

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ MAC.APP.No.606/2008**

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Date of decision: 1st September, 2009

NATIONAL INSURANCE CO.LTD. Appellant
Through : Mr. L.K. Tyagi, Adv.

versus

HEMANTI & ORS. Respondents
Through : Mr. S.N. Parashar, Adv.

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)**CM No.11197/2009**

- For the reasons stated in the application, the service of respondents No.7 and 8 is dispensed with.
- CM stands disposed of.

MAC.APP. 606/2008

- The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.8,40,000/- has been awarded to claimants/respondents No.1 to 6.

2. The accident dated 3rd April, 2005 resulted in the death of Shankar. The deceased was survived by his widow, four sons and father who filed the claim petition before the learned Tribunal.

3. The deceased was aged 34 years at the time of the accident and was working as a labourer earning Rs.4,500/- per month. However, in the absence of any documentary evidence to prove the income, the learned Tribunal took the minimum wages of Rs.3,271/- into consideration and took the judicial notice of increase in minimum wages due to inflation and rise in price index. The income of the deceased was computed by taking the average of minimum wages and its double. The learned Tribunal deducted 1/4th towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.7,50,686/-. Rs.10,000/- has been awarded towards medical expenses, Rs.10,000/- towards funeral expenses, Rs.15,000/- towards loss of love and affection, Rs.15,000/- towards loss of consortium and Rs.39,252/- towards loss of estate. The total compensation awarded is Rs.8,40,000/-.

4. The learned counsel for the appellant submits that the deceased died after one year of the accident and the injuries suffered by him due to the accident in question did not result in his death. Without prejudice to the above submission, the learned counsel for the appellant also challenges the quantum of compensation on the ground that the judicial notice of the minimum wages should not be taken into consideration for computation of compensation. The learned counsel further

submits that the multiplier applied by the learned Tribunal is on a higher side. The learned counsel further submits that the personal expenses of the deceased be taken to be 1/3rd instead of 1/4th.

5. With respect to the cause of death of the deceased, Dr. R. Sharma appeared as PW-3 and deposed that the death of the deceased can be related to the injuries suffered by him in the road accident. The deceased suffered spinal injury which ultimately resulted in his death. The deceased suffered fracture of C5 and C6 with Quadriplegia. The finding of the learned Tribunal with respect to cause of death is, therefore, upheld.

6. With respect to the computation of compensation, the learned Tribunal has taken judicial notice of increase in minimum wages due to inflation and rise in price index. It is well settled by catena of judgments of this Court in the cases of **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 **UPSRTC vs. Munni Devi**, MAC.APP.No.310/2007 decided on 28.07.2008 that the judicial notice be taken of increase in minimum wages due to inflation and rise in price index and that the minimum wages get doubled over the period of 10 years and the average of minimum wages and its double be taken to compute the income of the deceased for computation of compensation. The finding of the learned Tribunal is in consonance with the aforesaid judgments of this Court and there is no infirmity in the same.

7. The deceased left behind six dependents and, therefore, the deduction of 1/4th towards the personal expenses is upheld. The Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** held that the personal expenses of the deceased should be taken to be 1/4th where the deceased has left behind 4 to 6 dependants.

8. The learned Tribunal has applied the multiplier of 17 according to the Second Schedule of the Motor Vehicles Act. However, in the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation** (supra), the Hon'ble Supreme Court has held the appropriate multiplier at the age of 34 to be 16. The judgment of the Hon'ble Supreme Court was pronounced on 15th April, 2009. The multiplier applied by the learned Tribunal needs to be reduced by one. However, in the peculiar facts and circumstances of this case, this Court would not like to interfere with the multiplier applied by the learned Tribunal considering that the deceased suffered grievous injuries and was in a very traumatic condition for one year and was entitled to compensation for pain and suffering, loss of amenities of life, expenses on special diet and conveyance for a period of one year but no compensation has been awarded by the learned Tribunal under the above heads. However, this case should not be treated as a precedent.

9. For all the aforesaid reasons, the appeal is disposed of.

10. The appellant has deposited the entire award amount with

the Registrar General of this Court in terms of the order dated 11th December, 2008 out of which 60% of the award amount has been released to the appellants and the remaining award amount is lying in fixed deposit.

11. The Registrar General of this Court is directed to release the remaining 40% of the award amount to claimants/respondents No.1 to 6 in terms of the award of the learned Tribunal within a period of four weeks. The Registry shall verify whether the appellant has adjusted the statutory amount of Rs.25,000/- while depositing the award amount and if so, the statutory amount of Rs.25,000/- shall also be released to the claimants. However, if the appellant has not adjusted the statutory amount of Rs.25,000/-, the same may be refunded back to the appellant through counsel within a period of four weeks.

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

J.R. MIDHA, J

SEPTEMBER 01, 2009

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