

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

MAC APPEAL No.319 of 2008

% Judgment reserved on: 19th May, 2008

Judgment delivered on: 23rd May, 2008

National Insurance Company Ltd.
Delhi Regional Office "Jeevan Bharati"
Tower-II, Level-IV,
124, Connaught Circus,
New Delhi-110001.

.....Appellant

Through: Ms.Neetu Arora, Adv.

Versus

1. Renu Devi,
W/o Late Shri Shyam Rishideo
2. Ms.Phullo Kumari
D/o Late Shri Shyam Rishideo

3. Ms.Chandani Kumari,
D/o Late Shri Shyam Rishideo

4. Smt. Urmila Devi,
W/o Sh. Sita Ram Rishideo

5. Shri Sita Ram Rishideo
S/o Late Shri Mangain Rishideo

All R/o Village Gopipur, P.S. Kumarkhand
Distt. Madhepura, Bihar-852112

Presently at:
C/o Mahinder Singh Saini
H.No.56, Village Naharpur, Sector-7,
Rohini, Delhi.

.....Respondent

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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.

This appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the “Act”) arises out of the award dated 15.02.08 passed by Sh. Chander Shekhar, Judge, Motor Accident Claims Tribunal (for short as “Tribunal”), Delhi awarding the compensation of Rs.7,00,000/- along with the interest @ 7.5% per annum from the date of filing of the petition till realization to the claimants.

2. The brief facts of the case relevant for present appeal are that on 12.10.05 at 11.45 am when the deceased, Sh. Shyam Rishideo reached near Priya Dairy, B-5/263, Sector 7, Divider Road Rohini, Delhi, all of a sudden the offending

bus no. DL-1-PB-1647 being driven by Sh. Hari Singh, in a rash and negligent manner, lack in proper lookouts and in utmost high speed came and hit the deceased violently, as a result of which deceased fell down on the road and sustained multiple fatal injuries. The deceased was taken to BSA Hospital, Delhi, where he was declared 'brought dead'.

3. The claimants being the wife, children and parents of the deceased filed the petition for seeking the compensation.

4. Ld. Counsel for the Appellant submitted that the Tribunal erred in doubling the future prospective income of the deceased without any evidence on record for the actual income of the deceased by merely considering the

minimum wages and by applying the neutralization due to increase in inflation. The Tribunal has failed to consider that the deceased was Rikshaw puller and such criteria of future prospective income is not provided in the Act. Thus, the amount of compensation awarded is on the higher side. It is further submitted that multiplier of 17 as adopted by the Tribunal is on the higher side.

5. The 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.

6. 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.

7. The wife of the deceased in her evidence has stated that the age of the deceased was 23 years at the time of accident which is not disputed by any of the respondents (before Tribunal) and is duly corroborated by Postmortem report filed on record. Further, she has stated that the deceased was rikshaw puller and was earning Rs.5,000/- per month. However, no such documentary proof regarding occupation and income has been filed on record. Thus, the Tribunal has determined the income of the deceased with the aid of Minimum Wages Act.

8. Though the claimants have failed to produce any cogent evidence on record, but once the resort has been made to the Minimum Wages Act, therefore, the increase in the future wages under the Minimum Wages Act can certainly be taken into consideration. Perusal of the Minimum Wages Act shows that in the past, within a period of 10 years, the minimum wages almost get more than double; for instance, minimum wages of unskilled workman in the year 2000 were Rs. 2524/- under the Minimum Wages Act. The said minimum wages in the year 2007 for the same class of unskilled workman came to be Rs. 3470/- under the Act. This increase is not due to any promotion of unskilled workman or any kind of advancement in his career but the same are due to increase in the price index

and cost of living which are the determining factors taken into consideration for increasing the wages under the Minimum Wages Act. The nature of the job of unskilled workman will not change as the same shall remain unchanged.

9. In a recent decision of this Court ***Sh. Narinder Bishal and Anr. v. Sh. Rambir Singh and Ors., MAC App. 1007-08/2006***, decided on 20.02.08 by Kailash Gambhir, J., it has been observed as under;

“For determining the earning of the deceased or victim of the accident, the claimants are supposed to prove the exact income of the deceased by leading some cogent and reliable documentary evidence as to the nature of his employment or trade or business or in any other activity he was involved in and then the said income can

be taken into consideration for determining the quantum of compensation and if in such a case, the claimants are further able to establish the future prospects as well, then the criteria laid down in Sarla Dixit's case would get attracted. There can be another category of cases where the claimants are able to establish the future prospects of the deceased by quantifying the amount to be earned by the deceased in future with the help of cogent, reliable and convincing evidence and in all such cases the tribunal can take into consideration such future increase as has been established by the claimants on record. The difficulty however, would arise in all those cases where although the claimants are able to sufficiently establish on record the educational qualification of the deceased or the nature of his employment whether skilled, semi-skilled or unskilled but fail to establish by any reliable evidence to prove the exact income of the deceased. In such cases, question arises whether the Tribunal can take into consideration the minimum wages and the periodical revision of minimum wages as are fixed by

the Government under the Minimum Wages Act. To examine this question, it will have to be considered whether the revision which takes place under the Minimum Wages Act can be equated with the future prospects of a deceased. As would be evident from catena of judgments of the Supreme Court, the future prospects have no correlation with the price index, inflation or denunciation of currency value.

The future prospects would necessarily mean advancement in future career, earnings and progression in one's life. It could be considered by seeing, from which post a person began his career, what avenues or prospects he has while being in a particular avocation and what targets he/she would finally achieve at the end of his career. The promotional avenues, career progression, grant of selection grades etc. are some of the broad features for considering one's future prospects in one's career.

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.”

10. 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.”

11. 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.....”

12. Since the minimum wages have doubled in the past 10 years as per the Minimum Wages Act, therefore, safely the said increase at least can be taken in view as a future increase of double Minimum Wages under the Minimum Wages Act. Applying the said criteria, the income of the deceased as assessed in the year 2005 would increase to Rs. 4,800/- and taking an average of the same, the Tribunal rightly assessed the income of deceased at Rs. 3,200/- per month.

13. Now coming to the question of multiplier, the age of the deceased at the relevant time was 23 years and as per

the structured formula of the Second Schedule of the Act, the appropriate multiplier is 17. Thus, the multiplier of 17 adopted by the Tribunal is as per the Schedule and is fully justified.

14. Accordingly, no infirmity can be found with the order of learned Tribunal and the compensation awarded by the Tribunal is just sufficient and reasonable.

15. The present appeal is, therefore, dismissed.

V. B. GUPTA, J.

May 23, 2008

ac