

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: April 28, 2010

+ MAC Appeal 274 of 2010

%

New India Assurance Co. Ltd.
Through: Mr. Kishore Rawat, Advocate

28.04.2010
...Appellant

Versus

Suminder Kaur & Ors.
Through:

...Respondents

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?

ORAL

1. By this appeal, the appellant has assailed an Award passed by learned Tribunal dated 14th January 2010 whereby the Tribunal awarded a sum of Rs.27,13,900/- as compensation to the claimants on death of Shri Davender Singh husband of claimant no.1 and father of claimants no.2 and 3, in a motor accident. The ground of appeal as taken by the appellant is that the Tribunal wrongly considered the income of the deceased as Rs.25,000/- per month. It is submitted that the income was assessed on the basis of expenditure incurred by the deceased on maintaining his family and dependents. There was no evidence on record to prove that the deceased was earning a sum of Rs.25,000/-. The deceased admittedly was not an income tax payee and no documentary evidence was produced to prove the business income or educational qualification of the deceased. Thus, the Award made by the Tribunal was contrary to the settled law that in a case where income of deceased was not proved, the minimum wages should be taken as the income.

2. It is settled law that Motor Accident Claim Tribunal has to conduct an inquiry for grant of compensation. The inquiry has to be conducted in respect of all aspects involved in a compensation case including the aspect of income of the deceased. There is no doubt that in case of business persons or self-employed persons, the books of accounts are the best evidence and if the books of accounts are produced then there is no need for further evidence for proving the income and the Tribunal can infer income from the books of accounts. However, where a person indulges in a small business or is a self-employed person and the family is not involved in his business activities and is not aware about his business affairs, the family can prove the income of the deceased by indirect evidence. In the present case, it is not disputed that the deceased was the sole earning member of the family. The family was living in a rented accommodation. The two of the claimants viz. children of the deceased were studying. The deceased had also employed a domestic help and a driver. The family proved the monthly income of the deceased by placing on record the rent receipts, school fees receipts, the payments made to maid and driver and other expenses. The rent itself was Rs.5,000/-. The children were studying in Guru Harkishan Public School and were also taking tuitions. The deceased was also owner of a Truck bearing number DL 1JA 5810. He was also having the permit for running that truck. He was paying salary to the truck driver. He was in business of removal of debris (*malba*) and supply of building materials. His bank statement was placed on record to prove the receipts and disbursements. From all these documents and expenditure proved on record, the Tribunal came to conclusion that the deceased must be earning around Rs.25,000/- per month. However, the Tribunal considered that since the income of the deceased was taxable income and the family of the deceased was not aware of the fact whether he was paying income tax or not, the Tribunal deducted tax payable on this amount and arrived at the annual income of the deceased.

3. I, consider that there was no infirmity in the Award passed by learned Tribunal in arriving at monthly income of the deceased at Rs.25,000/-. I also consider that the Tribunal rightly made the expenditure as the basis in arriving at the probable income of the deceased. I find no force in this appeal and the same is hereby dismissed.

April 28, 2010
rd

SHIV NARAYAN DHINGRA J.