

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

Decided on: 21st December, 2011

+ **MAC APP. 1149/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. K.L. Nandwani, Advocate.

Versus

MASTER AVINASH & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.23245/2011 (exemption) in MAC APP. 1149/2011

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL.23244/2011 (delay) in MAC APP. 1149/2011

1. There is a delay of four days in filing the appeal.
2. For the reasons stated in the application, the same is allowed.

The delay of four days in filing the appeal is condoned.

MAC APP. 1149/2011 and CM APPL.23243/2011 (stay)

3. The Appeal filed by the Insurance Company seeks reduction of compensation of ₹ 6,18,000/- awarded by the Tribunal for the death of Govind Kumar in an accident on 29.12.2006.

4. It was claimed before the Tribunal that the deceased was aged about 40 years at the time of the accident. He was working as a Motor Vehicle Painter with M/s. N.S. Automobiles and was earning ₹ 7,000/- per month. The Tribunal did not rely upon the oral evidence produced in support of the deceased's income and, therefore, took the minimum wages of an unskilled worker i.e. ₹ 3350/- per month, added 50% of the income on the basis of *Kiran Devi & Ors. v. Surjeet Yadav & Ors. MAC APP. No.511/2009 decided by this Court on 18.01.2010*, and selected the multiplier of 15 suitable to the deceased's age to arrive at the loss of dependency.
5. It is urged by the learned counsel for the Appellant that there was no evidence that the deceased was in settled employment or was having a permanent job and, therefore, the Tribunal was not justified in making 50% addition in the minimum wages to calculate the dependency. It is urged that a number of appeals have been filed against the order of this Court where addition in minimum wages have been made, which have been admitted and are pending consideration before the Supreme Court.
6. In the case of *Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided by this Court on 20.02.2008*, it was observed as under:-

“For determining the earning of the deceased or victim of the accident, the claimants are supposed to prove the exact income of the deceased by leading some cogent and reliable documentary evidence as to

the nature of his employment or trade or business or in any other activity he was involved in and then the said income can be taken into consideration for determining the quantum of compensation and if in such a case, the claimants are further able to establish the future prospects as well, then the criteria laid down in Sarla Dixit's case would get attracted. There can be another category of cases where the claimants are able to establish the future prospects of the deceased by quantifying the amount to be earned by the deceased in future with the help of cogent, reliable and convincing evidence and in all such cases the tribunal can take into consideration such future increase as has been established by the claimants on record. The difficulty however, would arise in all those cases where although the claimants are able to sufficiently establish on record the educational qualification of the deceased or the nature of his employment whether skilled, semi-skilled or unskilled but fail to establish by any reliable evidence to prove the exact income of the deceased. In such cases, question arises whether the Tribunal can take into consideration the minimum wages and the periodical revision of minimum wages as are fixed by the Government under the Minimum Wages Act. To examine this question, it will have to be considered whether the revision which takes place under the Minimum Wages Act can be equated with the future prospects of a deceased. As would be evident from catena of judgments of the Supreme Court, the future prospects have no correlation with the price index, inflation or denunciation of currency value.

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. 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."

7. Similar view was taken in (i) *UPSRTC v. Munni Devi, IV (2009) ACC 879*, and *National Insurance Company Ltd. v. Renu Devi & Ors., III (2008) ACC 134*.
8. This accident took place on 29.12.2006. Even after making addition of 50%, the deceased's income was taken as ₹ 5025/- per month. The minimum wages for an unskilled worker has been raised to ₹ 5278/- w.e.f. 01.02.2010 i.e. just within three years and two months of the accident. It has to be kept in mind that the minimum wages are increased not only to offset inflation but also to provide better standard of living to the lowest paid workers on account of the growth in the economy. The minimum wages of an unskilled worker as on 01.01.1980 were just ₹ 240/- which were raised to ₹ 6656/- w.e.f. 01.10.2011 i.e. more than 25 times within a span of about 31 years.

9. It is the obligation upon a Tribunal, holding an inquiry under Section 168 of the Motor Vehicles Act or on the High Courts to award an amount of compensation which appears to it to be just and proper.
10. In view of the judgments in *Kiran Devi & Ors*, *Munni Devi*, *Renu Devi & Ors.* and *Narinder Bishal (supra)* and with regard to the aforementioned discussion, the Tribunal was justified in granting addition of 50% in the minimum wages while computing the loss of dependency.
11. The fact that some appeals have been preferred against the order of this Court, is not a ground to stay the proceedings in other cases pending before this Court.
12. The overall compensation of ₹ 16,18,000/- awarded for the death of a Painter cannot be said to be excessive or exorbitant.
13. I do not find any ground to interfere in the impugned award. The appeal is devoid of any merit; the same is accordingly dismissed. No costs.
14. Pending application also stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 21, 2011

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