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* IN THE HIGH COURT OF DELHI AT NEW DELHI

MACA No. 389/2010

Date of Decision: September 23, 2010

LAXMAN YATI MISHRA AND ORS Appellants
through Mr. Manish Maini, Advocate

versus

PAN SINGH AND ORS Respondents
through Mr. S.L.Gupta, Advocate for
respondent No.3.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

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

REKHA SHARMA, J. (ORAL)

The appellants are the husband, two daughters and one son of Smt. Saroj Bala who died in a road accident. The learned Motor Accident Claims Tribunal has awarded them compensation to the tune of ₹ 10,55,700/- including interim compensation along with interest @ 7.5% per annum from the date of the petition till realization. The appellants are not satisfied with the compensation so awarded, hence they have preferred the present appeal.

It is not in dispute that the deceased Smt. Saroj Bala was working as a *Mazdoor* with Garrisone Engineer (I) R & D, Delhi and at

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the time of her death, she was getting gross salary of ₹ 9,014/- while her carry home salary was ₹ 6,809/-. The learned Motor Accident Claims Tribunal has taken ₹ 6,809/- as the basis of her income for calculating the dependency of the appellants upon her.

As per the salary certificate of the deceased which was proved on record as Exh.PW2/A, she was contributing ₹ 2,000/- per month towards provident fund. This sum of ₹ 2,000/- has been excluded by the Claims Tribunal while taking ₹ 6,809/- per month as the basis of her income. Should the Claims Tribunal have excluded the said sum of ₹ 2,000/- in assessing the monthly income of the deceased? The answer is in the negative. It was an amount which the deceased was compulsarily saving at the cost of her and her family needs. I find no justification on the part of the Claims Tribunal in not treating ₹ 2,000/- as part of the salary of the deceased.

The learned counsel for the Insurance Company has also assailed the award. As per him, the Tribunal has wrongly assumed the personal expense of the deceased as $\frac{1}{4}^{\text{th}}$ of her income instead of $\frac{1}{3}^{\text{rd}}$. The learned counsel for the appellants does not dispute this.

Having regard to the aforesaid, I take the income of the deceased as ₹ 6,809/- plus ₹ 2,000/- which comes to ₹ 8,809/-. The same for convenience of calculation is rounded off to ₹ 8,800/-.

It is not disputed by either counsel that if ₹ 8,800/- are taken as the basis of the income of the deceased and $\frac{1}{3}^{\text{rd}}$ is deducted towards the personal expenses of the deceased, the total compensation payable to the appellants including the non-pecuniary damages comes to ₹ 12,59,000/-. The difference between the compensation awarded by

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the Tribunal and as calculated in appeal before this Court comes to ₹ 2,03,300/-. Hence, I award a further sum of ₹ 2,03,300/- to the appellants along with interest thereon @ 7.5% per annum. The Insurance Company is directed to pay the enhanced amount to the appellants within four weeks.

With this direction, the appeal is disposed of.

SEPTEMBER 23, 2010
PC.


REKHA SHARMA, J.