

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

*Decided on: 25<sup>th</sup> January, 2012*

+ **MAC APP. 562/2011**

NEW INDIA ASSURANCE COMPANY LTD..... Appellant

Through: Mr. R.K. Tripathi Advocate.

Versus

SMT. MANJU & ORS. .... Respondents

Through: Mr. A Hasan, Advocate with  
Mr. Vijay Kumar Advocate for R-4.

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

### **J U D G M E N T**

#### **G. P. MITTAL, J. (ORAL)**

1. The Respondent No.3 Smt. Savitri Devi who is mother of deceased Ravinder Kumar expired on 01.04.2011. The information regarding the death was given by the Respondent No.4, father of deceased Ravinder and husband of Respondent No.3 by an application under Section 151 CPC.
2. By CM APPL. No. 1584/2012, it has been urged that he being Class I legal heir, the share payable to Respondent No.3 should be paid to him.
3. The Learned Counsel for the Appellant submits that an Application for deletion of Respondent No.3's name was moved but, the same has not yet been listed.

4. In view of the admitted position, the name of Respondent No.3 is deleted from the array of parties. The Respondent No.4 shall be entitled to make appropriate submissions during the course of the arguments.
5. This Appeal is for reduction of compensation for the death of Ravinder Kumar who was aged about 28 years at the time of the accident which took place on 29.07.2006. The Motor Accident Claims Tribunal, (the Claims Tribunal) by the impugned award granted a compensation of ₹ 14,02,324/-.
6. During inquiry before the Claims Tribunal it was claimed that the deceased was getting a salary of ₹ 6,000/- per month from M/s. Swastik Enterprises; he was working as Physical Training Instructor (PTI) and was getting a salary of ₹ 2,500/-0 per month from SDM High School; in addition, the deceased had income from agriculture.
7. The Tribunal by the impugned judgment believed that the deceased was getting a salary of ₹2,500/- per month on the basis of the testimony of SDM High School's Principal and the certificate Ex.PW-5/7. The Tribunal declined to accept that the deceased was working with M/s. Swastik Enterprises and was getting a salary of ₹ 6,000/- per month. The agriculture income was also disbelieved. It was held that if there was any income from agriculture, it continued even after the deceased's death as this was the income to the deceased's larger family. Strangely,

the Tribunal took the deceased's salary from part time work as a PTI as ₹ 2,500/- per month, added ₹ 6531/- i.e. the salary of a Graduate as per Minimum Wages Act notified in Delhi; the Tribunal further made addition of 50% in the minimum wages on the basis of the judgment of this Court in *New India Assurance Company v. Raja Ram*, MAC APP. No.175/2006 decided on 25.08.2009 and computed the loss of dependency as ₹ 13,32,324/-.

8. The Tribunal's findings are extracted hereunder:-

*“.... PW-7 is a principal of a school who brought record from SDM High School to show that deceased was a part time PTI teacher and was earning Rs.2,500/- per month. He proved the certificate Ex.PW5/7 issued by him. He has also brought the appointment letter and salary record of the deceased so few cuttings on the attendance register does not draw a presumption that those are also forged and fabricated. Accordingly, the monthly income of deceased at Rs.2,500/- from SDM High school while working as PT Instructor is proved.*

*x                      x                      x                      x                      x                      x*

*Petitioners have not brought on record any document to show that deceased was having any agricultural land in his name and at what place. Petitioners from the statements of PW-1, PW-2 and PW-4, tried to prove that deceased was also an agriculturalist and used to sell the fruits and vegetables to them from time to time and was getting agricultural income. They have given some instances of sale of the agricultural produce by the*

deceased to them but from few instances, it is not proved what exact amount, deceased was earning from agricultural produce and whether this income exclusively belonged to him or it was a family income. PW-1 stated that deceased had sold 12 bags of mustard to him on 31-5-2006. This witness has now admitted that after death of deceased and even prior to that day, his father used to bring the agricultural produce to him for sale. PW-2 had proved two instances of sale of onions by the deceased but he also admitted in cross examination that earlier to death of the deceased and even after his death, brother of the deceased used to bring the produce to him for sale. Similarly PW-4 had only four instances when some agricultural produce was brought to him by the deceased in the month of April, 2006 only. These admissions on the part of the witnesses point out that family of deceased had not suffered any loss of agricultural income even after death of the deceased and now other family members are getting the same from sale of agricultural produce. Mere taking the fruits and vegetables to these three witnesses itself is not sufficient to presume that sale proceeds exclusively belonged to him. No income tax return of the deceased is brought on record by the petitioners to show what the income of the deceased from agriculture was. In such situation, it is difficult for the court to presume that deceased was having an agricultural income of his own. The possibility of delivering agricultural produce of common land or of another to these three witnesses cannot be ruled out in such circumstances. Accordingly, the claim of the petitioners regarding loss of agricultural income after death of deceased is liable to be rejected.

PW-5 has shown one receipt Ex. PW5/8 regarding payment of Rs.6,000/- to the deceased allegedly

*issued by M/s. Swastik Enterprises and alleged that deceased was working in this concern from 10 a.m. to 6 p.m. However this receipt is not proved as no witness from this concern has been examined to show that deceased was working in this concern. No appointment letter of the deceased issued by this concern is produced. He was allegedly working as recovery officer in this concern but the receipt does not show any status and designation of the deceased. It is not disclosed by petitioners since when deceased was working in this concern. This document Ex. PW5/8 is a simple one receipt and not a salary slip. Accordingly, it is difficult for this court to rely upon this document and income of deceased from this concern is not established.”*

9. The Claims Tribunal was justified in disbelieving the deceased's income from agriculture and M/s. Swastik Enterprises. There is no substantial material to challenge this finding of fact reached by the Claims Tribunal. But, at the same time, the Tribunal could not have added the part time salary of the deceased from the job of PTI if it had also taken the salary of a Graduate as per the Minimum Wages Act. Since the salary of a Graduate was much more than the part time salary of a PTI, presumably the deceased was doing something more than simply working as a PTI. His income should have been restricted to ₹ 4031/- which were the Minimum Wages of a Graduate on the date of the accident i.e. 29.07.2006.
10. The Tribunal rightly added 50% on account of increase in the Minimum Wages on the basis of the judgment of this Court in

(i) *National Insurance Company Ltd. v. Renu Devi & Ors.*, III (2008) ACC 134; (ii) *Kanwar Devi and Ors. v. Bansal Roadways & Ors.*, 2008 ACJ 2181; (iii) *UPSRTC v. Munni Devi*, IV (2009) ACC 879; and (iv) *Narinder Bishal & Anr. v. Rambir Singh & Ors.* 2009 ACJ 1881.

11. The loss of dependency thus works out as ₹ 8,22,324/- (4031 + 50% -  $\frac{1}{3} \times 12 \times 17$ ).
12. The Respondents Claimants are entitled to addition of ₹ 10,000/- towards loss of consortium, ₹ 10,000/- towards loss of estate, ₹ 10,000/- towards funeral expenses and ₹ 25,000/- towards loss of love and affection. The overall compensation comes to ₹ 8,77,324/- (8,22,324/- + 55,000/-).
13. The Third Respondent (Smt. Savitri Devi) the deceased's mother has since expired and her name was deleted from the array of parties as her husband, the Fourth Respondent was already on record.
14. Out of the compensation awarded, a sum of ₹ 2,00,000/- along with the proportionate interest shall be payable to the Fourth Respondent (Shri Ram Chander). Rest of the amount along with proportionate interest shall be equally shared by the First and the Second Respondent. The Second Respondent is the deceased's minor daughter; the amount payable to her shall be held in fixed deposit in UCO Bank, Delhi High Court Branch, New Delhi, till she attains the age of 21 years.

15. 30% of the amount awarded to the First Respondent shall be released to her (if not already released). Rest 70% shall be kept in FDRs for one year to seven year i.e. 10% for one year, 10% for two years, 10% for three years and so on in UCO Bank, Delhi High Court Branch, New Delhi.
16. The excess amount along with interest, if any, earned during the pendency of the Appeal shall be released to the Appellant Insurance Company through its counsel.
17. The statutory amount of ₹ 25,000/- shall also be so released.
18. The Appeal is allowed in above terms. No costs.
19. Pending applications stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**JANUARY 25, 2012**

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