

+ MAC APP No. 70/2008

Shri Subhash Goel and Anr. Appellant.
Through: Mr. S.N. Parashar, Advocate
versus

CORAM:

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

This matter can be disposed of at the stage of admission itself. There is no need to serve the owner of the offending vehicle as the offending vehicle was duly insured with respondent No.2, the insurance company and the

present petition was duly contested by respondent No.2 alone before the Tribunal. The award of Rs.1,80,000/- has been passed by the Tribunal in favour of the appellant along with interest @ 9% per annum inclusive of interim award.

The present appeal has been filed by the appellant claiming enhancement of the compensation amount over and above the amount as awarded by the Tribunal.

The brief facts of the case relevant for deciding the present appeal are that on 17.1.2004 at about 7:00 pm, the deceased was driving motorcycle No. DL-3SAA-7109. When the deceased reached at Dr. Ambedkar Marg, Khanpur, T point Madangir, New Delhi, a bus No. DL-1PA-0640 driven by its driver at a very high speed and in a rash and negligent manner without caring for rules of traffic came from behind and hit the motorcycle of the deceased. As a result of the forceful impact, the deceased fell down on the road and sustained grievous injuries all over the his body. He succumbed to the injuries sustained in the accident. A compensation of Rs.15 lakhs has been claimed by the petitioners alongwith interest at the rate of 12% per annum

from the date of filing of the petition in their favour and against the respondents jointly and severally who are owner and insurer of the offending vehicle.

Mr. S.N. Parashar, learned counsel appearing for the appellant contends that the Tribunal has not given benefit of any revision in the notional income although the said notional income of Rs.15,000/- was inserted in the Second Schedule of the Motor Vehicles Act by way of an amendment in the year 1994.

The contention of the learned counsel for the appellant is that the accident in the present case in which death of a young boy of 18 years has taken place, had occurred on 17.1.2004, and therefore, there is a gap of 10 years from the date of insertion of Second Schedule in the Motor Vehicles Act and the date of accident. Counsel, thus, sought to urge that at least the increase which have taken place under the Minimum Wages Act to meet the high cost of living, inflation and other common factors should have been taken into consideration by the Tribunal specially in cases like the present one where there is no other yardstick

to assess the income. Counsel for the appellant has also placed reliance on the judgment of this Court in MAC APP No. 139/2005 **Devki Devi vs. Anil Gupta** in which case this Court has enhanced compensation by calculating the income of the deceased double to the notional income at Rs.15,000/-

Counsel for the appellant further contends that even the compensation of Rs.20,000/- granted by the Tribunal towards loss of love and affection is on the lower side.

Mr. Kamal Chaudhary, appearing for the Insurance Company on the other hand, submits that the Tribunal has granted adequate and reasonable compensation keeping in view the facts and circumstances of the case. Counsel also submits that the said notional income of Rs.15,000/- has been allowed in the Second Schedule of the Act, and therefore, no further benefit or increase can be given to the appellant. Counsel also justifies the award of Rs.20,000/- towards loss of love and affection.

I have heard the learned counsel for the parties and

have also perused the record.

In the judgment of **Devki Devi (Supra)**, this Court has already taken a view that to meet the inflationary trend and also on account of fact that no revision in the structural formula of Second Schedule has taken place after the said structural formula was brought on the Statute in the year 1994, although, Sec. 163A(3) clearly provides for the amendment of the Second Schedule, keeping in view the cost of living by requisite notification in the official Gazette but no such revision has taken place and the present accident involving death of a young boy took place in the year 2004, and therefore, safely within a gap of 10 years period, the said notional income can be taken to have been doubled. Accordingly, the income as assessed by the Tribunal at Rs.15,000/- p.a. is taken as double i.e., Rs. 30,000/- p.a., and therefore, loss of financial dependency of the appellant is raised to Rs.30,000/-. After deducting 1/3rd of income towards personal expenses, dependency would come to Rs. 20,000/- and multiplying the same with the multiplier of 15, the future personal dependency would

come to Rs. 3 Lac. The amount of Rs.20,000/- has been granted towards loss of love and affection and the same is raised to Rs.25,000/- The differential amount of Rs. 1,55,000/- shall be paid by the respondent-Insurance Company along with up to date interest @ 7.5% per annum from the date of filing of the petition till realisation.

With these directions, the present appeal is disposed of.

February 13, 2008
'raj'

KAILASH GAMBHIR, J