

*** HIGH COURT OF DELHI : NEW DELHI**
MAC App. No.439/2008 & CM No.11233/2008

% Judgment reserved on: 4th September, 2008
Judgment delivered on: 23rd September, 2008

The New India Assurance Co. Ltd.,
12/1, Asaf Ali Road,
Jeevan Raksha Building, IInd Floor,
New Delhi Appellant

Through: Mr. P.K. Seth, Adv.

Versus

1) Sh. Mohd. Jabir, S/o. Sh. Mohd. Islam,
2) Smt. Sairun Nisha, W/o. Sh. Mohd. Jabir,

Respondents No.1 and 2 R/o. H. No.149,
Village4 Loam, Anchal Darbhanga,
Distt. Darbhanga, Bihar.

3) Sh. Ashok Goyal, S/o. Sh. Madhu Sudan Goyal
R/o. Triputi Automobiles, H. No.8, Katputali,
Jaipur, Rajasthan. ...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.

CM No.11234/2008

Allowed subject to all just exceptions.

Application stands disposed of.

MAC App. No.439/2008 & CM No.11233/2008

New India Insurance Company/the appellant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as 'Act') against the award dated 2nd June, 2008 passed by Sh. Suresh Chand Rajan, Judge, MACT (for short as 'Tribunal'), New Delhi.

2. Vide impugned judgment, the Tribunal awarded compensation to the tune of Rs.6,73,600/- along with interest @ 7% p.a. from the date of filing of petition till its realization.

3. The facts in brief are that one Mohd. Kazim, aged 20 years, suffered fatal injuries in a road accident on 7th June, 2006. The accident was allegedly caused by respondent No.3/Ashok Goyal, who was driving vehicle No.HR-47-8418 at a fast speed and in a rash and negligent manner.

4. On 7th June, 2006, deceased was waiting outside the jhuggis for the daily job of labour, in the meantime the truck in question carrying the cement sacks came there and the driver offered to work for unloading the truck to the deceased and engaged him for work. Deceased boarded the truck and the driver took the truck towards the main nala patri, in spite of warning from the co-labourer that the road is narrow. In spite of this, the driver kept on driving the truck on the said park, which was not fit for driving and was in a bad condition, due to which the truck turned turtle and deceased fell down. He was removed to Rao Tula Ram Hospital where he was declared brought dead. Respondent No.3 was the driver as well as the owner

of the offending vehicle and the vehicle was duly insured with the appellant at the time of the accident.

5. Respondent No.3 was duly served but did not appear in the trial court and as such vide order dated 6th January, 2007, he was proceeded ex-parte.

6. The appellant in its written statement filed before the trial court admitted that the vehicle in question was insured with it. However, it is stated that on the facts and circumstances of the present case, no accident as narrated in the claim petition has taken place. The driver of the offending vehicle while driving the vehicle should have a valid and effective driving licence and unless and until the same is proved, no liability can be imposed against the appellant.

7. Aggrieved with the judgment passed by the Tribunal, the appellant has filed the present appeal.

8. The first contention of learned counsel for appellant is that the impugned order has been passed under section 163A of the Act and under this section

no future prospects can be considered. The general damages cannot exceed beyond the Second Schedule of the Act and since the order has been passed under section 163A of the Act, provision of section 170 of the Act are not applicable to the impugned order.

9. As per the title of the petition, this petition has been filed under section 163A of the Act in the Tribunal. However, the Tribunal has been registered this petition under section 166 and 140 of the Act, as per its Order dated 3rd August, 2006.

10. In the impugned judgment also, it has been stated by the Tribunal that parents of the deceased has filed this petition under section 166 and 140 of the Act, claiming compensation of Rs.25 Lacs.

11. I fail to understand as to how the Tribunal has registered this petition under section 166 and 140 of the Act when in the petition itself it is stated that it has been filed under section 163A of the Act.

12. Be that as it may be, the claimants have mentioned that the deceased was earning Rs.40,000/- per annum.

13. Under Second Schedule of the Act, the upper limit of the income is Rs.40,000/- per annum.

14. Since no proof with regard to the income of the deceased has been placed on record, the Tribunal thus took the safest course and adopted the minimum wages as given in the Second Schedule of the Act. The minimum wages has been taken as Rs.3,300/- per month and considering the future prospects which are inherent and taking into account the method as laid down in ***Sarla Dixit v. Balwant Yadav, AIR 1996 SC 1274***, the income of the deceased was doubled and average of the same was taken and 1/3rd was deducted and thus monthly income was taken as Rs.3,300/-. The annual income thus comes to Rs.39,600/-.

15. This annual income of Rs.39,600/- in any case, comes within the prescribed limits, as laid down in the Second Schedule of the Act.

16. Further, in ***Sarla Dixit & Ors. v. Balwant Yadav & Ors. (Supra)***, the Court has observed as under;

“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.”

17. 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.”

18. Thus, it is clear that 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.

19. In view of the above discussion and decisions, no infirmity can be found with the impugned judgment of the Tribunal and thus, there is no merit in this appeal and the same is, hereby, dismissed

20. No order as to costs.

21. Trial Court record be sent back.

September 23, 2008
rs/Bisht

V.B.GUPTA, J.