

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 506/2006

Judgment delivered on: September 28, 2007

Smt. T. Chandramathiamma
wife of Late Shri M.P. Narayanan Pillai
R/O Mangalalhit House,
Manchadikar,
Changnachery
Distt. Kottayam
Kerala State

.....Appellant.

Through: Mr.Divakaran Kanoth for the appellant.

versus

..... Respondent

Pappi
S/o Shri Lal Mohamad
R/o Hari Nangal Colony
P.S. Badarpur
New Delhi & Ors.

Through: Mr. R.N. Sharma for the respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

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| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

The present appeal has been filed against the impugned order dated 7.3.2006 passed by the Motor Accident Claims Tribunal.

The facts which are not in dispute inter alia, are that the petition under Section 166 read with Section 140 of The Motor Vehicles Act, 1988 was preferred by the mother of the deceased seeking compensation on account of death of her son M.N. Nand Kumar. The deceased son of the appellant was 24 years old and was working as an Engineer with M/s. Fasci Comp Systems on a monthly salary of Rs.3000/-. On 15.3.90 at about 4.00 P.M. the deceased who was pillion riding a motor cycle bearing registration No. DNF 124 driven by one Mr. Pradeep Kumar was hit due to the rash and negligent driving by one truck bearing registration no. DLL 6858 which collided with the Maruti Car which led to causing the said accident of the motor cycle. The deceased received serious

injuries and was declared brought dead at the hospital.

In the present appeal Mr. Divakaran Kanoth, the counsel for the appellant has assailed the findings of the award dated 7.3.2006 mainly on two grounds; firstly the age of the mother/appellant has been wrongly taken into consideration as 67 years, although her correct age was 54 years on the date of accident. The second contention of the counsel for the appellant is that the Tribunal has not correctly taken into consideration the future prospects of the deceased as he has a promising career being a qualified engineer. The contention of the counsel for the appellant is that the deceased who was employed as an engineer could have earned much more till the date of his retirement had he not met with the said tragic accident.

Mr.R.N. Sharma, counsel appearing for respondent no.3 very fairly conceded to the first contention of the counsel for the appellant. Counsel for the respondent has admitted that a mistake has crept in the award as regards the age of the appellant as her correct age on the date of the accident was 54 years. On the second

contention counsel for the respondent states that the appellant is not entitled to any further enhancement as far as future prospects are concerned. Mr. Sharma says that Tribunal has already taken into consideration the future prospects of the deceased in accordance with the principles laid down in **Sarla Dixit & Anr. Vs. Balwant Yadav & Ors., 1996 ACJ 581**. Counsel for the respondent further says that rather the multiplier is required to be reduced in the present case as the future prospects have been given in favour of the appellant/claimant in accordance with **Sarla Dixit's case (supra)**. Counsel further contends that appellant was the only surviving legal heir and therefore, the Tribunal ought to have taken into consideration one half of the income towards personal expenses.

I have heard the counsel for the parties. As far as the age of the appellant/claimant is concerned, there is no doubt that the same has been wrongly taken into consideration at the age of 67 years. The correct age of appellant/claimant on the date of the accident is 54 years and that is borne out from the date of birth certificate of the appellant, which shows the date of birth of the

appellant as 19.9.36. Since the counsel for the respondent has also not disputed this fact, therefore, I see no reason to disbelieve the said contention of the counsel for the appellant that the age of the claimant was 54 years on the date of the accident. Taking the said age into consideration the Tribunal ought to have applied the applicable multiplier of 11 years as per the Second Schedule.

As far as the second contention of the appellant is concerned, I find that the Tribunal has duly taken into consideration the future prospects of the deceased by applying the principle of law laid down in **Sarla Dixit's case (supra)**. I do not find that the appellant is entitled to any separate compensation under the head 'future prospects' once the criteria laid down in **Sarla Dixit's case** has been duly taken into consideration by the Tribunal.

Although, I find that the Tribunal has taken into consideration 1/3rd of the salary towards personal expenses without giving any basis for doing so, yet, however, since in the present case the precious life of a young engineer has been lost, and the said finding has not been assailed by the insurer, therefore, I am not

inclined to interfere with the said finding.

Counsel for the respondent has also argued that the appellant had failed to give evidence in support of her claim till 2004 although the claim by the appellant was filed in the year 1990. This certainly shows that there is an undue delay on the part of the appellant in completing her evidence due to which long period of more than 16 years was taken by the Tribunal in deciding the case. It is no more res integra that the compensation to be awarded to the claimants in motor accident matters should be just and fair compensation. The Supreme Court in ***Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274** has observed as under:

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence."

The Supreme Court in ***Divisional Controller, KSRTC v. Mahadeva Shetty*, (2003) 7 SCC 197** has held as under:

“ It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be “just”. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be “just” and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be “just” compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Though by use of the expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression “just” denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just. (See *Helen C. Rebello v. Maharashtra SRTC* 8.)”

In these circumstances, the interest awarded by the Tribunal is reduced from 7.5% to 6% from the date of the institution of the petition till the date of realisation.

In the light of the aforesaid discussion the matter is remanded back to the Tribunal to recalculate the award amount as per the directions given above.

With these directions, appeal stands disposed of.

September 28 , 2007
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KAILASH GAMBHIR J.