

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

MAC APPEAL No.283 of 2008

% Judgment reserved on: 02nd May, 2008

Judgment delivered on: 8th May, 2008

National Insurance Co. Ltd.
Regional Office No.2
2E/9, Jhandewalan Extn.
New Delhi

.....Appellant

Through: Mr. Pradeep Gaur with Mr. Dev
Dutt, Adv.

Versus

1. Master Vansh S/o. Late Sh. Lalit Kumar
2. Master Vibhor S/o. Late Sh. Lalit Kumar
3. Shri Mahender Prakash
S/o. Sh. Ram Swaroop
4. Smt. Daya Rani W/o. Shri. Mahender Prakash
All R/o. D-162-A, Gali No.5, Bhajan Pura
Delhi-110023
(Respondent No.1 & 2 are minor children through
grandfather and natural guardian i.e. R-3)
5. Shri Atta Mohd. S/o. Shri. Mohd. Razak
R/o. Vill. Kherli Khurd, P.O. Mandi Khera
P.S. Firozpur Jhirka, Distt. Nuh (Mewat)
Harayana (Driver)
6. Shri Makhan Singh
R/o. 218, Sarai Pipalthala,
Delhi (Owner)

.....Respondents

Through: None.

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.

The present appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (for short as the "Act") by National Insurance Co. Ltd. against the judgment dated 30.01.08, passed by Ms. Neena Bansal, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), Delhi.

2. Facts in brief necessary for disposal of the present appeal are that on 21.04.07, the deceased, Sh. Lalit Kumar was going on his scooter bearing no. DL-7SN-6381 from the side of Majnu ka Tila towards Wazirabad along with his wife Neeru and minor son Vibhor. When he reached near red light, Wazirabad T-point, a truck bearing no. HR-38K-1933 came from the side of Majnu ka Tila and hit the scooter from its behind. Due to said impact, they fell down

on the road and the truck dragged the scooter for a considerable distance. The Lalit Kumar and his wife died on the spot and son sustained grievous injuries.

3. A petition seeking compensation was filed by the parents and minor sons of the deceased against the appellant and respondent no. 5 & 6 herein.

4. Vide impugned judgment, the Ld. Tribunal passed an award for a sum of Rs.12,84,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization in favour of respondents no. 1 to 4 herein and against the appellant.

5. It has been contended by Ld. Counsel for the Appellant that the Tribunal has erred in taking into consideration the income of the deceased as Rs.8,000/- per month, only on the basis of his educational qualification and accepted the fact that he was working as an accountant in the absence of any documentary evidence. The Tribunal has failed to consider the fact that in the absence of any cogent evidence regarding earning and

employment, the income of the deceased should have been considered on the basis of Minimum Rates of Wages prescribed in Delhi Territory for a Graduate. There is no cogent evidence regarding future increase in income of the deceased, therefore, the order is liable to be modified.

6. The Hon'ble Apex Court in plethora of cases has held that while assessing the income of the deceased in motor accident cases, the tribunals should bear in mind that the same should be assessed on the basis of the cogent and the reliable evidence produced and duly proved on record.

7. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident then the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be taken into consideration.

8. In ***The New India Assurance Co. Ltd. v. Smt. Nirmala Devi and Ors., [2007] VI AD (Delhi) 730***, this Court held;

“A perusal of the minimum wages notified under the Minimum Wages Act show that the minimum wages gets increased by nearly 150% in 10 years.”

The Court further observed;

“Noting that minimum wages virtually double after every 10 years to neutralise increase in inflation, cost of living, purchasing power of rupee.....”

9. In the present case, the deceased was admittedly a commerce graduate and has been working as an accountant and proprietor of the firms where the deceased was working as accountant have appeared in the witness box.

10. As per the Minimum Wages Act, the minimum wages payable to a Graduate in the year 2007 were Rs.4,230/-. The monthly income of the deceased is thus assessed at the said amount of Rs. 4,230/- but once the income of the deceased is determined under the Minimum Wages Act, then increase in the Minimum Wages can also be taken into consideration as the minimum wages are revised by the Government every year so as to meet the increase in the

price index, inflationary trends and other economic factors.

11. A perusal of the minimum wages notified under the Minimum Wages Act shows that to neutralize increase in inflation and cost of living, minimum wages virtually increase more than double within a span of about 10 years. For example, minimum wages for a Graduate in the year 1991 were Rs. 1,215/- but in the year 2000, the same got increased to Rs. 3,284. Therefore, it can be safely said that the income of the deceased would have at least doubled with the passage of time. The Ld. Tribunal has taken into consideration that there has been 300% increase in the price index since 1989 to 2006 and held that;

“Though there is no evidence on record to show the future prospects of the deceased. However, a glance at minimum wages would show that there has been about 300% increase in the price index since 1989-2006. Considering the inflatory trends and rise in price index, it would not be unreasonable to assume that the income of the deceased, who was barely 32 years of age at the time of his death, would have doubled with the passage of time had he lived his whole life, i.e., it would have become Rs.16,000/- per month. The average income of the deceased is thus calculated as Rs.12,000/- per month [(Rs.8,000 + Rs.16,000/-)/2] or Rs.1,44,000/- per annum.”

12. The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance and survival of the workman class. Keeping this in view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.

13. Even assuming for arguments sake that the Tribunal has taken the income of deceased on higher side and has also taken into consideration the relevant facts with regard to increase in the minimum wages, but it should not be lost sight of the fact that the Tribunal also has deducted $\frac{1}{2}$ of the income of the deceased towards his personal expenses, which under any circumstances is on much higher side.

14. In a plethora of cases, the Apex Court and various High Courts have held that $\frac{1}{3}$ rd amount of the income

should be deducted towards self-expenses of the deceased.

15. In ***New India assurance Co. Ltd. V. Charlie and another, AIR 2005 Supreme Court 2157***, the Apex Court has observed as under;

“What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.”

16. In the present case also, the deceased was married and 32 years of age. So, the Tribunal ought to have made 1/3rd deduction for personal expenditure but has deducted 1/2 of the income of the deceased towards his personal expenses, which is on much higher side. Thus, the income of deceased even assessed on somewhat higher side, stands neutralized with 50% deductions towards personal expenditure.

17. In the light of the above discussion, it is clearly borne out from the record that the tribunal has correctly assessed

the income of the deceased and thus, I find myself in agreement with the order of the Ld. Tribunal. I, therefore, do not find any infirmity in the impugned order and the compensation awarded by the learned Tribunal is just and fair.

18. As a result, the present appeal is hereby dismissed.

19. Copy of this judgment be sent to the Trial Court.

May 08, 2008
rs

V. B. GUPTA
(JUDGE)