

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. No. 139/2005

Judgment delivered on: October 03, 2007

Smt.Devki Devi

..... Appellant

Through: Mr.S.N. Parashar, Adv.

versus

Sh. Anil Gupta

..... Respondent

Through: Mr.A.K. Sharma, Adv. for
respondent No.1.
Mr.R.K. Tripathi, Adv. for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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. Oral:

*

The appellant in the present appeal seeks enhancement in the award over and above the amount as already awarded by the Tribunal. The Tribunal has awarded a sum of Rs.1,10,000/- towards loss of financial dependance besides a sum

of Rs.15,000/- towards loss of consortium/non-pecuniary damages with a further sum of Rs.5,000/- towards funeral expenses and thus a sum of Rs.1,65,000/- has been awarded in favour of the appellant. The case involves a young child of 18 years who as per the appellant was working as a labourer in some canteen. In the absence of any evidence led by the appellant to prove his income and due to the nature of the employment, the Tribunal has taken the notional income of Rs.15,000/- into consideration as laid down in the Second Schedule of the Motor Vehicles Act. After deducting 1/3rd income of the deceased towards personal expenses and after taking note of the age of the defendants, multiplier of 11 has been applied and the Tribunal has arrived at the said figure of Rs.1,10,000/-. The appellant in the present appeal is aggrieved that the inflation and the increase in the price index has not been taken into consideration by the Tribunal. Counsel appearing for the appellant contends that accident had occurred on 6.9.2001 and the Second Schedule was inserted in the Motor Vehicles Act by amending the Act of 1988 in the year 1994 w.e.f. 14.11.1994. Counsel for the appellant has placed reliance on the judgment of this Court in MAC. App. No.297/2005 in which the inflation and increase in the cost of living index has been taken into

consideration.

Per contra, counsel for the respondent contends that there is no illegality and perversity in the order passed by the Tribunal and the appellant did not lead evidence to disclose the nature of his employment. Counsel also contends that correct multiplier of 11 after taking into consideration the age of the defendants has been applied by the Tribunal.

I have heard learned counsel for the parties.

In the Second Schedule the criteria for taking into consideration the multiplier as well as the income of the deceased, a formula was inserted in the year 1994 and thereafter no revision has been made in the Second Schedule. In Sub Clause (c) of Section 163-A, the legislature mandated that the Central Government may keeping in view the cost of living from time to time amend the Second Schedule by notification in the official gazette. But, however, no such notification has been issued by the Central Government even after a lapse of more than 12 years from the date when the said Section 163-A and the Second Schedule was brought on the statute of Motor Vehicles Act. Under the Minimum Wages Act, the salary of Rs.1,382/- in the year 1994 was increased to Rs.2579/- in the year 2001 and Rs.3312/- as on

1.8.2006. The price index has also increased manifold due to the inflation and as per the judgment of this Court in MAC. App. 297/2005, this Court has observed increase of at least 50% in the minimum wages from the year 1997 to 2003. It is, thus, apparent that the wages have increased almost double from the year 1994 till 2006 (the revision in the minimum wages is also based on the price index).

In view of the said increase in the price index, I feel that the compensation awarded by the Tribunal by not taking into consideration the increase in the price index is inappropriate. I do not feel inclined to interfere with the multiplier of 11 years and also the award of Rs.15,000/- made towards consortium/non-pecuniary damages. The compensation of Rs.1,10,000/- as granted by the Tribunal towards the loss of financial dependance of the defendants shall now needs to be calculated on the basis of double of the annual income as on the date of accident i.e. Rs.30,000/- and after deducting 1/3rd of the sum towards personal expenses of the deceased, the said amount would come to Rs.20,000/- per annum and with the multiplier of 11 being applicable in the present case, the total compensation towards the loss of financial dependance would come to Rs.2,20,000/-.

Since the appellant has already received a sum of Rs.1,10,000/-, therefore, the balance amount shall be paid by respondent No.3 insurer with interest at the rate of 9% from the date of filing of the appeal.

With these directions, the appeal is disposed of.

October 03, 2007
ga

KAILASH GAMBHIR, J.