

*** HIGH COURT OF DELHI : NEW DELHI**

MAC APPEAL No.65 of 2007

% Judgment reserved on: 21st May, 2008

Judgment delivered on: 28th May, 2008

1. Smt. Renu Bidhuri
W/o. Late Sh. Kapil Bidhuri,
Aged about 28 years.
2. Sanskar Bidhuri
S/o. Late Sh. Kapil Bidhuri,
Aged about 4 ½ years.
(Petitioner No.2 being Minor though her mother and
natural guardian. Petitioner No.1 Both R/o. of C/o.
Sh. Dharam Singh Verma, 1879, Udaychand Marg,
New Delhi-3)
3. Sh. Mukut Bidhuri S/o. Chaudhwary Khillu,
aged about 51 years
4. Smt. Vimla Bidhuri
W/o. Sh. Mukut Bidhuri,
Aged about 49 years.
(Petitioners No.3 & 4 both residents of 435,
Sector-37, Faridabad.) Appellants

Through: Mr. Rajeshwar Kumar
Gupta, Adv.

Versus

1. Sh. Shamshad Alam
S/o. Sh. Sajjad Hussain,
R/o. J-11/10, Madangir,

New Delhi-110052

2. Col. V.K. Kapoor,
R/o. A-70, Shivalik,
New Delhi-17.

3. New India Assurance Co. Ltd.,
2213, Channa Complex, 4th Floor,
Gurdwara Road, New Delhi.
(Policy No.311300/31/01/05147 w.e.f. 23/11/01 to
22/11/02) Respondents

Through: Mr. Pankaj Seth, Adv. for
respondent No.3/Insurance
Company.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 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 |

V.B.Gupta, J.

By way of present appeal, appellants are seeking
enhancement of compensation amount awarded to
them by the learned Tribunal.

2. The facts in brief are that on 20th November,
2002, deceased, Kapil Bidhuri was going on his Motor

Cycle No.HR-51-L-4331 from Teh Khand to Faridabad and when at about 9.30 p.m. he reached near Village Badarpur, the deceased was hit by a speeding Bus No.DL-IPB-3144. The Bus was being driven rashly and negligently by its driver/respondent No.1 and due to the forceful impact, the deceased died on the spot. A compensation claimed of Rs.20 lacs along with interest @ 12% p.a. from the date of filing of the petition till realization was filed by the appellants against the respondents.

3. Vide impugned judgment dated 3rd November, 2006, passed by Ms. Sukhvinder, Judge, MACT Delhi, she awarded a sum of Rs.5,00,360/- as compensation along with 7.5% interest p.a. from the date of filing of the petition till realization.

4. It has been contended by learned counsel for the appellants that the deceased was working as a Marketing Manager and was getting a salary of Rs.7,500/- p.m. besides a fixed conveyance allowance

of Rs.2,000/- p.m. and salary certificate of the deceased has already been duly proved on record but in spite thereof the Tribunal has assessed the income on the basis of minimum wages at Rs.3,128/-. The Tribunal ought to have taken the dependency of the appellants at Rs.7,500/- p.m. by taking future prospects.

5. On the other hand, it has been contended by learned counsel for the respondents/Insurance Company that appellants have failed to produce any document showing that the deceased was earning Rs.7,500/- p.m. nor any statement of accounts the deceased have been produced that he was having a regular monthly income. Under these circumstances, the Tribunal rightly assessed the monthly income of the deceased as per the minimum wages.

6. There is no dispute with regard to the age of the deceased which was 26 years and the Tribunal adopted a multiplier of 18 years as per the Second Schedule of

the Motor Vehicles Act, 1988 (for short as 'Act'). The only question which arises for consideration is as to whether the Tribunal rightly assessed the monthly income of the deceased on the basis of minimum wages and whether future prospects of the deceased was taken into account or not.

7. PW 1, the widow of the deceased, in her testimony has deposed that the deceased was working as a Marketing Manager with M/s. Niharika Financial Services and was earning Rs.7,500/- as salary per month and Rs.2,000/- per month as conveyance allowance. However, in her cross-examination she deposed that the deceased was getting his salary by cheque but she was not sure about it.

8. PW3, the employer of the deceased has also testified that the deceased was employed in his firm at a salary of Rs.7,500/- per month and Rs.2,000/- per month as conveyance allowance. However, he has failed to produce any document establishing that the deceased was his employee and earning Rs.7,500/- per month. Further, in his

statement he deposed that he used to pay the deceased mostly by cash.

9. Thus, there are contradictions between the statements of PW1 and PW 3. Further, in the statement of the PW 3 the words **“because the same have been burnt”** have been added later on. These added words relate to the accounts with regard to the payments made by PW-3 to the deceased. Even otherwise, no material has been placed on record to show as to when the relevant record was burnt. This bald statement given by PW3 does not inspire any confidence with regard to the story put in the evidence about burning of the record. Thus, the testimony of both PW 1 and PW 3 is not reliable on this account that deceased was getting a salary of Rs.7,500/- per month.

10. The appellant has failed to produce any statement of accounts of the deceased to show that the deceased was having a regular monthly income. Even otherwise from the qualification of the deceased it cannot be believed that he would have been employed as a Marketing Manager, as

admittedly he had failed in the first year examination of Diploma in Mechanical Engineering.

11. Learned counsel for the appellants has cited a decision of Bombay High Court namely: ***Satpal Singh DharamSingh Chowdhary & Anr. v. Ashok G. Raut & Ors., I (2006) ACC 341.*** In this case, the employer has deposed that deceased was paid Rs.8,000/- p.m. but the Tribunal discarded same stating that it was not supported by any payroll or account books or income tax returns and assessed the income of deceased at Rs.15,000/- p.a. The Court held that:-

“Non submission of income tax returns would not necessarily mean that the income of Vijender was Rs.15,000/- per annum and calculation of Rs.1,000/- per month for four years was also not proper”

12. With respect, I do not find myself in agreement with this decision of Bombay High Court.

13. The accident in the present case took place during the year 2002 and if the income of the deceased is taken as Rs.7,500/- per month plus Rs.2,000/- per month as conveyance allowance then the total gross salary would come to Rs. 1,14,000/- per annum. Under the Income Tax

Act, 1961, on this salary, the deceased was liable to pay the income tax and his employer was to deduct TDS. No income tax return has been placed on the record on behalf of the appellants nor the employer of deceased has stated as to what amount he was depositing after deducting the tax from the salary of the deceased. Thus, no reliable documentary evidence has been placed on record with regard to the income of the deceased.

14. When the question of paying income tax to the Government comes, then the claimants say that the income of deceased is below taxable, but when the question of receiving any compensation or any grant from Government arises, then the claimants say that the earnings of deceased are more than taxable income, so, the claimants cannot blow hot and cold at the same moment. If the income is above taxable limit, then income tax return should be filed, otherwise legal presumption would be that the income was below taxable limit.

15. Since, no income tax was being paid by the deceased, the Tribunal rightly, under these circumstances, has taken

the income of the deceased, on the minimum wages and no fault can be found on this account.

16. It is now well settled that while estimating future loss of income, the Court has to take into account future prospects of the deceased. No future prospects can be considered in the present case as no evidence to this effect was led by the appellant. Therefore, in the absence of any proof with regard to the same, in view of ***Bijoy Kumar Duggar v. Bidagar Dutta*** AIR 2006 SC 1255, the contention regarding the future prospects is rejected.

17. The compensation awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

18. The present appeal is, therefore, dismissed.

19. No orders as to costs.

20. Trial Court record be sent back.

**V. B. GUPTA
(JUDGE)**

**28th May, 2008
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