

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC APP. NO. 316/2009

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Mr. D.K. Sharma, Advocate.

versus

MEVA DEVI AND ORS. Respondents
Through: Mr. H.U. Haq, Advocate, for the
respondents no.1 to 5.

% Date of Reserve : October 18, 2010
Date of Decision : November 29, 2010

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

: REVA KHETRAPAL, J.

This appeal seeks to assail the Award dated 23rd May, 2009 passed by the Motor Accident Claims Tribunal whereby compensation in the sum of ₹ 7,11,000/- has been awarded to the respondents no.1 to 5 as legal representatives of the deceased Kabir Singh on account of the fatal injuries sustained by Kabir Singh (hereinafter referred to as 'the deceased') in a motor vehicular accident. The appellant is the Insurance Company with which the offending car was insured and accordingly has been held liable to indemnify the insured, viz., the respondent no.6 herein.

2. The case of the appellant is that the impugned Award is against the law and evidence on record. Mr. D.K. Sharma, the learned counsel for the appellant, contended that the respondents no.1 to 5, though they alleged that the deceased was employed in Group-IV Securities Guarding Ltd. and earning ₹ 3500/- per month, they failed to prove the occupation and income of the deceased. No witness was examined from Group-IV Securities Guarding Ltd. or any other witness to prove that the deceased was working in Group-IV

Securities Guarding Ltd. PW-1, Smt. Meva Devi, the widow of the deceased was the sole witness who examined herself for proving on record the occupation and the income of the deceased. Thus, according to the learned counsel for the appellant, there is no material on record to prove that the deceased was even working for a livelihood except the testimony of his widow, PW-1, Smt. Meva Devi. He contended that in such circumstances, the future prospects of the deceased should not have been considered while computing the loss of dependency of the claimants, there being no evidence of any nature whatsoever on record pertaining to his future prospects. Further, it is contended by Mr. Sharma that the learned Tribunal erred in adopting the multiplier of 17, and that keeping in view the age of the deceased the multiplier of 16 should have been adopted to augment the multiplicand.

3. Mr. H.U. Haq, the learned counsel for the respondents no.1 to 5, to rebut the contentions of Mr. D.K. Sharma, pointed out that PW1, Smt. Meva Devi, in the course of her evidence had testified that her husband was employed in Group-IV Securities Guarding Ltd. at

Gurgaon and was drawing a salary of ₹ 3500/- per month as a permanent employee in the aforesaid company. PW1, Meva Devi had also proved on record the salary certificate and salary slip of the deceased as PW1/3 and PW1/4. The learned Tribunal, therefore, erred in not accepting the said documentary evidence on record. The deceased had a permanent job and his widow, his mother and the minor children were, therefore, entitled to receive compensation, keeping in view his future prospects.

4. I find from the records that the deceased was a matriculate, as is clear from his Matriculation Certificate, Ex.PW1/1 and his date of birth was 10th June, 1965. The date of the accident was 14th May, 2000, meaning thereby that at the time of the accident he was less than 35 years of age. PW1, Meva Devi, has categorically stated in the witness box that the deceased was earning a sum of ₹ 3500/- per month from Group-IV Securities Guarding Ltd. and has placed on record the salary slips of the deceased as Ex.PW1/3 and PW1/4, which in fact show that the deceased was earning a sum of ₹ 3500/- per month. I see no reason to doubt the testimony of this witness.

More so, when there is not even a suggestion put to the witness that the said salary certificate and salary slip placed on record by her are fake documents. It is well settled that the standard of proof in a case under the Motor Accident Vehicles Act is not the same as in a criminal case or in civil proceedings. Moreover, the deceased in the instant case was working as a guard with a reputed security agency. The salary slip placed on record is dated May'99 and presumably in the said year, the deceased must have been earning the aforesaid sum of money. He was in a regular job and was less than 35 years of age. In due course of time, the deceased would certainly have earned more and keeping in view the inflationary trend, it would be not unreasonable to add 50% to his income towards future prospects, in consonance with the decision of the Supreme Court in the case of *Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, as has been done by the Tribunal.

5. The learned Tribunal, however, rejected the salary certificate of the deceased as not proved and for the purpose of calculation of loss of dependency, proceeded on the basis of the matriculation certificate

of the deceased placed on record observing that the minimum wages of a matriculate as on the date of the accident were ₹ 2867/-. The Tribunal for the purpose of calculation rounded off the said figure to ₹ 2900/- and thereafter, keeping in view the law laid down by the Supreme Court in *General Manager Kerala Transport Road Corporation Vs. Susamma Thomas, reported as 1994 ACJ 1(SC)* and *Smt.Sarla Dixit & Ors. Vs. Balwant Yadav & Ors., reported as AIR 1996 SC 1274*, calculated the gross average salary of the deceased by taking the mean of the present and expected salary of the deceased as ₹ 4350/-, i.e., $\text{₹ } 2900 + \text{₹ } 5800 = \text{₹ } 8700 / 2 = \text{₹ } 4350/-$. Deducting one-fourth therefrom for the personal expenses of the deceased, the Tribunal held that the monthly loss of dependency comes to $\text{₹ } 4350 - \text{₹ } 1087 = \text{₹ } 3263/-$ and thus the yearly loss of dependency comes to $\text{₹ } 3263 \times 12 = \text{₹ } 39,156/-$. The Tribunal then applied the multiplier of 17 as per the Second Schedule keeping in view the fact that the deceased fell in the age group of 30-35 years and worked out the actual loss of dependency to $\text{₹ } 39156 \times 17 = \text{₹ } 6,65,652/-$, which if rounded off to Rs.6,66,000/-. Adding non-

technical damages to the aforesaid amount for loss of love and affection and consortium (₹ 20,000/-), funeral expenses (₹ 10,000/-) and loss to estate (₹ 5,000/-), the Tribunal held the appellant entitled to a total compensation of ₹ 7,11,000/- with interest @ 7.5% p.a. from the date of filing of the petition till the realization of the amount.

6. Applying any yard stick, I do not find any infirmity in the order of the Tribunal though it bears repetition that the Tribunal ought to have taken the sum of ₹ 3500/- as salary of the deceased instead of taking the minimum wages in the sum of ₹ 2900/-. Calculated on that basis, the salary of the deceased after adding 50% to the same towards future prospects would work out to ₹ 5250/- per month, i.e., ₹ 63,000/- p.a. Deducting one-fourth therefrom keeping in view the fact that the deceased had five dependants, the annual loss of dependency works out to ₹ 47,250/-. Adopting the multiplier of 16 as set out in *Sarla Verma's case (supra)*, the total loss of dependency works out to ₹ 7,56,096/- and after adding the non-technical damages, as awarded by the Tribunal to ₹ 7,81,000/-.

7. Thus viewed from any angle, the compensation awarded by the learned Tribunal cannot be said to be excessive or more than the amount to which the claimants are entitled. The award of the Tribunal is, therefore, affirmed.

The appeal is accordingly dismissed.

**REVA KHETRAPAL
(JUDGE)**

November 29, 2010
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