IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2460 OF 2008

[Arising out of SLP(C) No.9833 of 2006]

KAMLA SHARMA & ANR **Appellant(s)**

VERSUS

M/S ORIENTAL INSURANCE CO. LTD. **Respondent(s)**

O R D E R

Leave granted.

One Raj Kamal Sharma died in a road accident on 19th February, 1993. At the time of his death he was unmarried and 22 years old. His parents, who are the appellants before us, filed an application for compensation before the Motor Accident Claims Tribunal and the Tribunal upon computing the estimated income of the deceased at Rs.2000/- per month at the time of the accident came to the conclusion that the annual loss of dependency of the appellants was Rs.12,000/- after deducting 50% of the income towards personal expenses. Keeping in view the age of the appellant at the time of the accident, the Tribunal applied the multiplier of 11 and computed the compensation payable for the loss of dependency as Rs.1,32,000/-. After making certain other additions on account of loss of love and affection, loss of estate, funeral expenses, the total amount of compensation was determined as Rs.1,49,500/-. The appellants were also awarded

interest @ 9% per annum from the date of filing of the Claim Petition till payment.

Being dissatisfied with the compensation awarded by the learned Tribunal, the appellants filed an appeal before the High Court under Section 173 of the Motor Vehicles Act, 1988 and claimed that the income of the deceased had been computed at a lower figure than what it should have been. It was urged that as a pujari, performing pujas at various places and also in well known companies, his monthly income was at least between Rs.8000/- and Rs.10,000/-. It was also contended that the future prospects of the deceased had not been taken into consideration while applying the multiplier of 11.

The claim of the appellants was contested and it was urged on behalf of the respondent-insurance company that there was no reliable evidence to prove or establish that the monthly income of the deceased was more than what had been estimated by the learned Tribunal. It was also urged that the multiplier applied by the Tribunal was correct.

After considering the submissions made on behalf of the respective parties, the High Court concluded that the monthly income of the deceased had been computed without taking into consideration the future prospects of the deceased and accordingly it raised the monthly income from Rs.2000/- to Rs.3000/-. Taking into account the age of the victim and the age of the appellants, the High Court also concluded that the multiplier which had been applied by the learned tribunal was erroneous and the same should have been 12 instead of 11. Accordingly, after enhancement of the estimated income of the deceased and application of the multiplier of 12, the total compensation was enhanced by the High Court to Rs.2,33,500/- plus Rs.10,000/- plus Rs.5000/- plus

Rs.2500/-. The interest was, however, reduced from 9% to 8% and it was directed that the enhanced amount of compensation with interest @ 8% per annum from the date of the filing of the Claim Petition till payment would have to be paid by the insurance company within a period of two months from the date of the order. The total amount awarded was directed to be shared by the appellants equally.

Aggrieved by the aforesaid order of the High Court, the appellants have preferred the instant appeal.

Appearing in support of the appeal, Mr. K.K. Rai, learned senior counsel, submitted that both the learned Tribunal as also the High Court had confused issues by applying the principles both of Section 163A and Section 166 of the Motor Vehicles Act, 1988, in determining the compensation payable to the appellants on account of the death of their son who at the relevant point of time was only 22 years old. According to Mr. Rai, having referred to the Second Schedule to the Motor Vehicles Act, 1988, and having assessed the estimated income of the deceased below 40,000/- per annum, both the Tribunal as well as the High Court should have strictly applied the structured formula contained in Schedule II to the Act. He also urged that even if the Second Schedule was not strictly applicable to a claim made in terms of Section 166 of the Act, a reasoned approach should have been taken to arrive at a just and fair compensation on account of the death of the appellants' son.

Reference was made by him to the decision of this Court in Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala & Ors., 2001 (5) SCC 175, which dealt strictly with compensation assessable in terms of the structured formula under Section 163A and

submitted that the ratio of the said decision ought to have been followed by the High Court.

Mr. P.K. Seth, learned advocate appearing for the respondent, however, clarified that the application for compensation having been made under Section 166 of the aforesaid Act, the appellants could not claim determination of compensation in terms of the Second Schedule and the structured formula contained therein. According to Mr. Seth, both the Tribunal as well as the High Court had applied the law correctly in determining the compensation since in an application under Section 166 of the Act, the Second Schedule to the Motor Vehicles Act, 1988, did not strictly apply. In support of the submissions, he referred to and relied upon a recent decision of this Court in the case of Ramesh Singh & Anr. Vs. Satbir Singh & Anr., 2008 (1) SCALE 630, which too, however, dealt with a claim for compensation made under Section 163A of the aforesaid Act. What has been held in the said decision is not, therefore, relevant for the purpose of this case, since the application in this case was made under Section 166 and not 163A of the Motor Vehicles Act, 1988. In such a case, the question, as to whether the age of the deceased or the age of the parents ought to be taken into consideration for assessing the compensation, loses all significance.

It must also be noted that the appellants had availed of the benefit of Section 140 of the Motor Vehicles Act which disentitled them to apply for compensation under Section 163A having regard to the provisions of Section 163B.

We, therefore, need not be detained by either of the judgments which have been cited on behalf of the respective parties since we are satisfied that the application as

made under Section 166 of the Act has been dealt with correctly by the Tribunal as also the High Court. Both the Tribunal as well as the High Court were within their discretion to refer to the Second Schedule as a guideline for the purpose of arriving at the final compensation to be awarded as also the multiplier to be applied to the multiplicand which was computed both by the Tribunal as also the High Court.

There was one other point which was raised by Mr. Rai regarding the assessment of the loss of dependency which according to him should not have been taken as 50% but one-third as is generally taken in similar cases. On this point we are in agreement with Mr. Rai and we feel that both the forums below took a wrong view of the matter and that loss of dependency should have been taken as 1/3rd and not 50% as has been awarded.

The judgement of the High Court is accordingly, modified to the extent that in calculating the amount of compensation to be awarded, the loss of dependency should be taken as 1/3rd and not 50%.

The Tribunal is directed to work out the compensation payable on the basis of these directions and thereafter to finalise the compensation payable to the appellants. Once such assessment is made, the insurance company shall make payment of the same within two months from the date of the order of the Tribunal.

The appeal stands disposed of.

There will be no orders as to costs.

.....J.

(ALTAMAS KABIR)

.....J.
(MARKANDEY KATJU)

New Delhi;
April 03, 2008.