

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

MAC APPEAL No.276/2008 & CM No.6284/2008

% Judgment reserved on: 30th April, 2008

Judgment delivered on: 7th May, 2008

Bajaj Allianz General Insurance Co. Ltd.
C-31/32, Ist Floor,
Connaught Place,
New Delhi.

...Appellant

Through:Mr.Pankaj Seth, Adv.

Versus

1.Smt. Seema Devi
W/o Late Shri Anjani Jha,

2.Om Prakash,
S/o Late Shri Anjani Jha,

3.Smt.Rama Kesi Devi,
W/o late Shri Mahinder Jha,

Respondent No.2 being represented through
Respondent No.1-mother and natural guardian.

Respondents 1 to 3 R/o Village Somnaha Ojha Tola,
PS Chakmahsi, Distt.Samstipur, Bihar

4. Shri Pushpender Pal Khanna,
R/o A-126, Narang Colony,
Janakpuri, New Delhi.

...Respondents

Through: Nemo.

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 under Section 173 of Motor Vehicles Act, 1988 (for short as 'Act') has been filed against the order dated 08.01.08, passed by Sh. V.K. Maheshwari, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), New Delhi.

2. In a nutshell, the facts relevant for the purpose of dealing with this appeal are that on 27.10.04 deceased, Sh. Anjani Jha as a pillion rider along with his friend namely, Rinku was coming from Delhi Cantt to R.K. Puram after finishing his work on a two wheeler scooter bearing no. DNN-6079 which was driven by deceased's friend and he was sitting as a pillion rider. When they reached at Red Light of Sector 1 of R.K. Puram near Sangam Cinema, at that time a Toyota Qualis bearing no. DL-4C-R-2764 driven by its driver, respondent No.4 came from the side of Hyatt Hotel, in rash and negligent manner and hit their scooter.

As a result thereof, the deceased and his friend fell down and sustained fatal injuries. Deceased was taken to Safdarjung Hospital, where he was declared as brought dead.

3. A petition seeking compensation was filed by the legal heirs of the deceased against the appellant herein and respondent no. 4 herein.

4. Vide impugned judgment, the Ld. Tribunal passed an award for a sum of Rs.7,22,400/- along with interest @ 7% per annum from the date of filing of the petition till realization in favour of respondents no. 1 to 3 herein.

5. It has been contended by Ld. Counsel for the Appellant that in absence of any proof of income or earning of the deceased, the Tribunal erred in taking into consideration the minimum wages prevailing in the year 2007 of unskilled labourer for the purpose of calculating the average earning of the deceased at Rs.3,182/- per month when in the year of accident, the minimum wages of unskilled labourer was Rs.2,894/- p.m. It is further submitted that the Tribunal has proceeded with the wrong assumption that since the deceased was 38 years old at the

time of accidental death, he had to live about 32 years more as the normal span of life in this part of the country is 70 years, as the Tribunal failed to take into consideration the uncertainty of one's life. The deceased was 38 years old, therefore, the multiplier of 12 should be adopted. The future increase in earning has wrongly been taken into consideration, when there is no evidence to this effect.

6. Ld. Counsel for the appellant has also relied upon ***Bijoy Kumar Dugar v. Bidya Dhar Dutta and Others, (2006) 3 Supreme Court Cases 242*** and ***The Managing Director, TNSTC v. Sripriya & Ors., 2007 (4) Scale 22*** in support of its contentions.

7. In ***Bijoy Kumar Dugar (Supra)*** the Apex Court has observed;

“It is by now well-settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a 'multiplier'. The multiplier is

applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family naturally is in proportion to one's earning capacity."

8. In ***Smt. Sarla Dixit and Anr. v. Balwant Yadav & Ors.***, ***AIR 1996 SC 1272***, the Apex Court has observed;

"So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death to the maximum which he would have otherwise got had he not died a premature death and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner."

9. In the present case, no documentary evidence with regard to earnings of deceased has been placed on the file; therefore, the Tribunal is adopting the minimum wages of an unskilled labourer to assess the earnings of the deceased.

10. 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. After taking judicial facts and circumstances, the Ld. Tribunal has taken into consideration future advancement prospects of deceased while assessing the loss of dependency and held;

“This accident had taken place on 21.10.04. Age of deceased was 38 years at the time of this accident. This Court is deciding this case in the year 2008. Deceased had to live about 70 years according to the normal span of life, thus he had to live about 28 years more from now onwards had he not died in this accident. Minimum wages of a unskilled labourer, in the year 2004 were Rs.2,894/-pm, when this accident had taken place. Minimum Wages of unskilled labourer in

the year 2007 are Rs. 3470/- when this Court is deciding this petition. Thus average earning of deceased are being assessed at $\text{Rs.}2,894 + 3,470 = \text{Rs.}6,364 / 2 = \text{Rs.}3,182$ per month. As deceased has to live about 28 years more from today onwards had he not died in this accident, hence after taking in consideration chances of advancement of his future prospects his average earnings will be $\text{Rs.}3,182/- + \text{Rs.}6,364 = \text{Rs.}9,546 / 2 = \text{Rs.}4,773/-$ per month for assessing loss of dependency to petitioners.”

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. As regards the contention of multiplier, deceased was 38 years of age at the time of his death. Multiplier for the age group of a person between 35 years to 40 years as per schedule II of the Act is 16. The same has been adopted

by the learned Tribunal, which in my opinion is correct and do not warrant any interference. Thus, the decision cited by Ld. Counsel for the Appellant is not applicable to the facts of the present case.

14. Thus, no fault can be found with the reasoning given by the learned Tribunal. The compensation awarded by the learned Tribunal is just and reasonable and no ground is made out for interference with the award passed by the learned Tribunal.

15. With the result, present appeal stands dismissed.

16. Copy of the judgment be sent to the trial court.

May 07, 2008
Bisht

V.B.GUPTA, J.