

UNREPORTED

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

+ MAC. APP. No. 253/2009

NAFISA & ANR.

..... Appellants

Through: Mr. O.P.Mannie, Advocate.

Versus

SUBASH YADAV & ORS.

..... Respondents

Through: Ms. Sumeet Kaur, Advocate
for the respondent No.2.
Ms. Shantha Devi Raman,
Advocate for the respondent
No.3.

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Date of Decision : February 28, 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 has been preferred by the appellants for enhancement of the compensation awarded by the Motor Accident Claims Tribunal by its award dated 27th January, 2009.

2. The appellants are the father and mother of the deceased Salimuddin, who died in a road accident on 06th December, 2003. The

deceased, was crossing the main road of Bhati Mines, Village Fatehpur Beri, when he was hit by the offending vehicle, a tanker bearing no. HR-26-GA-0172, driven by the respondent no.1, owned by the respondent no.2 and insured with the respondent no.3.

3. The Motor Accident Claims Tribunal, by its judgment dated 27th January, 2009 passed an award of ₹ 1,93,627/- inclusive of the interim award with interest @ 9% per annum from the date of the institution of the petition till the date of the award. Dissatisfied with the award amount, the claimants, who are the appellants in this appeal, have prayed for enhancement of the award amount.

4. The learned counsel for the appellants assailed the award on two grounds, which are as follows:-

(i) The Tribunal wrongly assessed the age of the claimants, being father and mother of the deceased as 56 and 54 years respectively, whereas they were actually aged 49 and 44 years at the time of the accident. The Tribunal accordingly erred in applying the multiplier of '8' instead of '14' which was the correct multiplier; and

(ii) The Tribunal erred in not giving the benefit of doubling of minimum wages, while assessing the income of the deceased for the purpose of computing the loss of dependency of the claimants.

5. The learned counsel for the respondents on the other hand, sought to support the award, contending that no enhancement of the award amount was warranted as the award was a just and fair award.

6. As regards the first contention of the appellant's counsel, it is well-established that where the deceased is a bachelor, the multiplier is to be determined on the basis of the age of the mother of the deceased. The appellant no 1 is the mother of the deceased and she was aged about 44 years at the time of the accident. However, the learned Claims Tribunal determined the multiplier in the instant case by adopting the following line of reasoning:

“Deceased was aged about 18 years & petitioner no 2 as per his deposition was aged about 56 years as on the date of the accident. As per the copy of Ration Card placed on record, petitioner No.1 is two years younger to petitioner No.2, meaning thereby that she was around 54 years of age at the time of accident and as such, appropriate multiplier as per schedule II in reference to Section 163-A of Motor Vehicle Act shall be 8”

7. By an order dated 23.02.2010, this Court in exercise of its powers under Order 41 Rule 27 (1)(b) permitted the appellants to lead additional evidence to prove their age. The learned counsel for the appellants placed on record their Election Cards bearing Nos. UP/80/398/183337, Ex.AW1/B and UP/80/398/183338, EX.AW-1/C. In Ex.AW1/C, the age of the mother of the deceased is shown to be 35 years as on 1st January, 1995, though the same is issued in the name of “Nanni” instead of Nafisa. However, the said discrepancy was clarified by the learned counsel of the appellants by the filling an affidavit of the appellant no 2, who is the father of the deceased and husband of the appellant No.1, wherein he identified the photograph of his wife Nafisa. The age of the appellant No.2, as per his Election Card, Ex. AW1/B is shown as 40 years as on 01.01.1995.

8. It thus stands conclusively established that the age of the mother of the deceased was 44 years at the time of the accident. The contention of the learned counsel for the appellants that the multiplier of ‘14’ should be adopted in consonance with the judgment of the

Supreme Court in *Smt. Sarla Verma &Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, is accordingly upheld.

9. As regards the second contention of the appellant's counsel, the learned counsel of the insurance company contended that doubling of minimum wages could not have been resorted to as there was no proof on record regarding the future prospects of the deceased. The learned counsel of the appellant, on the other hand, placing his reliance upon the case of *'ICICI Lombard General Insurance Co Ltd Vs Ram Jatan Ram &Ors (MAC App No- 65/2011) decided by this Court on January 21, 2011'*, urged that doubling of minimum wages is done to meet the increase in price index and inflation rate and the same is not in any manner reflective of the future prospects of the deceased, hence, the benefit of doubling of the minimum wages must be given while computing the compensation.

10. In the case of *'Sh. Narinder Bishal and Anr. Vs. Sh. Rambir Singh and Ors. 2009ACJ 1881'* this question was raised, wherein it was clarified that there is a crystal clear difference between the two, that is, revision of minimum wages with the passage of time and the

increase in the income of the deceased, taking into account his future prospects. The following apposite observations were made:

“ 16. The future prospects would necessarily mean advancement in future career, earnings and progression in one's life. It could be considered by seeing, from which post a person began his career, what avenues or prospects he has while being in a particular avocation and what targets he/she would finally achieve at the end of his career. The promotional avenues, career progression, grant of selection grades etc. are some of the broad features for considering one's future prospects in one's career.

17. The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance and survival of the workman class. Keeping this in view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.”

11. This Court has even otherwise consistently taken the view 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 a victim, who dies in a motor vehicular accident. It has also been highlighted in several decisions of this Court 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. The following, amongst others, are the decisions of different Benches of this Court taking the aforesaid view:

- (i) *National Insurance Co Ltd Vs Pooja, ILR (2006) Delhi 635*
- (ii) *Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182,*
- (iii) *National Insurance Company Limited vs. Renu Devi, III (2008) ACC 134,*
- (iv) *UPSRTC vs. Munni Devi, IV (2009) ACC 879,*
- (v) *National Insurance Co. Ltd. vs. Kailash Devi, II (2008) ACC 770.*
- (vi) *Jitender Kumar vs. Virender Singh, II (2010) ACC 322*
- (vii) *Shanti Devi and Ors. vs. Ghasiya Khachhap and Ors., ILR (2010) Delhi 412, and*

(viii) *New India Assurance Co. Ltd. vs. Sujata &Ors., MAC.*

APP. No.19/2011 decided on January 21, 2011

12. I see no reason to disagree with the consistent view taken by this Court. No judgment to the contrary could be cited by the learned counsel for the respondents nor any cogent reason was given as to why this Bench should take a different view.

13. The award, therefore, deserves to be modified, in consonance with the judgment of the Supreme Court rendered in *Smt. Sarla Verma &Ors. (Supra)* and the aforesaid judgments rendered by this Court. The minimum wages with respect to an unskilled workman on the date of the accident were ₹ 2,783.90, rounded off to ₹ 2,784/-. Adding 50% to the same, the income of the deceased works out to ₹ 4,176/- p.m. i.e. ₹ 50,112 per annum. Since the deceased was a bachelor, a deduction of one-half will have to be made for his personal expenses, thereby leaving a balance of ₹ 25,056/- per annum as the contribution of the deceased to his parents. Adopting the multiplier of '14' to augment the aforesaid multiplicand of ₹ 25,056/-, the total compensation payable to the appellants-claimants comes out

to be ₹ 3,50,784/-. The appellants are held entitled to receive the said amount of compensation with interest as awarded by the learned Tribunal.

14. The award is accordingly enhanced to the aforesaid extent.

15. The appeal stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

February 28, 2011
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