

from the date of institution of the petition till the date of actual deposit, passed in favour of the respondents no.1 to 5 and against the appellant.

2. The brief background leading to the filing of the present appeal is that the respondents no.1 to 5 had filed a petition under Section 166 of the Motor Vehicles Act, 1988 against the appellant (the insurer) and the respondents no.6 to 8 (the driver and the owner of the offending vehicle) for the grant of compensation of ₹ 20 lakhs for the death of Sanjay, aged 29 years, who suffered fatal injuries in a vehicular accident on 28th January, 2007.

3. The grievance of the appellant, who admits the factum of insurance of the offending vehicle, is that the Motor Accident Claims Tribunal erred in : -

- (i) computing the compensation awardable to the respondents no.1 to 5 (claimants in the claim petition) on the basis that the deceased was a skilled workman;

(ii)increasing the figure of minimum wages by 50% on the premise that the minimum wages are revised from time to time and the thumb rule is that 50% of the income be added to the income of the deceased to take care of the inflationary trend;

(iii) applying the multiplier of 18 instead of the multiplier of 17

(iv)deducting $1/4^{\text{th}}$ of the income of the deceased instead of $1/3^{\text{rd}}$.

4. Mr. D.K. Sharma, the learned counsel for the appellant strongly contended that the amount of compensation awarded to the respondents no.1 to 5 by the learned Tribunal was a bonanza and that the impugned award deserves to be modified/set aside, being based entirely on surmises and conjectures.

5. According to the learned counsel for the appellant, the family of the deceased comprised of his widow and two minor children. The parents of the deceased, who had four sons, could by no stretch of imagination be presumed to be dependant upon the deceased alone.

Thus, the deduction of $1/4^{\text{th}}$ of the income of the deceased instead of $1/3^{\text{rd}}$ was wholly unjustified.

6. Learned counsel for the appellant further submitted that the claimants had failed to establish the income and occupation of the deceased and the Tribunal therefore erred in assessing his income on the basis that he was a skilled workman and, thereafter, increasing the figure by 50% on the basis that the minimum wage rate was susceptible to revision from time to time, keeping in view the inflationary trend. The contention of the learned counsel was that the income of a semi-skilled worker should have been taken instead of a skilled worker. He further submitted that the adoption of the multiplier of 18 by the learned Tribunal was also unjustified and impermissible.

7. Mr. Anshuman Bal, the learned counsel for the respondents no.1 to 5 urged to the contrary, placing reliance upon the evidence adduced by the claimants on the record. The learned counsel contended that there was no justification for the Tribunal to have discarded the statement of PW1, Smt. Omwati, the widow of the

deceased, who testified that the deceased was a milk-vendor by profession and was earning ₹ 8000/- per month. More so, as the aforesaid deposition of PW1 had been corroborated by the testimony of PW3, Devender, who testified that the deceased was his nephew and was a milk-vendor like himself and was earning ₹ 8000/- per month. Mr. Bal also contended that no fault could be found with the finding of the Tribunal that the future prospects of the deceased were to be taken into account for the purpose of computation of the income of the deceased, keeping in view the fact that in a large number of decisions of the Supreme Court as well as this Court, judicial notice had been taken of the fact that the minimum wages are revised from time to time, resulting in doubling of the figures in a span of 10 years time. Further, according to him, the multiplier of 18 had been rightly adopted by the learned Tribunal and there was no justification for adopting any other multiplier.

8. Having heard the learned counsel for the parties and gone through the award, this Court is of the view that there is no infirmity in the judgment of the learned Tribunal in so far as the computation of

compensation is concerned except as regards the multiplier. PW1, Smt. Omwati and PW3, Sh. Devender categorically deposed that the deceased used to sell milk by carrying the same in cans from Loni to Delhi and was earning a sum of ₹ 8000/- per month. In view of the fact that there was no documentary proof on record regarding the income of the deceased, the learned Tribunal, however, assessed the income of the deceased under the Minimum Wages Act by treating him as a skilled worker, thereby rejecting the contention of the appellant that the deceased was earning a sum of ₹ 8000/- per month. A skilled worker was entitled to receive minimum wages of ₹ 3736/- per month as on 1st of August, 2006 and the Tribunal, therefore assessed the income of the income of the deceased to be ₹ 3736/- per month. It may be noted at this juncture that the contention of the learned counsel for the appellant that the income of the deceased should be taken as that of a semi-skilled worker was rightly turned down by the Tribunal in view of the fact that the deceased was a non-matriculate, having passed his ninth Standard examinations. Had the deceased been engaged in any clerical or other allied work, his

income could have been assessed as a non-matriculate, but since the deceased was engaged in the business of milk-vending, the learned Tribunal, in my view, rightly treated him as a skilled worker and adjudged his income to be ₹ 3736/- per month.

9. To the aforesaid sum of ₹ 3736/- per month, the Tribunal, keeping in view the future prospects of the deceased and the law laid down in *Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, added a sum of ₹ 1868/- , i.e. 50% of the income of the deceased and thereby arrived at the figure of ₹ 5604/- per month, i.e. ₹ 67,248/- per annum as the income of the deceased. The Tribunal then deducted 1/4th (one-fourth) towards the personal and living expenses of the deceased, in consonance with the decision in *Sarla Verma's* case (supra) as the deceased had five dependants and thus the loss of dependency was assessed to be in the sum of ₹ 50,436/-. Thus far I find no infirmity in the reasoning and computation of the Tribunal. Hereinafter, the Tribunal applied the multiplier of 18 to arrive at the figure of ₹ 12,10,464/-. As regards this multiplier, learned counsel for the appellant has urged and I think

rightly so that the multiplier, keeping in view the decision of the Hon'ble Supreme Court in the case of *Sarla Verma* (supra), ought to have been 17 instead of 18.

10. Applying the multiplier of 17, the amount of compensation comes to ₹ 8,57,412/-. Accordingly, the appellants are held entitled to receive the said sum as compensation for the loss of dependency. Apart from this, the appellants are also held entitled to receive a sum of ₹ 5,000/- towards funeral expenses, ₹ 10,000/- towards loss of estate and ₹ 10,000/- towards loss of consortium, in all ₹ 25,000/- in lieu of the sum of ₹ 80,000/- awarded by the Tribunal as non-pecuniary damages. Thus, in totality the appellants are held entitled to receive a sum of ₹ 8,82,412/- (i.e. ₹ 8,57,412 + ₹ 25,000), which may be rounded off to ₹ 8,82,000/-, with interest @ 8% per annum from the date of filing of the petition till realization. The award stands modified accordingly.

11. Disbursement of the award amount shall be in accordance with the directions contained in paragraph 10 of the award with the modification that the respondent no.1 shall deposit a sum of

₹ 2 Lacs in FDR with a nationalized bank for a period of 10 years instead of a sum of ₹ 4 Lacs.

10. The appeal is disposed of in the above terms.

REVA KHETRAPAL
(JUDGE)

November 18, 2010
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