

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

Reserved on: 4th January, 2012
Pronounced on: 17th January, 2012

+ **MAC.APP. 588/2011**

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD.

.... Appellant

Through: Ms. Suman Bagga, Adv.

versus

GURNAM KAUR & ORS

..... Respondents

Through: Mr. Gurmit Singh Hans, Adv.
for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant seeks reduction of compensation awarded by Motor Accident Claims Tribunal (the Tribunal), for the death of Harvinder Singh, who died in an accident which took place on 04.11.2009.
2. The only ground of challenge is the addition of 50% to the minimum wages taken by the Tribunal to determine the loss of dependency. During inquiry before the Tribunal it was claimed that the deceased was engaged in repair, sale and purchase of second hand AC, washing machine and other electrical appliances and was earning ₹ 10,000/- per month.

3. In the absence of any cogent evidence, the Tribunal took the minimum wages of a skilled worker, added 50% towards inflation on the basis of *National Insurance Company Limited v. Kailash Devi, II (2008) ACC 770* and worked out the loss of dependency as ₹ 8,39,565/-. The overall compensation of ₹ 9,69,565/- was awarded to the Claimants.
4. This Court in (i) *UPSRTC v. Munni Devi, IV (2009) ACC 879*; (ii) *National Insurance Company Ltd. v. Renu Devi & Ors., III (2008) ACC 134*; and (iii) *Narinder Bishal & Anr. v. Rambir Singh & Ors. MAC APP. 1007-08/2006* decided on 20th February, 2008 has observed that 50% of the minimum wages have to be added to offset the inflation due to indexation. 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 hence there is need to add 50% of the minimum wages to arrive at the victim's income.
5. 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 is to be noticed that there was an increase of about 50% in the minimum wages in just six months. This was not on account of inflation but to provide a better standard of living.

6. In *National Insurance Company Ltd. v. Renu Devi & Ors.*, III (2008) ACC 134, 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.”

7. Thus, the Tribunal's finding making an addition of 50% to give the benefit of an increase of 50% in the minimum wages cannot be faulted.
8. It is urged that the compensation of ₹1,00,000/- towards the loss of love and affection was excessive. In this regard, I may mention that where the Claimants are entitled to loss of dependency on actual basis, normally a nominal sum is awarded under the head of loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages irrespective of the number of dependents. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.

9. The overall compensation is reduced from ₹9,69,565/- to ₹8,94,565/- (i.e. ₹9,69,565/- - ₹75,000/-).
10. The excess amount along with interest earned, if any, on the sum of ₹75,000/- shall be refunded to the Appellant Insurance Company. The statutory amount of ₹25,000/- shall also be refunded.
11. The compensation shall be disbursed to the Respondents Claimants proportionately in terms of the Tribunal's award.
12. The Appeal is allowed in above terms.
13. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 17, 2012

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