

UNREPORTED

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

+ MAC. APP. 9/2011

THE NEW INDIA ASSURANCE CO.LTD Appellant
Through: Mr. K.L.Nandwani, Advocate.

versus

RAJNI DEVI & ORS Respondents
Through: Mr. S.N.Parashar, Advocate for
the respondents No.1 to 4.

% Date of Decision : May 13, 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 18.10.2010, passed by the Motor Accident Claims Tribunal, awarding a sum of ₹ 7,68,260/- to the respondents No.1 to 4 on a

Claim Petition filed by them for compensation under Section 166 read with Section 140 of the Motor Vehicles Act, 1988.

2. The brief facts relevant for the decision of the present appeal are that on 18.07.2007, one Shri Ram Niwas (hereinafter referred to as “the deceased”) was sitting behind a stationary dumper, while the driver of the dumper was changing the tyre of the same. The alleged offending vehicle, being tempo bearing No. HR-69A-0414, driven rashly and negligently and at a fast speed, came from Haryana side towards GTK Road, Alipur and crushed the deceased.

3. A First Information Report under Section 279/304-A IPC was registered against the driver of the offending tempo being FIR No.227/2007 Police Station, Alipur. A Claim Petition was filed by the respondents No.1 to 5, being the widow of the deceased, children of the deceased and mother of the deceased before the Claims Tribunal. The Claims Tribunal, from the evidence on record, found that the accident had taken place on account of the rash and negligent driving of the offending tempo, and awarded a sum of ₹ 7,68,260/- to the claimants alongwith interest at the rate of 7.5% per annum from

the date of the filing of the petition, i.e. 10.12.2007 till the date of the realisation of the amount.

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.

9. In the instant case, the deceased was aged 37 years and was stated to be earning a sum of ₹ 5,000/- per month, at the time of his death, as the conductor of the dumper behind which he was sitting, when the unfortunate accident occurred. The Claims Tribunal, however, observed that the claimants had not placed on record the income proof of the deceased nor examined the employer of the

deceased to show what salary he was getting. In such a situation, the Claims Tribunal resorted to the help of the Minimum Wage Rate Chart for the relevant period and held that the deceased being a matriculate must be presumed to be earning a sum of ₹ 3,918 per month as per the Schedule notified under the Minimum Wages Act. Thereafter, the Claims Tribunal took the average of the current income of the deceased and the future income of the deceased, that is, ₹ 3,918/- and ₹ 7,836/-, divided the sum total by 2 and, accordingly, assessed the monthly income of the deceased at ₹ 5,877/- per month, that is, ₹ 70,524/- per year. To this multiplicand, the learned Tribunal applied the multiplier of 15 applicable to the age group of persons between 36 to 40 years at the time of the death. On the assumption that the deceased was expending 1/4th of his income upon his own upkeep, the Tribunal thus assessed the loss of dependency to be in the sum of ₹ 7,93,260/- , to which amount the Tribunal added a sum of ₹ 25,000/- by way of non-pecuniary damages and, thereafter, deducting the interim compensation of ₹ 50,000/- , awarded a sum of ₹ 7,68, 260/- in all, to the claimants.

10. I find no error in the aforementioned computation of the loss of dependency of the respondents 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.

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

**REVA KHETRAPAL
(JUDGE)**

**May 13, 2011
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