

UNREPORTED

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

+ **MAC APP. NO.523/2007**

BALI SINGH & ORS. Appellants

Through: Mr. Amit Singh, Advocate

versus

RAM KUMAR PASWAN & ORS. Respondents

Through: Pankaj Seth, Advocate for the
Insurance Company.

% Date of Decision : July 19, 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?

JUDGMENT

: REVA KHETRAPAL, J.

1. By way of the present appeal, the appellants seek enhancement of the compensation awarded to them by the Claims Tribunal by its judgment and award dated 21.02.2007 passed in Suit No.475/2004.

2. The brief facts relevant for the disposal of the present appeal are that one Veer Singh (hereinafter referred to as the 'deceased') died in a road accident on 31st August, 2004. A claim petition seeking compensation for the untimely demise of the 'deceased' was filed by the parents, widow and four minor children of the deceased, who are the appellants herein, against the driver, owner and insurer of the offending vehicle, the respondents No. 1, 2 and 3 herein. The Claims Tribunal disposed of the said petition by its award dated 21st February, 2007 awarding a total compensation of ₹ 4,66,400/- to the appellants along with the interest @ 7.5% per annum from the date of the filing of the petition till the date of the award. The manner of computation of the aforesaid award by the Tribunal may be summarized as follows.

3. In the absence of any proof regarding the income of the deceased, who was stated to be an auto driver, the Tribunal resorted

to the minimum wage rate applicable to a semi-skilled worker as on the date of the accident, which is in the sum of ₹ 3,060/- per month and rounded off the same to ₹ 3,100/- per month, that is, ₹ 37,200/- per annum. To this multiplicand constituting the income of the deceased, the Tribunal applied the multiplier of 18 and deducting therefrom one-third towards the personal expenses of the deceased, calculated the loss of dependency of the appellants to be in the sum of ₹ 4,46,000/- (that is, ₹ 3,100 x 12 x 18 x 2/3). In addition to the loss of dependency, the Tribunal awarded pecuniary and non-pecuniary damages towards funeral expenses, transportation of dead body, loss of estate and loss of consortium in the sum of ₹ 5,000/- each, thereby awarding a total sum of ₹ 4,66,400/- in favour of the appellants.

4. Aggrieved by the aforesaid quantum of compensation, the appellants have filed the present appeal seeking enhancement of the same. Mr. Amit Singh, the learned counsel for the appellants has assailed the award on the following grounds:

- (a) The Tribunal erred in considering the income of the deceased as only ₹ 3,100/- per month instead of ₹ 5,000/- per month as claimed in the petition.
- (b) The Tribunal erred in not considering future prospects of increase in the income of the deceased.
- (c) The Tribunal erred in deducting one-third of the income of the deceased towards his personal and living expenses in view of the fact that the deceased was survived by seven dependents.

5. Mr. Pankaj Seth, the learned counsel for the respondent No.3 – Insurance Company, on the other hand, sought to support the award of the Tribunal. According to him, the impugned award was passed on the basis of documentary evidence on record and no modification thereto was warranted either on facts or in law.

6. As regards the first submission of the learned counsel for the appellants, I find from the perusal of the record that no evidence whatsoever is forthcoming as regards the income of the deceased. In

such circumstances, the Tribunal rightly resorted to the Minimum Wage Rates notified by the Government for the purpose of computation of compensation payable to the appellants and no interference in that respect is called for. Coming now to the aspect of future prospects, I find that the Tribunal in its award has relied upon two judgments, viz. ***Bulbul Chakrabarthy & Ors. versus Ram Kumar & Ors. 2001 ACJ 705 (Delhi) and Bijoy Kumar Dugar versus Bidyadhar Dutta & Ors. AIR 2006 SC 1255***, to deny the benefit of future prospects. The Tribunal, however, lost sight of the fact that the present award has been made on the basis of minimum wages and the benefit of inflation in respect thereof has to be allowed irrespective of whether or not there is any evidence regarding future prospects of increase in the income of the deceased. It has been the consistent view of various Benches of this Court that while calculating the compensation on the basis of minimum wages, the same has to be doubled and averaged to provide for the rise in inflation and reduction in the value of money. Following are some of

the judgments of this Court wherein the aforesaid view has been taken:

- (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.***
- (vii) ***National Insurance Co. Ltd. vs. Kailash Devi, II (2008) ACC 770, and***
- (viii) ***The New India Assurance Co. Ltd. vs. Rajni Devi & Ors.,*** MAC. APP. No.9/2011 decided on May 13, 2011.

7. The learned counsel for the appellants has cited the judgment of this Court in the case of ***New India Assurance Co. Ltd. versus Smt. Nirmala Devi & Ors. 2007 VI AD (Delhi) 730***, wherein the

learned Single Judge while allowing the benefit of rise in inflation and cost index observed that the minimum wages could reasonably be assumed to have tripled by the time deceased would have left his gainful employment and accordingly took the average of amount of minimum wages and its triple to calculate the amount of loss of dependency. However, having regard to the consistent view of this Court, I am inclined to consider the income of the deceased at ₹ 4,650/- per month (that is ₹ 3,100/- x 2 + ₹ 3,100/- ÷ 2) for the purpose of computation of loss of dependency.

8. Adverting next to the aspect of deduction for personal and living expenses, I accept the contention of the learned counsel for the appellants that deduction of one-third of the income of the deceased for his personal expenses and maintenance by the learned Tribunal was wholly unjustified. In view of the legal position as enunciated in the case of *Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121* where the deceased is survived by seven dependant family members, deduction of only one-fifth of the income of the deceased towards his

personal and living expenses is warranted. Thus calculated, the monthly dependency of the appellants works out to ₹ 3,720/- per month (₹ 4,650/- x 4/5). Augmenting the monthly loss of dependency of the appellants by the multiplier of 18 as applied by the Tribunal, the total loss of dependency of the appellants works out to be ₹ 3,720/- x 12 x 18 = ₹ 8,03,520/-. Adding thereto pecuniary and non-pecuniary damages in the sum of ₹ 20,000/- as awarded by the Tribunal, the total compensation payable to the appellants works out to ₹ 8,23,520/-, rounded off to ₹ 8,24,000/-.

9. In view of the aforesaid, the award amount is modified to the extent that the same is enhanced from ₹ 4,66,400/- to ₹ 8,24,000/-.

10. The respondent No.3 is directed to deposit the award amount as enhanced within four weeks from today with interest @ 7.5% per annum on the enhanced amount from the date of filing of the petition till the date of realisation.

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

12. The records of the Claims Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

JULY 19, 2011
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