

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.328/2004**

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Date of decision: 31st August, 2009

SAROJA &ORS.

..... Appellants

Through : Mr. Aruna Mehta and
Ms. Sanjeev Mehta, Advs.

versus

SHAHID &ORS.

..... Respondents

Through : Ms. Manjusha Wadhwa, Adv.
for R-3.**CORAM :-****THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.2,81,000/- has been awarded to the appellants. The appellants seek the enhancement of the award amount.

2. The accident dated 26th April, 1999 resulted in the death of Dev Raj. The deceased was survived by his widow, one minor son and one minor daughter who filed the claim petition before the learned Tribunal.

3. The deceased was aged 35 years at the time of the accident and was working as Mason earning Rs.4,000/- per month.

However, in the absence of any documentary evidence of income, the learned Tribunal took the minimum wages of Rs.2,350/- and deducted Rs.980/- towards personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs.2,63,040/-. Rs.10,000/- has been added towards loss of expectation of life, Rs.5,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The total compensation awarded is Rs.2,81,000/-.

4. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

- (i) The deceased was a mason and, therefore, the minimum wages of Rs.2,772/- for a skilled worker should be taken into consideration to compute the compensation.
- (ii) The increase in minimum wages due to inflation and increase in price index be also taken into consideration.
- (iii) The compensation be awarded for loss of love and affection and loss of consortium.

5. Appellant No.1 appeared in the witness box as PW-4 and deposed that the deceased was working as a mason earning Rs.180/- per day/Rs.4,000/- per month. PW-4 further deposed that sometimes he was earning Rs.5,000/- per month including overtime. PW-4 further deposed that the deceased was working with Kalidas and prior to that he was working on daily wages and he was a very good mason. Kalidas appeared as PW-2 and

deposed that the deceased was a very expert mason and he was paying Rs.180/- per day and in month, he used to pay Rs.4,000/- to the deceased. PW-3 is a colleague of the deceased who deposed that he was also working on daily wages earning Rs.180/- per day. He deposed that the deceased was a very expert mason and his income was not less than Rs.4,000/- per month. All the aforesaid witnesses in cross-examination deposed that they do not have any document to prove the occupation and income of the deceased.

6. The learned Tribunal disregarded the statement of PW-2, PW-3 and PW-4 and held that the deceased was working only as a labourer and the minimum wages of Rs.2,348/- for an unskilled worker were taken into consideration to compute the compensation. The finding of the learned Tribunal is correct to the extent that the income of the deceased has not been proved. However, there is sufficient evidence on record that the deceased was an expert mason. Mason is a skilled worker according to the Schedule under the Minimum Wages Act and in that view of the matter, the learned Tribunal ought to have taken the minimum wages in respect of a skilled worker. The minimum wages for a skilled worker as on the date of the accident were Rs.2,772/- per month. The income of the deceased is, therefore, taken to be Rs.2,772/- per month according to the schedule of the Minimum Wages Act for a skilled worker.

7. The learned Tribunal has not taken into consideration the increase in minimum wages due to inflation and increase in price

index. It is well settled by catena of judgments, namely, **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, Lekh Raj vs Suram Singh, 2007 ACJ 2165, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134** and **UPSRC vs. Munni Devi**, MAC.APP.No.310/2007 decided on 28.07.2008 that the minimum wages gets doubled over a period of 10 years due to inflation and increase in price index and, therefore, the judicial notice be taken of the increase in minimum wages by taking average of the minimum wages and its double. Following the aforesaid judgments, the income of the deceased is taken to be Rs.4,158/- [(Rs.2,772 + Rs.5,544)/2].

8. According to the appellants, the age of the deceased at the time of the accident was 35 years. The appellants rely on the post-mortem report in which the age of the deceased has been mentioned as 35 years. However, in the original information slip given by the cremation ground, the age of the deceased has been mentioned as 40 years. The appellants have also placed on record the ration card in which the age of the deceased has been mentioned as 35 years. However, there is overwriting on the ration card and it is clearly legible that the age of the deceased in the ration card was mentioned as 45 years which was interpolated and overwritten to make it 35 years. The ration card is a more authentic document as compared to the other documents on record and the age of the deceased is taken to be 45 years according to the ration card. The appropriate multiplier according to the age of 45 years is 14 and, therefore, the

multiplier is reduced from 16 to 14.

9. Taking the income of the deceased to be Rs.4,158/-, deducting $\frac{1}{3}^{\text{rd}}$ towards the personal expenses of the deceased and applying the multiplier of 14, the loss of dependency of the appellants is computed to be Rs.5,23,908/- ($\text{Rs.4,158} \times \frac{3}{4} \times 14 \times 12$). The learned Tribunal has not awarded any compensation for loss of love and affection and loss of consortium. However, Rs.10,000/- is awarded towards loss of expectation of life which is not a permissible head. The compensation of Rs.10,000/- towards loss of expectation of life is treated as loss of love and affection. Rs.10,000/- is awarded towards loss of consortium and the total compensation is computed to be Rs.5,51,408/- ($\text{Rs.5,23,908} + \text{Rs.10,000} + \text{Rs.5,000} + \text{Rs.2,500} + \text{Rs.10,000}$).

10. The appeal is allowed and the award amount is enhanced from Rs.2,81,000/- to Rs.5,51,408/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.2,81,000/-. The rate of interest on the enhanced award amount shall be 7.5% per annum from the date of filing of the petition till realization.

11. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch within 30 days. The deposit be made by means of an account payee cheque drawn in the name of UCO Bank A/c Smt. Saroja and be handed over to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No.09310356400).

12. The order with respect to mode and manner of disbursement of award amount shall be passed on the next date of hearing after examining the appellants with respect to their financial condition and financial needs. The appellants are directed to remain present in the Court on the next date of hearing.

13. List for directions on 22nd October, 2009.

14. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

J.R. MIDHA, J

AUGUST 31, 2009

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