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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.625 of 2009

28.04.2010

M/S. ICICI LOMBARD GENERAL INSURANCE CO. LTD.

.....Appellant

Through: Mr. Tarun Singla, Advocate.

Versus

BIMLA & ORS.

.....Respondents

Through: None.

Reserved on: 23rd April, 2010
Pronounced on: April 28, 2010

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?

J U D G M E N T

1. By present appeal, the appellant has assailed the quantum of compensation as allowed by the Tribunal to the claimant vide its order dated 25th September, 2009. The award is assailed on the ground that the learned Appellate Tribunal wrongly took into account future prospects and added 50 per cent of the minimum wages while calculating compensation and also wrongly awarded amount of Rs.10,000/- towards loss of love and affection.

2. The deceased in this case was a young boy of 18 years of age, the only supporting family member of a widowed mother and two minor children (12 years old brother and 9 years old sister). He was stated to be working as a conductor on bus and earning Rs.4,500/- per month as salary. As is usual in this country for such employees, no salary certificate was being issued to him nor was any produced. So, the Tribunal considered his monthly income as minimum wages prevalent at that time, namely, Rs.3,600/- per

month and relying on *Sarla Dixit vs. Balwant Yadav & Ors.*; 1996 ACJ 581, *Oriental Insurance Company Ltd. vs. Vijay Kumar Mittal*; III (2007) ACC 676 and judgment passed by Delhi High Court in *National Insurance Company vs. Smt. Pinki Devi* in Mac. Appeal No.719 of 2006 decided on 13th May, 2008, the future prospects were added to the extent of 50 per cent.

3. Counsel for the appellant argued that in *Sarla Varma & Ors. vs. Delhi Transport Corporation & Anr.*; (2009) 6 SCC 121, the Supreme Court has observed that where the deceased was self-employed or was on a fixed salary, the courts will usually take only the actual income at the time of death; and departure there from should be made only in exceptional cases. He submitted that case of deceased was neither rare nor exceptional and only minimum wages should have been taken as the basis for calculating compensation.

4. It is not the case that the deceased was self-employed. He was working as conductor on a bus, it is a different thing that no salary certificate was being issued to him. Nor it is a case that he was on fixed salary. The Tribunal has not taken into account the income as stated by her mother or the other witness, that is, Rs.4,500/- per month. The Tribunal has only considered the income of the deceased as minimum wages prevalent at the time. The minimum wages are revised from time to time depending upon the prevalent inflation. The court can take judicial notice of the high rate of inflation prevalent during recent years and the manner in which the inflation was eating away the value of rupee. The result is that the statutory minimum wages are being revised by the State from time to time so that workmen do not starve, as the effort of industry is to employ workmen only on minimum wages. I, therefore, consider that the Tribunal rightly took into account future prospects of minimum wages being revised from time to time

and there was no illegality in it.

5. I also find no force in the plea that the Tribunal wrongly awarded Rs.10,000/- for loss of love and affection. While consistency in awarding compensation by all courts is desired, there can be no prescribed mathematical formula for determining compensation for consortium, love and affection etc. The Tribunal has to award such compensation on case to case basis taking into consideration the facts and circumstances of each case. In the present case, the father of the deceased had already died, the deceased was the eldest male member in the family supporting his younger brother and sister and a widowed mother. One cannot compensate the void which death of deceased brought into the life of his mother, younger brother and sister. The amount of Rs.10,000/- awarded by the Tribunal was only a token amount towards loss of love and affection. In *Baby Radhika Gupta & Ors. vs. Oriental Insurance Co. Ltd. & Ors.*; 2010 ACJ 758, the Supreme Court upheld awarding of Rs.25,000/- towards love and affection.

6. I find no reason to interfere in the award. There is no force in this appeal. The appeal is hereby dismissed.

SHIV NARAYAN DHINGRA J.

APRIL 28, 2010
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