

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

Reserved on: 21st November, 2011
Pronounced on: 23rd November, 2011

+ **MAC APP. 559/2009**

NATIONAL INSURANCE COMPANY LTD..... Appellant
Through: Mr. D.K.Sharma, Advocate.

Versus

SNEH WISHARD & ORS. Respondents
Through: Respondents No.1 to 3 *Ex parte*.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant National Insurance Company Limited impugns the award dated 01.09.2009 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby the compensation of ₹ 4,43,000/- was awarded to Respondents No.1 to 3 on account of death of Late Ariel Wishard.
2. The Appellant's grievance is that there could not have been addition of 50% of the minimum wages to calculate the average income of the deceased as the deceased was already 57 years of age.

3. A perusal of the award reveals that in the absence of any proof of income, the Tribunal took the minimum wages @ ₹ 3271/- as the deceased's income. The Tribunal added 50% of the minimum wages on the basis of judgment of this Court in *National Insurance Company Limited v. Kailash Devi II (2008) ACC 770* to offset the inflation; applied the multiplier of 9; deducted one-third towards the personal expenses and calculated the dependency at ₹ 3,53,376/-.
4. In *Kailash Devi (supra)* this Court held that the minimum wages doubles within a span of ten years and therefore, 50% addition has to be made in the minimum wages to offset inflation. Similar view was taken by this Court in *Kanwar Devi and Ors. v. Bansal Roadways & Ors., 2008 ACJ 2181*, where it was held that the minimum wages is not akin to future prospects.
5. It is true that the inflation and price indexation is not the same as the future prospects, yet the future prospects are considered where the deceased or injured is comparatively young. The principles as given in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121*, while considering the future prospects would equally apply while considering the indexation due to inflation in case of minimum wages i.e. addition of 50% towards inflation and indexation where the deceased/injured was below 40 years; 30% where the

deceased/injured was less than 50 years and 'NIL' where the deceased/injured was more than 50 years.

6. Since the deceased was 57 years of age, the increase due to inflation could not have been awarded as is evident from the fact that at the age of 57 only a multiplier of 9 is applicable.
7. Thus, the dependency ought to be calculated at the assumed income i.e. ₹ 3271/- of the deceased. The dependency after deducting one-third towards personal expenses works out to ₹ 2,35,548/- (i.e. ₹ 3271/- minus $\frac{1}{3}^{\text{rd}} \times 12 \times 9$). On adding the conventional sum of ₹ 80,000/- towards loss of consortium, funeral charges and loss of love and affection as awarded by the Tribunal, the total compensation works out to be ₹ 3,15,548/- as against ₹ 4,33,376/-.
8. The excess amount deposited in terms of the order of this Court dated 21.12.2009 shall be refunded to the Appellant out of the last FDR/FDRs.
9. The appeal is allowed and the impugned award is modified to the extent indicated above. No costs.
10. Copy of the order may be sent to the trial court for information.

(G.P. MITTAL)
JUDGE

NOVEMBER 23, 2011

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