

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

+ **MAC. APP. 34/2009**

Reserved on: 12th August, 2011
Pronounced on: 26th August, 2011

M/S. NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. D.K. Sharma, Adv. for the
appellant.

Versus

SMT. SUSHILA DABAS & ORS. Respondents

Through: Mr. J.M. Bari, Adv. for the
respondents 1 to 3 and 7.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of local papers may be
allowed to see the judgment? - Yes
2. To be referred to the Reporter or not ? - Yes
3. Whether the judgment should be reported - Yes
in the Digest ?

M.L. MEHTA, J.

1. This appeal is directed against the impugned judgment and award dated 21.10.2008 of Shri Pradeep Chadha, Presiding Officer, MACT (hereinafter referred to as 'the Tribunal' for short). Vide the impugned award, the petition filed by the wife and children of the deceased Raj Singh Dabas was allowed and a sum of ₹16,20,000/- was granted as compensation to them and also the mother of the deceased who was impleaded as respondent No. 5. The insurance company i.e. the appellant was directed to pay the aforesaid amount to the

petitioners and the mother of the deceased in the manner as indicated in the award.

2. The deceased Raj Singh Dabas was aged about 46 years and stated to be engaged in private business. He met with an accident on 10.12.1994 while he along with his brother was going on a two wheeler scooter which was struck by a truck being driven in a rash and negligent manner by its driver. It is pertinent to mention here that Shri N.K. Goel, Learned Presiding Officer, MACT, vide his judgment and award dated 25.08.01 had awarded compensation in the sum of ₹1,48,000/- to the petitioners and the mother of the deceased. He had arrived at this conclusion by taking the age of the deceased as 46 years at the time of his death. The petitioner Sushila Dabas who is the widow of the deceased had stated that her husband was working as Librarian in Aurobindo college upto year 1980 when he went to Libya and returned from there in 1986. Thereafter he could not join his duties and started doing the work of builder. Since all this was not proved on record, the learned Tribunal took the income of the deceased as ₹1586/- per month the prescribed minimum wages of a semi-skilled worker at the time of his death. He observed that had the deceased survived, his income would have increased with passage of time and therefore, he assessed the income of the deceased for the remaining part of his life as ₹2,000/- per month. Making a deduction of 1/4th towards the personal and living expenses of the deceased, the then Tribunal assessed the

dependency loss of the dependants as ₹1,500/- per month or say, ₹18,000/- per annum. He applied the multiplier of 11 and assessed the compensation payable as ₹1,98,000/- (₹18,000/- x 11). Since the petitioners were already paid ₹50,000/-, they along with the mother of the deceased were awarded ₹1,48,000/-.

3. Against the said award, the petitioners preferred appeal before this Court which remanded the case back to the Tribunal with the liberty to the petitioners to lead additional evidence. It was on remanding back the matter to the Tribunal that the statement of the petitioner Sushila Dabas was again recorded by the Tribunal. Thereafter Mr. Pradeep Chadha, Ld. Tribunal, awarded compensation amounting to ₹16,20,000/- vide the impugned award. In arriving at this amount of compensation, the learned Tribunal took note of the fresh deposition of the petitioner Sushila Dabas who had stated that her husband had done Ph.D. in Zoology from Meerut University and worked as professional Assistant Librarian in Aurobindo College, University of Delhi. She had further stated that her husband had gone to Libya in 1981 to work as Chief Librarian and on his return in 1987, he started his own private business of builder and was earning not less than ₹10,000/- per month. The learned Tribunal took monthly income of the deceased as ₹15,000/- based on his salary which he got in Libya in Libyan Dinars 4175 during the period of his contract with his employer there from 01.07.85 to 31.07.1987. The Tribunal recorded that the deceased would have

earned at least the same amount of ₹15,000/- per month had he not expired. On this observation, he proceeded to assess the compensation by applying the multiplier of 13. After making deduction of 1/3rd towards personal expenses of the deceased, the Tribunal arrived at a figure of ₹15,60,000/- as the dependency loss of the petitioners and the mother of the deceased. He added ₹60,000/- as compensation for loss of love and affection and thus awarded ₹16,20,000/- as the compensation payable to the dependants. The impugned award is in challenge in the present appeal by the insurance company.

4. I have heard Mr. D.K. Sharma, learned counsel for the appellant and Shri J.M. Bari, learned Advocate for respondents No. 1 to 3 and 7. The main challenge of the appellant/insurance company is that the compensation awarded by Shri Pradeep Chadha, learned Tribunal, is highly excessive and against the general principles of assessment of compensation in such cases.

5. There is no dispute that the deceased was aged about 46 years. I shall also proceed with the admitted fact that the deceased was a Ph.D. before his leaving for Libya. It is averred that in the year 1981 he worked as professional Assistant Librarian in Shri Aurobindo College. There is no evidence as to what was his salary in this position in the college. Though all this is not properly proved, but, from the memorandum issued by the college it is seen that he got extra-ordinary leave of two years with effect from 02.07.1981. Similarly, though, no

sufficient evidence has been led on record as regards his salary at the time of joining in Libya as Chief Librarian in the year 1981, but from some correspondence it is seen that he did get a job of Chief Librarian in the Library of Central Hospital Zuara, Municipality, Al-Nuqat-Al-Khamees. There is no reason to doubt the testimony of Smt. Sushila Dabas, who was one of the petitioners, that her husband went to Libya on 3.7.1981 and returned on 20.07.1986. The learned Tribunal, has referred to the agreement dated 04.07.1985 regarding terms of contractual employment of the deceased for a period of two years with effect from 01.07.1985 to 31.07.1987 at the salary of Libyan Dinars 4174 per annum which comes to ₹1,80,000/- p.a. Since there is no evidence led with regard to his previous contract when he joined services in Libya in July 1981 and his salary of ₹15,000/- per month was as per the contract of 1985, it can be said that the salary when he joined in July 1981 must be quite lesser than what he got in July 1985. If it was the same or equivalent, the petitioners would have chosen to prove the same on record as they did to prove the salary starting from July 1985. It is also a common knowledge that one would prefer to go abroad to do some service only if he is offered better emoluments or prospects in comparison to what he is getting here as one would be required to have an additional establishment there in abroad. If one gets the same salary as in his own country or equivalent thereto, he may not prefer to go abroad unless there is some financial gain or other

better prospects in doing so. Keeping in view the fact that there is nothing on record as to the salary of deceased at the time of leaving India and/or at the time of joining at Libya, the salary of the deceased what he was getting after four years of his service at Libya would be the only guiding factor to proceed further to see his income. As is noted above, one would go abroad or continue to stay there only if there is any better financial gain or other better prospects. In the absence of any evidence, a guess work has to be made that the deceased might have joined in Libya at the salary of about ₹10,000/- per month and if that was so, he might certainly be getting lesser than that in his position in Aurobindo college else he would not have chosen to go to Libya. However, all this exercise is not much worthwhile because as per the widow of the deceased, after returning from Libya her husband started his personal business as builder. She stated that he was earning not less than ₹10,000/- per month. For substantiating that he was not earning less than ₹10,000/- per month, she stated about the deceased to be maintaining a bank account reflecting his high earnings. No other evidence of any sort has been led to substantiate the plea that the deceased after his return from Libya started his personal business as builder and was earning not less than ₹10,000/- per month. The bank account referred to by Smt. Sushila, the widow of the deceased, has been perused which reflects meager and irregular deposits of cash in his account creating all doubts that deceased at any point of time

was earning ₹10,000/- per month immediately before or at the time of his death. It was suggested to her that the deceased was not earning ₹10,000/- per month. In answer to this question, she categorically admitted that after return from Libya, the deceased was not earning because of his educational qualification and she did not know whether he was assessed to income tax or not. The learned Tribunal in the impugned award has also recorded that mere bank transactions cannot be treated as proof of income of the deceased and that there is no concrete proof of his earnings between 1987-1994. On the other hand he proceeded to record that the deceased would at least have earned same amount of ₹15,000/- per month after return from Libya had he not expired. This opinion of learned Tribunal seems to be misplaced.

6. In the absence of there being any cogent evidence as regards the income of the deceased, and there being also no evidence as regards to his earning capacity since he was not regularly employed from 1987 till his death in the year 1994, his income has to be assessed based on his past earnings with the help of some guess work. In following this there is doubt in arriving at precise income, but, for the purpose of calculating compensation in the absence of any evidence, assessment has to be made on the basis of estimation and in the entire scenario and keeping in view the fact that the deceased, admittedly, was not regularly employed since after his return from Libya in 1987, income of the deceased for the purpose of compensation can be estimated ₹8,000/-

per month. Since the deceased was not in a regular stable job/employment, there was no element of any future prospects for consideration for assessing his income. Thus, estimated income of ₹8,000/- per month can be taken as his monthly income for the purpose of calculating compensation. The family of the deceased comprised of three petitioners and his mother and hence $\frac{1}{4}$ th of his income can be taken towards his personal and living expenses. That being so, the dependency loss of the petitioners and the mother of the deceased comes to ₹6000/- per month (₹8,000/- (-) ₹2,000/- (i.e. $\frac{1}{4}$ th of ₹8,000/-)) i.e. ₹72,000/- per annum. In view of the law laid down by the Supreme Court in the Case of **Sarla Verma and others v DTC and another** (2009) ACJ 1298, multiplier of 13 would be applicable and applying this multiplier the total dependency loss of the dependants comes as ₹9,36,000/- (72000x13). The learned Tribunal also awarded ₹60,000/- as compensation for loss of love and affection. I do not intend to interfere in this discretion of the Tribunal. Consequently, the petitioner and the mother of the deceased are held to be entitled to compensation of ₹9,96,000/-. It is seen that a sum of ₹1,69,126/- has already been withdrawn by the petitioners from the amount deposited by the appellant in compliance of the impugned award of the Tribunal. Thus, a balance a balance of ₹8,26,874/- is payable to the petitioners [₹9,96,000 – ₹1,69,126/-]. The appellant had deposited ₹15,69,126/- in the Court. The appellant shall be entitled to refund of the balance with

proportionate interest that has accrued on the refundable amount. The payable amount of ₹8,26,874/- with accrued interest thereon shall be net amount that is to be disbursed to the claimants. Out of this amount, a sum of ₹4 lac shall be payable to Smt. Shushila Dabas (widow of the deceased), a sum of ₹2 lac to Ms. Shweta (daughter of the deceased) and Rs.1 lac to mother of the deceased. Since the amount of ₹1,69,126/- which was already been withdrawn was for the benefit of son of the deceased, the balance amount shall be paid to him. All the claimants will also be paid proportionate accrued interest on their entitlements. Half of the share of all the petitioners/claimants shall remain deposited in FDRs for a period of 3 years. In case of emergent need or the marriage of Shweta, the claimants will be entitled to seek withdrawal of the needed amounts prematurely.

7. The appeal stands disposed of accordingly.

**M.L. MEHTA
(JUDGE)**

August 26, 2011
AWANISH