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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.277 of 2008 & C.M. Appl. Nos.6301 of 2008

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29.04.2010

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

RADHA VISHNOI & ORS. Respondents
Through: None.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. By present appeal, the appellant/insurance company has assailed the quantum of compensation awarded to the claimant on the ground that the Tribunal wrongly took into consideration the average income of deceased as Rs.22,500/- per month against a salary drawn by the deceased of Rs.15,000/-, for the purpose of assessing the loss of dependency. The Tribunal did not apply the ratio of *Sarla Dixit vs. Balwant Yadav & Ors.*; 1996 (3) SCC 179 correctly and in later judgment of *Bijoy Kumar Dugar vs. Bidyadhar Dutta & Ors.*; 2006 (3) SCC 242, the Supreme Court has held that dependency would have been worked on the basis of earning of deceased at the time of accident.

2. The deceased in the present case was working as a software engineer with Progressive Software Company earning a salary of Rs.15,000/- per month. Before Tribunal his appointment letter, salary certificate and bank statement etc., were produced

to prove his income. The statement of employer showed that there would have been rapid rise in the salary of the deceased due to his field of service and the employer deposed that his income at the time of deposition would have been Rs.28,000/- per month. Taking into account the fact that deceased was a regular employee and a trained software engineer, the trial court took into account future prospects of the progression of his career and considered that if the deceased had not died and had worked till his retirement, his salary would have risen to Rs.30,000/-. I think this is a very conservative estimate of the career progress of deceased. If the Tribunal had taken into account the real career progression available to software engineers these days, the Tribunal would have come to the conclusion that salary wise, the deceased would have at much higher stage. In any case, the Tribunal adopted a conservative attitude, without taking into consideration the steep progress being made by software engineers and still the insurance company is aggrieved as to why the Tribunal has taken into account the future prospects of the deceased.

3. Looking into the latest judgment of the Supreme Court in *Sarla Varma & Ors. vs. Delhi Transport Corporation & Anr.*; (2009) 6 SCC 121, I consider no fault can be found with the award given by the Tribunal taking into account 50 per cent of the salary towards future prospects.

4. I find no force in this appeal. The appeal is liable to be dismissed and is hereby dismissed.

SHIV NARAYAN DHINGRA J.

APRIL 29, 2010
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