

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 697/1996

**MOHD. KAREEM & OTHERS
v
RAVINDRA KUMAR & OTHERS**

Date of Judgment: FEBRUARY 28, 2007.

Hon'ble Mr. Justice R. S. Chauhan

**Mr. H.M. Bhargava for the appellants.
Mr. G. Bardar for the respondents.**

By Court:

Having lost their only son, the appellants have approached this Court for enhancement of the compensation. They have challenged the award dated 10.1.96 passed by the Motor Accident Claims Tribunal, Jaipur District, Jaipur (henceforth to be referred to as 'the Tribunal', for short) whereby the learned Tribunal had granted a compensation of merely, Rs.1,15,200/- alongwith an interest of 12% per annum and had also imposed a penal interest of 15% in case the said compensation amount is not paid within a period of one month.

According to the appellants their only son Mohd. Farooq, although only 19 years old, was engaged in the business of buying and selling of goats. On 17.10.91 while he was bringing goats

from Delhi to Jaipur in a truck, bearing Registration No. DIG 8282, the said truck was being driven in a rash and negligent manner. Because of utter negligence of the driver, the truck turned turtle. Consequently, Mohd. Farooq expired. Since the aged parents were dependant on the young man for their financial and emotional needs, they filed a claim petition before the learned Tribunal. In order to support their case, they produced six witnesses and submitted twelve documents. The respondents examined a single witness and did not submit any document. After going through the oral and documentary evidence, the learned Tribunal granted a compensation as mentioned above. Hence this appeal for enhancement.

Mr. Rakesh Bhargava, learned counsel for the appellant has vehemently argued that since the deceased was a bachelor the multiplier should have been applied in accordance with the age of the parents. At the time of the death of Mohd. Farooq, the father was 50 years old. Therefore, according to the Second Schedule attached to the Motor Vehicles Act, 1988 (henceforth to be referred to as 'the Act', for short) a multiplier of 13 should have been applied. However, without assigning any reason, the learned Tribunal has applied a multiplier of 12. Secondly, according to the three witness namely, A.D.2, Mohd. Karim, the father of the deceased, A.D.5, Riyazuddin and A.D.6 Islamuddin, the deceased was earning Rs. 1,500/- per

month. However, again without giving any reason, the learned Tribunal has concluded that the deceased was earning only Rs. 1,200/-. Since there was no evidence to rebut the claim of the witnesses produced by the appellants, their testimony should have been accepted at its face value. Hence, there was no occasion for the learned Tribunal to conclude that the deceased was earning only Rs. 1,200/- per month. Thirdly, although the appellants had incurred expenses for the funeral, no compensation has been paid for the funeral expenses. Lastly, despite the fact that they had lost their only son, no compensation has been paid for the love and affection.

On the other hand, Mr. G. Bardar, learned counsel for the Insurance Company has supported the impugned award.

We have heard both the learned counsels and have perused the impugned award.

Although the accident took place in 1991, but by the time the award was pronounced in the year 1996, the Second Schedule attached to the Act had come into force. Therefore, while assessing the compensation, the learned Tribunal should have used the Second Schedule as a valid guideline. According to the Second Schedule, a multiplier of 13 should have been applied in case the age of the parents is 50 years. Admittedly, in the present case, the age of the parents is 50 years. Yet, the learned Tribunal has applied

the multiplier of 12 and that too without assigning any cogent reason for applying a lower multiplier. Thus, the multiplier chosen and applied by the learned Tribunal is legally unsustainable. Therefore, this Court has no option but to increase the multiplier from 12 to 13 in the present case.

Moreover not only the father of the deceased, but two other independent witnesses have also testified before the learned Tribunal that the deceased was earning Rs. 1,500/- per month, since the respondents have not controverted the said claim, there was no reason for the learned Tribunal to conclude that the deceased was earning merely Rs. 1,200/- per month. In absence of rebuttal of the claim of the appellants, the learned Tribunal could not have presumed a lower salary/wages for the deceased person.

Furthermore, the learned Tribunal has not assigned any reason for its conclusion that the deceased was earning only Rs. 1,200/- per month. Therefore, the said conclusion is unacceptable. Thus, this Court holds that the deceased was earning Rs. 1,500/- per month. According to the note attached to the Second Schedule, a legal fiction has been created that the deceased would have spent one-third of his salary on himself, therefore, the income that he would have paid to his aged parents would have been Rs. 1,000/- per month.

Admittedly, funeral are not for free. Some expenses must have been incurred by the appellants for burying their only son. Thus, the learned Tribunal should have granted some compensation for the funeral expenses. Considering the fact that the accident took place in the year 1991, this Court grants a funeral expenses of Rs. 2,000/- to the appellants.

One of the most painful events in life is loss of a young son. The parents, who had brought him up with the hope that he would be their haven during their old age, stand suddenly exposed to the vagaries of life upon the sudden demise of their son. The young man would not only have been a support to the aged parents, but also to his two young sisters, the appellant Nos. 3 and 4 before this Court. The emotional, the psychological, the physical and the social vacuum left by the deceased can never be fulfilled by any monetary compensation. However, the law can only endeavour to compensate the grief ridden family for the sudden departure of the young son. The learned Tribunal should have been sensitive to the emotional and psychological vacuum left by the death of a young son. Therefore, this Court is inclined to grant a lump sum of Rs.40,000/- for the loss of love and affection suffered by the four appellants before this Court.

In the result, this appeal is allowed and the award dated

10.1.96 is modified as under :-

Loss of Income 1,000 x 12 x 13	=	1,56,000
Loss of Love & Affection	=	40,000
Funeral Expenses	=	2,000
Total		1,98,000/-

The said compensation shall be adjusted with the compensation already paid to the appellants. The remaining principal amount shall be paid @ 12% per annum from the date of the filing of the claim petition up to the date of award dated 10.1.96 and from the date of filing of this appeal i.e. 10.4.96 till the date of realization of the amount, the interest of 9% per annum shall be paid. The learned Tribunal is directed to realise the said amount from the Insurance Company and to pay the same to the appellants within a period of two months from the date of receipt of the certified copy of this judgment.

(R.S. CHAUHAN) J.

MRG.