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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd January, 2012

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MAC. APP. No.984/2011 & CM.No.20313/2011(stay)

HDFC ERGO GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Neerja Sachdeva, Advocate

versus

SHANKASHI DEVI & ORS

..... Respondents

Through Mr. S.N. Parashar, Advocate for
Respondents No.1 to 7

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. Notice.
2. Mr. S.N. Parashar, Advocate appearing on behalf of Respondents No.1 to 7 accepts notice.
3. The Appeal is for reduction of compensation of ₹7,72,000/- for the death of Gyan Chand who was aged about 49 years at the time of the accident which took place on 10.06.2009.

4. The learned counsel for the Appellant submits that the Respondents (Claimants) failed to produce any evidence with regard to the deceased's income. The Tribunal took the minimum wages of an unskilled worker and erred in adding 50% thereof towards inflation to compute the loss of dependency.
5. On the other hand, the learned counsel for the Respondents submits that the compensation awarded is just and reasonable, rather the compensation amount of ₹10,000/- awarded towards loss of love and affection is on the lower side.
6. 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 an 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.
7. A perusal of the Notifications issued under the Minimum Wages Act would show that the minimum wages of an unskilled worker were revised from ₹3683/- on 01.08.2009 to ₹ 5278/- 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.

8. 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.”

9. At the same time, it has to be noticed that at the time of accident, the deceased was aged about 49 years. The principles as given in *Sarla Varma v. DTC*, (2009) 6 SCC 121 while considering the indexation due to inflation in case of minimum wages. 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 (supra)* 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 and 'NIL' where the deceased/injured was more than 50 years.
10. The compensation of ₹10,000/- awarded towards the loss of love and affection needs to be enhanced to ₹25,000/-. In view of the discussion above, the compensation is reassessed as under:

1. Loss of dependency	₹ 6,38,252/-
2. Loss of love and affection	₹ 25,000/-
3. Loss of consortium	₹ 10,000/-
4. Funeral Expenses	₹ 5,000/-
5. Loss to Estate	₹10,000/-
TOTAL	₹ 6,98,252/-

11. The overall compensation stands reduced from ₹7,72,000/- to ₹ 6,98,252/-. The compensation of ₹ 6,98,252/- after deducting interim compensation, if paid shall be released/held in fixed deposit and apportioned in the manner as suggested by the Tribunal except that the amount shall be held in FDR in UCO Bank, Delhi High Court Branch and the award of compensation in favour of Respondent No.1 shall stand reduced to the extent as ordered by this Court.
12. The excess amount deposited by the Appellant shall be released with the interest, if any, earned during the pendency of Appeal.
13. The statutory amount of ₹ 25,000/- shall also be returned to the Appellant.
14. The Appeal and the pending application stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 23, 2012

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