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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 26, 2010
Date of Order: July 02, 2010

+ MAC Appeal 92/2010

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S. Jasbir Singh & Anr.
Through: Mr. Navneet Goyal, Advocate

02.07.2010
...Appellant

Versus

National Insurance Co. Ltd.
Through: Mr. S.L. Gupta, Advocate

...Respondent

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?

JUDGMENT

1. This appeal has been preferred by the claimants against an award dated 12th November 2009 on the ground that the compensation awarded by the Tribunal was inadequate.

2. Brief facts relevant for the purpose of deciding this appeal are that on 22nd June, 2004 Smt. Harvinder Kaur was sitting on pillion seat of motorcycle number DL-6-SQ-1979 being driven by her son Amandeep Singh. When the motorcycle reached Punjabi Bagh underpass, its tyre got punctured due to which deceased fell down from the motorcycle on the road and sustained head injuries. She was taken to Maharaja Agrasen Hospital where she succumbed to the injuries. The claim petition was filed by other two sons of the deceased making Amandeep Singh as respondent no.1 and the insurance company as respondent no.2.

3. Before learned Tribunal it was submitted that the deceased was taking tuitions of students of class 4th and 5th and was doing embroidery work and earning Rs.5,000/- per month. However, even the educational qualification of the deceased was not proved before the Tribunal. No document was placed before the Tribunal regarding her earnings. The deceased was aged around 42 years. The learned Tribunal calculated compensation to be awarded to the Lrs of the deceased on the basis of minimum wages prevalent at the relevant time. The Tribunal added 50% of the minimum wages as future prospects and applied a multiplier of 14 and calculated the damages after deducting 50% of the amount towards personal and living expenses of the deceased. It had come on record that only one son of the deceased was minor and other son who had filed the claim petition was major. The Tribunal calculated total loss of dependency to Rs.3,60,725/- added to it Rs.10,000/- towards loss of estate, Rs.5,000/- towards funeral expenses, Rs.20,000/- as loss of love and affection and Rs.1,75,713/- towards compensation for medical treatment and awarded a sum of Rs.5,71,438/-.

4. It is argued by the counsel for the appellant that the Tribunal wrongly deducted 50% of the amount towards personal expenses and wrongly calculated compensation by taking minimum wages as the income.

5. I consider that the Tribunal had awarded just, adequate and fair compensation in this case. As per *Sarla Varma & Ors. vs. Delhi Transport Corporation & Anr.*; (2009) 6 SCC 121 where the deceased was self-employed, the courts should take into account only the actual income at the time of death. In the present case, it was stated that the deceased was self-employed but no proof of her working, educational qualification or income was given. Despite that, the Tribunal had taken the income as being earned by a normal person on the basis of minimum wages. The future prospects were not to be added in terms of *Sarla Varma's case (supra)*, however, the same were added by the

Tribunal. The multiplier was applied as per parameters set by various decisions of Apex Court including *Sarla Varma's case*. The personal expenses were rightly deducted to 50%. One son of the deceased was the tort feaser as he was driving the deceased on motorcycle and caused accident. He was having capacity to earn and maintain a motorcycle. The other son of the deceased was also a major and it has not been brought on record that he was dependent upon the deceased. Thus, only one son of the deceased was minor and dependent. In view of the fact that there was only one dependent, the income of the deceased was to be divided into two parts, one for herself and one for the dependent and the deduction of 50% towards personal expenses was therefore justified.

6. I find no force in the present appeal. The appeal is hereby dismissed.

July 02, 2010
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SHIV NARAYAN DHINGRA J.