

UNREPORTED

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

+ MAC.APP. 4/2011

ICICI LOMBARD GEN INSURANCE CO LTD Appellant
Through: Mr. Tarun Singla, Advocate

versus

MEMUNA BEGUM & ORS. Respondents
Through: Mr. Navneet Goyal, Advocate.

% Date of Decision : May 18, 2011

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?

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. This appeal is directed against the judgment and award dated 07.10.2010, passed by the Motor Accident Claims Tribunal in Suit No. 478/09, awarding a sum of ₹ 8,32,000/- to the respondents No.1

to 8, for the death of Mohd. Anis Ahmed in a motor vehicular accident.

2. The brief facts relevant for the decision of the present appeal are that the aforesaid Mohd. Anis Ahmed (hereinafter referred to as “the deceased”) sustained fatal injuries in a motor accident on 28.10.2009 when he was hit by the offending vehicle bearing temporary No. HR-99-TEA-8208 while he was crossing the road in front of Meridian Hotel, Civil Lines, Delhi. He died on the following day, that is, on 29.10.2009. A Claim Petition under section 166 read with section 140 of the Motor Vehicles Act, 1988 was filed before the Claims Tribunal by the respondents No.1 to 8, being the widow and seven children of the deceased. The Claims Tribunal, after coming to the conclusion that the accident in question had taken place on account of the rash and negligent driving of the offending vehicle by the respondent No. 9, awarded a sum of ₹ 8,32,000/- to the respondents no. 1 to 8 alongwith interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of the realisation of the amount.

3. Mr. Tarun Singla, the learned counsel for the appellant-Insurance Company, has challenged the aforesaid award passed by the Claims Tribunal solely on the ground that the respondents no. 1 to 8 not having placed on record any proof of the income of the deceased, the Claims Tribunal erred in taking into account the future prospects of the deceased and, increasing the minimum wages applicable on the date of the death of the deceased by 50% while calculating the loss of dependency of the respondents no. 1 to 8. Mr. Singla relies upon the judgements of the Supreme Court in the cases of *Sarla Verma versus Delhi Transport Corporation, (2009) ACJ 1298* and *Abati Bezbaruah versus Dy. Director General, Geological Survey of India, (2003) 1 SCR 1229*, to support his argument that while assessing the income of the deceased for the purpose of calculating the loss of dependency of his legal representatives, 50% increase in the income of the deceased towards the future prospects could not be taken into account where the deceased was aged 45 years and no proof of his income was on record. Mr. Singla puts forth the argument that the future prospects, if any, could be allowed to the

extent of 30% only as it has been clearly laid down in the case of ***Sarla Verma (supra)*** that where the deceased was aged between 40 to 50 years, the addition towards future prospects should be to the extent of not more than 30%.

4. I am not inclined to agree with the aforesaid contention of Mr. Singla, the learned counsel for the appellant, as to my mind, there is a clear cut distinction between the Claims Tribunal taking into account the periodical increase in minimum wages on account of inflation and taking into account the future prospects of advancement of the deceased in his chosen career or job. This distinction has been explained by this Court in a number of decisions and there is no scope left for any controversy in this regard. In a recent decision of this court rendered in ***New India Assurance Company Limited versus Ramesh and Ors. MACA 718/2010 decided on 04.02.2011***, it was held as follows:

“It has been the consistent view of different Benches of this High Court that minimum wages get doubled over a period of 10 years, and this is not a fact which can be brushed aside while computing the loss of dependency of the legal representatives of the deceased in a motor

vehicular accident. As regards the reliance placed on the cases of **Sarla Verma and Bijoy Kumar Dugar (supra)**, by the learned counsel of the Appellant, it is pertinent to note that in both the said cases the aspect of rise of minimum wage rate has not been touched upon and pertinently in the second case enhancement of compensation was refused on the ground that no material could be placed on record by the claimants to support their contention that the future prospects of the deceased ought to have been taken into consideration for the purpose of assessment of the income of the deceased. In the context of cases where compensation is awarded on the basis of minimum wages, however, this Court has, time and again, taken the view that the benefit of doubling of minimum wages must be given to counter the rise in price index and inflation; and that the Court's taking into account the increase in minimum wages is not akin to taking into account the future prospects of the deceased in his chosen job or vocation."

5. A similar view has been taken by this Court in a subsequent decision in the case of **New India Assurance Comapny Limited versus Rajni Devi and Ors. MACA 9/2011 decided on 13.05.2011.**

The relevant portion of the said judgment reads as follows:

"4. Mr. K.L.Nandwani, the learned counsel for the Insurance Company has challenged the aforesaid award passed by the Claims Tribunal solely on the ground that the Claims Tribunal, in view of the fact that the claimants had totally failed

*to prove the income of the deceased, while taking the income of the deceased on the basis of the minimum wages applicable on the date of the accident to a matriculate, erred in giving the benefit of doubling of the minimum wages. The contention of Mr. Nandwani is that this tantamounted to the Claims Tribunal awarding the benefit of future prospects of the deceased to the claimants, which could not be done, keeping in view the law laid down by the Supreme Court in the cases of **Bijoy Kumar Dugar versus Bidya Dhar Dutta, (2006)3 SCC 242** and **Sarla Verma versus Delhi Transport Corporation, (2009) ACJ 1298**. In both the aforesaid cases, the Supreme Court, Mr. Nandwani contended, had unequivocally laid down that while assessing the income of the deceased for the purpose of calculating the loss of dependency of his legal representatives, the future prospects of the deceased could not be taken into account where the deceased had no permanent employment. *

5. I am not inclined to agree with the aforesaid contention of Mr. K.L.Nandwani, the learned counsel for the appellant, as to my mind, there is a basic difference between the Claims Tribunal taking into account the increase in minimum wages and taking into account the future prospects of advancement of the deceased in his career or job, and the fallacy lies in confusing the two.

6. Judicial notice has been taken time and again of the fact, by different Benches of this High Court, that minimum wages get doubled over a period of 10 years and this is a fact which cannot be brushed aside while computing the loss of dependency of the legal representatives of the deceased in a motor

vehicular accident. In the following amongst other decisions, this Court has taken the view that the benefit of doubling of minimum wages must be given to counter the rise in price index and inflation:

- (i) Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182,*
- (ii) National Insurance Company Limited vs. Renu Devi, III (2008) ACC 134,*
- (iii) UPSRTC vs. Munni Devi, IV (2009) ACC 879,*
- (iv) Shanti Devi and Ors. vs. Ghasiya Khachhap and Ors., ILR (2010) Delhi 412,*
- (v) New India Assurance Co. Ltd. vs. Sujata & Ors., MAC. APP. No.19/2011 decided on January 21, 2011,*
- (vi) Jitender Kumar vs. Virender Singh, II (2010) ACC 322, and*
- (vii) National Insurance Co. Ltd. vs. Kailash Devi, II (2008) ACC 770.*

*7. As regards the reliance placed by the learned counsel for the Insurance Company on the cases of **Bijoy Kumar Dugar and Sarla Verma (supra)**, it is apposite that in both the said cases the aspect of rise in the minimum wage rate has not even been touched upon and as a matter of fact in both the cases, it has been emphasized that the Claims Tribunal must assess the income of the deceased on the basis of the evidence placed on record by the claimants.*

8. During the course of hearing, furthermore, no cogent reason could be assigned by the learned

counsel for the appellant as to why judicial notice should not be taken of the fact that the Government of the National Capital Territory of Delhi, by notification, increases the rate of minimum wages every six months or so to meet the increase in price index and inflation rates, and for this reason this Court has consistently taken the view that in cases where the compensation payable to the victim or his legal representatives is being computed on the basis of minimum wages, the minimum wages earned by the deceased must be presumed to have doubled over a span of 10 years.”

6. As regards the argument of the learned counsel for the appellant that the addition ought to have been to the extent of 30% because the deceased was aged 45 years, I am not in agreement with this line of argument either. As stated above, the minimum wage rate is increased every six months or so and over a period of ten years the increase is 100% so as to double the minimum wages. The deceased was admittedly 45 years of age at the time of his death and it can easily be presumed that he would have worked for another ten years at least, if not more. As such, there is no manner of doubt that the minimum wage rate prevalent at the time of the death of the deceased would have doubled during his career span, had he not died in the accident. The Tribunal, thus, in my opinion, committed no error in

increasing the minimum wages applicable at the time of the death of the deceased by 50% on account of inflation and rise in price index.

7. In the instant case, the deceased was stated to be a labourer and earning a sum of ₹ 4,000/- per month at the time of his death. However, the Claims Tribunal, in view of the fact that the respondents no. 1 to 8/claimants could not place on record any proof regarding the income of the deceased, resorted to the Minimum Wages to compute the loss of dependency of the respondents no. 1 to 8, which were in the sum of ₹ 3,953/- per month as applicable on the date of the accident. Thereafter, the Claims Tribunal added 50% to the aforesaid amount towards increase in minimum wages on account of inflation and rise in price index to arrive at a sum of ₹ 5,929.50/- per month. Deducting one-fifth therefrom towards the personal expenses of the deceased and applying the multiplier of 14, the Tribunal calculated the total loss of dependency of the respondents no. 1 to 8 in the sum of ₹ 7,96,924.80/-, that is, ₹ 5,929.50/- x 12 x 14 x 4/5. To this amount, the Tribunal added a sum of ₹ 35,000/- by

way of non-pecuniary damages and awarded a sum of ₹ 8,32,000/- in all, to the respondents no. 1 to 8.

8. I find no error in the aforementioned computation of the loss of dependency of the respondents no. 1 to 8 herein. The mode of calculating the award amount as adopted by the Claims Tribunal, to my mind, was just and proper and calls for no interference.

9. The award is accordingly upheld. Resultantly, the appeal is dismissed as being without merit.

10. Records of the learned Tribunal be sent back.

**REVA KHETRAPAL
(JUDGE)**

**May 18, 2011
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