

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

Decided on: 6th January, 2012

+ **MAC APP. 286/2011**

ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Ms. Manjusha Wadhwa Advocate
Ms. Angana Goswami Advocate

Versus

SMT. RAJNI DEVI & ORS. Respondents

Through: Mr. Ajay Kumar Advocate with
Mr. Anil Singh Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Oriental Insurance Company Ltd. seeks reduction of compensation of ₹9,41,040/- awarded by the Motor Accident Claims Tribunal, (the Tribunal) for death of Raju Kumar Mandal who succumbed to the fatal injuries in an accident which took place on 23.06.2007. During inquiry before the Tribunal, it was claimed that deceased Raju Kumar Mandal was aged about 25 years on the date of the accident. He was a professional driver and getting a salary of ₹ 6,000/- per month. Deceased's driving licence Ex.PW-1/1 was proved where the deceased's date of birth was mentioned as 14.01.1982. In the absence of any cogent evidence with regard to the deceased's

income of ₹ 6,000/- per month, the Tribunal took the minimum wages of a skilled worker (₹ 3940/- per month), added 50% towards inflation, deducted one-third towards personal and living expenses and applied the multiplier of 18 to arrive at the loss of dependency as ₹ 8,51,040/-. The Tribunal further granted sum of ₹ 50,000/- towards loss of love and affection, ₹ 10,000/- towards loss of estate, ₹10,000/- towards loss of consortium and ₹ 20,000/- for last rites.

2. The contentions raises on behalf of the Appellant's are:-
 - (1) There should have been deduction of 50% as against one-third taken by the Tribunal as the deceased left behind only a widow.
 - (2) In the absence of any evidence led by the Claimants with regards future prospects 50% increase could not have been given in the minimum wages adopted by the Tribunal.
 - (3) The compensation awarded towards conventional heads i.e. loss of love and affection, loss of consortium and funeral expenses is excessive.
3. On the other hand, it is contended by the learned counsel for the Respondents that 50% deduction is made in case of a bachelor. In case of a married person, the minimum deduction is one-

third. Reliance is placed on *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

4. The Hon'ble Supreme Court considered the judgments of *G.M., Kerala SRTC v. Susamma Thomas*, (1994) 2 SCC 176; *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362; *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179 and *New India Assurance Co. Ltd. v. Charlie*, (2005) 10 SCC 720, and held that where the deceased is a bachelor deduction towards the personal expenses should be 50%. However, where a bachelor leaves behind a widowed mother and young siblings dependant on him, the deduction towards the personal and living expenses should be one-third. In the case of married person where the number of dependants was 2-3, the deduction suggested was one-third.
5. In this case the deceased died issueless. He did not leave behind the parents. Thus, the widow was the only dependant; applying the ratio of *Sarla Verma (supra)*, the deduction towards the personal and living expenses has to be one-half and not one-third. Obviously, the deceased would spend not less than 50% on himself. The Tribunal erred in making deduction of only one-third towards the personal living expenses of the deceased. In my view, it has to be one-half.
6. It is true that there was no evidence led towards the deceased's future prospects. It was claimed that the deceased was getting a sum of ₹6,000/- per month. The same was not believed by the

Tribunal in the absence of any cogent evidence. The Tribunal, therefore, took the minimum wages of a skilled worker, added 50% towards the future prospects/inflation.

7. In *National Insurance Company Ltd. v. Renu Devi & Ors.*, III (2008) ACC 134, this Court held that the increase in the minimum wages is not on account of promotion of a unskilled worker or on account of advancement in his career but the same is due to increase in the price index and cost of living. It has also to be borne in mind that the minimum wages are revised not only to meet the inflation but also to improve the standard of living of the lowest paid workers and to give the benefit of growth in GDP.
8. A perusal of the Notifications issued under the Minimum Wages Act would show that the minimum wages of a skilled worker were revised from ₹4377/- on 01.08.2009 to ₹ 6448/- on 01.02.2010. Thus, it has to be noticed that there was increase of about 50% in the minimum wages just in six months. This was not on account of inflation but to provide a better standard of living.
9. In *Renu Devi & Ors.(supra)* it was held as under:-

“9. In a recent decision of this Court Sh. Narinder Bishal and Anr. v. Sh. Rambir Singh and Ors., MAC App. 1007-08/2006, decided on 20.02.08 by Kailash Gambhir, J., it has been 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.”

10. *In The New India Assurance Co. Ltd. v. Smt. Nirmala Devi and Ors., [2007] VI AD (Delhi) 730, this Court held:-*

“A perusal of the minimum wages notified under the Minimum Wages Act show that the minimum wages gets increased by nearly 150% in 10 years.”

11. *The Court further observed:-*

“Noting that minimum wages virtually double after every 10 years to neutralise increase in inflation, cost of living, purchasing power of rupee.....”

12. *Since the minimum wages have doubled in the past 10 years as per the Minimum Wages Act, therefore, safely the said increase at least can be taken in view as a future increase of double Minimum Wages under the Minimum Wages Act. Applying the said criteria, the income of the deceased as assessed in the year 2005 would increase to Rs. 4,800/- and taking an average of*

the same, the Tribunal rightly assessed the income of deceased at Rs. 3,200/- per month.”

10. The Tribunal’s finding on this aspect, therefore, cannot be faulted.

11. Where full compensation for loss of dependency is granted, only a notional sum is awarded towards the non-pecuniary damages i.e. loss of love and affection, loss of consortium and loss of estate. Funeral charges are awarded on actual basis. There has to be uniformity in the award of compensation under these heads irrespective of the status of the deceased or the Claimants. No evidence was led as to the actual funeral expenses spent by the Respondent.

12. Hence, revised loss of dependency works out as ₹6,38,280/- (3940/- + 50% ÷ 2 x 12 x 18).

13. The overall revised compensation is tabulated hereunder:-

(1)	Loss of dependency	=	₹ 6,38,280/-
(2)	Loss of love and affection & loss of consortium		
		=	₹ 25,000/-
(3)	Loss of estate	=	₹ 10,000/-
(4)	Funeral Expenses	=	₹ 10,000/-
TOTAL		=	₹ 6,83,280/-

14. The compensation is reduced from ₹ 9,41,040/- to ₹ 6,83,280/- including the interim compensation of ₹ 50,000/-.
15. 50% of the amount was ordered to be released to Respondent by the order of this Court dated 28.04.2011.
16. The excess amount along with interest earned, if any, on the sum of ₹ 2,57,760/- shall be refunded to the Appellant Insurance Company. The statutory amount of ₹25,000/- shall also be refunded.
17. The appeal is allowed in above terms.
18. The report from the Registry may be obtained as to the amount released and the amount lying deposited. List on 23.01.2012.

(G.P. MITTAL)
JUDGE

JANUARY, 06, 2012

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