 6% per annum as compensation.

The brief facts relevant for deciding the instant case are that on 21/04/2000, deceased Sh. Manindra Bhunia, aged 32 years, after purchasing flowers from the market opposite Hanuman Mandir, Connaught Place was going to Preet Vihar in a TSR bearing registration no. DL 1R F 1803, driven by Sh. Inderjeet Parshad in a rash and negligent manner and at a very high speed. On reaching the outer circle near Minto Road, the aforesaid TSR hit a stationary bus bearing registration no. DL 1P 9275, which was stationary on the road. As a result, Sh Maninder received fatal injuries. A claim petition was filed by widow, minor children and mother of the deceased before the Motor Accident Claims Tribunal on 12/4/2006 and award was made on 19/4/2006. Aggrieved with the said award present appeal is preferred by the appellant insurance company.

Sh. R.N. Sharma counsel for the appellant has assailed the said award on two grounds. Firstly, it is urged that the tribunal has erred in granting compensation to the tune of Rs.6,32,000/- by taking income @ Rs. 36,000 pa, when there was no documentary evidence

in support of the same. The counsel maintained that the tribunal relied upon the oral testimony of the witness and on the basis of the same it took income at Rs. 3,000 p.m. instead of taking the aid of Minimum Wages Act for assessing the income of the deceased. Secondly, the counsel contended that the multiplier of 17 applied by the tribunal in the instant case for the deceased who was 32 yrs of age is on the higher side.

Per Contra, Sh. D.D. Singh counsel for respondents refuted the contentions of counsel for the appellant. The respondent nos.1 to 4 also filed cross objections wherein, they have urged for enhancement of rate of interest granted by the tribunal from 6% to 9% pa. In this regard the counsel has placed reliance on the judgment of this court in **Sayri & Ors. vs. Vijender Singh & Ors.** reported in **2005 ACJ 1083 (Del)**.

I have heard learned counsel for the parties and have perused the record.

As regards the contention of the counsel for the appellant that the tribunal without there being any documentary evidence on record to prove the income of the deceased, merely relied on the

deposition of the witness and has assessed the income of the deceased at Rs. 3,000, without the aid of Minimum Wages Act for computing the compensation. I, feel there is a merit in the submission of the counsel for the appellant. On perusal of the award it is explicit that it is not proved on record as to what was the exact income of the deceased. Also, it has been observed by the learned tribunal that the minimum rates of wages at the time of accident was Rs. 2419 but still the tribunal assessed compensation after taking Rs. 3,000 as income of the deceased. It is no more res integra that in the absence of any cogent evidence on record to prove the monthly income at the time of accident the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be safely taken into account. In this regard the Hon'ble Apex Court has in **Oriental Insurance Co. Ltd. v. Meena Variyal,(2007) 5 SCC 428** observed as under:

“It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor

Vehicles Act, which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis--vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment.”

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. In my considered view, in the instant case, the tribunal erred in taking Rs. 3,000 pm as the income of the deceased. The income of the deceased should have been taken at Rs. 2419 pm.

As regards the contention of the counsel for the appellant that the multiplier of 17 is on the higher side, I do not find any force in the said contention of the counsel. The age of the deceased at the time of the accident was 32 yrs and the multiplier of 17 adopted by the tribunal is as per the II Schedule to the Motor Vehicles Act, 1988.

In plethora of cases the Hon'ble Apex Court has held that the II Schedule can be taken as a guide in computing compensation and any deviation therefrom, should take place only in the peculiar facts and circumstances of the case. In this regard in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India,(2003) 3 SCC 148** the Hon'ble Apex Court has observed as under:

“11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.”

In my view, in the instant case the tribunal has correctly applied 17 as the multiplier for assessing compensation.

No evidence has been led to show the prospects of future increase in the income of the deceased. However, 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. For instance, minimum wages of skilled labourers as on 1.1.1980 were Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Therefore, taking Rs. 2419 p.m. as the income of the deceased and doubling the same i.e Rs. 4838 and taking mean of both of them, the monthly income of the deceased along with the increase in the minimum wages would come out as Rs.3628.5, which may be rounded of to Rs. 3629 and the annual income of the deceased would come out as Rs. 43,548. After making 1/3<sup>rd</sup> deductions towards personal expenses the annual dependency would come out as Rs. 29,032. After applying multiplier of 17, the loss of dependency would be Rs. 4,93,544. The tribunal has further awarded general damages to the tune of Rs. 20,000., therefore the total compensation shall come out to Rs. 5,13,544.

In relation to the contention of counsel for respondents that the rate of interest of 6% p.a. awarded by the tribunal is on the

lower side and the same should be enhanced to 9% p.a., I feel that the rate of interest awarded by the tribunal is on the lower side but rate of interest @ 9% p.a. as claimed by the respondents is also on the higher side. In catena of cases the Hon'ble Supreme Court has observed 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, growth of economy, policy of Reserve Bank of India from time to time and other such factors. In this regard in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India,(2003) 3 SCC 148** the Hon'ble Apex Court has observed as under:

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

18. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all



relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same, as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money, which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A (3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the

Tribunal or the High Court as indicated above.”

In the facts of the present case, I am inclined to enhance the rate of interest from 6% pa to 7.5% p.a.

Vide order dated 17<sup>th</sup> May 2006, directions were given for release of 75% of the award amount to the respondents without any security and the remaining 25% of the amount was to be released on furnishing security. In case the said 25% of the amount has still not been released in favour of the respondents then the balance amount in terms of the above discussion shall be released in favour of the respondents with upto date interest @ 7.5%. In case the entire award amount has been received by the respondents then the remaining amount which is in excess shall be paid by the respondents to the appellant. The interest @ 7.5% shall be payable by the appellant on the entire award amount after adjusting the amount already paid by the appellant @6% p.a.

With these directions the present appeal and cross objection stands disposed of.

Parties are to bear their own costs.

**December 20, 2007**

**KAILASH GAMBHIR  
JUDGE**