

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

MAC APPEAL No.320 of 2008

% Judgment reserved on: 20th May, 2008

Judgment delivered on: 26th May, 2008

1. Munni Devi (Wife)
W/o Late Shri Amar Nath
2. Smt.Vijay Laxmi W/o Late Shri Manoj Kumar (Daughter)
3. Manoj Kumar S/o Late Shri Amar Nath (Son)
4. Naveen Kumar S/o Late Shri Amar Nath (Son)
5. Sushma D/o Late Shri Amar Nath

All R/o H.No.RC-625, Vandana Enclave,
Khoda Colony, Ghaziabad, U.P. Appellant
Through: Mr.Vijay Kumar, Adv.

Versus

1. National Insurance Co.Ltd.
R.O.1, Jeevan Bharti Building,
4th Floor, Connaught Place,
New Delhi-110001.
2. Prem Sagar Mehta
S/o Sh.Kishan Lal
R/o 10/158, Khichri Pur,
Delhi.
3. Harinder
S/o Shri Maharaj Singh
R/o B-70/16, Harijan Basti,
Kondli, Delhi. Respondent
Through: Mr.Pradeep Gaur, Advocate
for respondent No.1.

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 the Motor Vehicles Act, 1988 (for short as the “Act”) read with section 151 CPC has been filed against the order dated 05.02.08 passed by Sh. A.S. Jayachandra, Judge, Motor Accident Claims Tribunal (for short as “Tribunal”), Delhi for enhancement of the compensation amount.

2. In a nutshell, the facts relevant for the purpose of dealing with this appeal are as follows:

3. On 09.11.03, the deceased, Sh. Amar Nath was going to work in RTV bearing no. DL-1VA-2436. As the vehicle started to move, another RTV bearing no. DL-1VA-0584 came from back side and in the process of overtaking hit the RTV bearing no. DL-1V-A-2436 by which the deceased, who was to get down from the RTV, got crushed between both the vehicles and fell on the ground and died due to the fatal injuries.

4. The Tribunal vide impugned judgment, awarded compensation of Rs.3,04,000/- by applying a multiplier of 11, along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

5. It has been contended by Ld. Counsel for the Appellant that the Tribunal erred in assessing the income of the deceased on the basis of Minimum Wages as Rs.2,784/- per month whereas, the deceased was actually earning Rs.4,500/- p.m. as a security guard. Further, the Tribunal has not considered the future prospects and future rise in income of the deceased at the time of assessment of compensation. It is further submitted that the Tribunal has awarded a sum of Rs.10,000/- only on account of loss of consortium to the wife which is otherwise quite unjustified and inadequate.

6. In the present case, Appellants had not been able to prove the income of the deceased as no documentary evidence had been placed on record and no employer of the deceased had been examined.

7. Thus, in the absence of any other evidence, the Ld. Tribunal had taken the help of Minimum Wages Act to assess the monthly income of the deceased, which is the right approach adopted by it. Therefore in the absence of any proof, I do not find any infirmity in the finding of the Tribunal on this issue.

8. Further, I do not find any force in the contention of the learned Counsel for the appellants that the Tribunal has not taken into consideration the future increase in the income of the deceased. Regarding the future prospects, the same cannot be granted unless there is evidence to this effect on record. There is no evidence on record to prove that the deceased was in a trade where he would have earned more from time to time or he had special merit or qualification or opportunities which would have led to an improvement in his income. Therefore, in view of ***Bijoy Kumar Duggar v. Bidagar Dutta*** AIR 2006 SC 1255, the contention regarding the future prospects is rejected.

9. Even assuming for arguments sake that the Tribunal has not 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 already taken the income of the deceased as Rs.3,000/- per month instead of Rs.2,783/- per month, therefore, this contention is also rejected.

10. Regarding this contention of learned counsel for the appellants that Rs.10,000/- awarded on account of loss of consortium is inadequate, in this respect, Second Schedule of the Act may be referred to. It lays down certain specific amounts payable against general damages in the case of death such as for Loss of Consortium, if beneficiary is the spouse, and the amount laid down is Rs. 5,000/-. In the present case, the Tribunal has already granted Rs.10,000/- towards loss of consortium, which under any circumstances is on much higher side. Thus, I find no ground to interfere with the decision of the Tribunal in this regard.

11. In the light of the above discussion, it is clearly borne out 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 that compensation awarded to the

appellants is just and adequate. I, therefore, do not find any infirmity in the impugned order.

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

13. No order as to costs.

V. B. GUPTA, J.

May 26, 2008

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