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

Decided on: 18th February, 2015

+ **MAC.APP. 526/2012**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr.D.K. Sharma, Advocate

versus

SHANTI DEVI & ORS

..... Respondents

Through: Mr. Lokesh Kumar, Advocate
with Mr. Harish Nigam,
Advocate for Respondents no.1
to 5.

+ **MAC.APP. 775/2012**

SHANTI DEVI AND ORS

..... Appellants

Through: Mr. Lokesh Kumar, Advocate
with Mr. Harish Nigam,
Advocate

versus

VINOD AND ORS

..... Respondents

Through: Mr. D.K. Sharma, Advocate for
Respondent no.3 Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals (MAC. APP. 526/2012 and MAC. APP. 775/2012) arise out of the judgment dated 15.03.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.8,11,477/- was awarded to Respondents no.1 to 5 (in MAC.APP.526/2012), who are the legal representatives of deceased Prem Shanker who suffered fatal injuries in a motor vehicular accident which occurred on 30.05.2006.
2. For the sake of convenience, the Appellant in MAC.APP. 526/2012 which is an appeal for reduction of compensation will be referred to as the Insurance Company, whereas the Appellants in MAC.APP. 775/2012, who are the legal representatives of deceased Prem Shanker, shall be referred to as the claimants.
3. During inquiry before the Claims Tribunal, it was claimed that the deceased was working with M/s Allena Auto Industries Pvt. Ltd. and was getting a salary of Rs.5,077/- per month. The Claims Tribunal was not convinced as it was proved on record that the deceased had resigned from the service. The Claims Tribunal therefore, took minimum wages of a skilled worker and made addition of 30% towards inflation to compute the loss

of dependency as Rs.6,07,932/-. The Claims Tribunal further awarded a sum of Rs.1,65,000/- under non-pecuniary heads, in addition the claimants were awarded a sum of Rs.33,545/- towards medical expenses and Rs.5,000/- towards special diet and conveyance to arrive at a total compensation of Rs.8,11,477/-.

4. Urging that the compensation awarded is exorbitant and excessive, the learned counsel for the Insurance Company urges that in the absence of any evidence with regard to the future prospects, no addition towards the same should have been made. It is stated that the compensation towards non-pecuniary damages is also on the higher side.
5. On the other hand, the learned counsel for the claimants urges that sufficient material was placed on record to prove that the deceased was an excellent painter. Although he resigned from M/s Allena Auto Industries Pvt. Ltd., but he was working as an independent contractor with the same company raising bills and his tax was being deducted at source which amply demonstrated that the deceased had a handsome income and bright future prospects.

MULTIPLICANT AND FUTURE PROSPECTS:

6. In order to prove the income of deceased Prem Shanker, the claimants examined PW-4 Mr. K.M. Chacko who was working as a Manager in M/s Allena Auto Industries Pvt. Ltd. Relevant

portion of the examination of this witness is extracted hereunder:

“...The computer generated copy of the pay of the deceased Prem Shankar is Ex.PW-4/B, the deceased started doing the job work in the name and style of Prem Stoving and Spray Printing Works and the statement of Ledger of Prem Stoving and Spray Printing Work for financial year 1/04/2004 to 31.03.2006 Ex.PW-4/C is the relevant document. The same are attested by me at the time of resignation of the deceased for our company he was getting total emolument Rs.5070/- p.m. as mentioned in the salary Ex.PW-4/B in the year 2005.

Our Co. has deducted the TDS for the year 2004-2005 and 2005-2006 the certified copy of the same are already on record which are marked B & C.”

7. In cross-examination, PW-4 deposed as under:

“....The deceased resigned from the service in March, 2006. The exact date I don't know. It is correct from July 2005 till March 2006 he did not attend the service. It is wrong to suggest that the deceased was never in the service of the Allena Auto Industries Pvt. Ltd. It is wrong to suggest that document Ex.PW-4/A and PW-4/B are forged and fabricated documents. I have not brought the bills issued by Prem Stoving and Spray Printing Work. I do not know whether the Prem Stoving and Spray Printing Work was a proprietorship or partnership firm. It is wrong to suggest that document Ex.PW-4/C is forged and fabricated document. I have not brought the record of TDS deducted from the payment giving to Prem

Stoving and Spray Printing Works. I do not know whether the said firm was registered under Sales Tax and Income Tax. It is wrong to suggest I am deposing falsely.”

8. Apart from the examination of this witness, the claimants also placed on record statement of account of Prem Stoving and Spray Printing Work in the name and style of which the deceased was working. The statement of account for the accounting year 2004-05 reveals that a TDS of Rs.70,101/- was deducted by M/s Allena Auto Industries Pvt. Ltd. Similarly, for the accounting year 2005-06, a TDS of Rs.9,676/- was deducted. The rate of TDS has been mentioned at 2% and 2.04% respectively.
9. It is therefore, evident that deceased Prem Shanker did not resign from the job for any bad reason. Rather, it can be inferred from the statement of PW-4 that the deceased resigned for better prospects and instead of being happy with the salary of Rs.5,077/- per month, he entered into a venture of doing his own work for the same company.
10. A perusal of the statement of account also reveals that there are a number of entries of debit and credit. At the same time, in the absence of any evidence, it will be difficult to say whether these entries were on account of raw material supplied by M/s Allena Auto Industries Pvt. Ltd. or for some other purpose. Saying

that it was for supply of the raw material will only be speculating. The accident in question took place on 30.05.2006. Any income and beyond Rs.1,00,000/- in the Assessment Year (A.Y.) 2006-07 and Rs.1,10,000/- in the A.Y. 2007-08 was taxable. I will have to make some guess work to arrive at the income of the deceased. In the circumstances of the case, I will take the same to be Rs.1,10,000/- per annum.

11. Since the deceased was a self-employed person and in the absence of any Income Tax Return (ITR) *etc.*, it will be difficult to make addition towards future prospects. The loss of dependency therefore, comes to Rs.10,72,500/- (Rs.1,10,000/- x $\frac{3}{4}$ x 13).
12. I will further award a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate. In addition, the claimants are entitled to a sum of Rs.33,545/- towards medical expenses and Rs.5,000/- towards special diet and conveyance as awarded by the Claims Tribunal in view of the fact that the deceased suffered injuries on 30.05.2006 and succumbed to the injuries during the course of the treatment on 02.06.2006. The overall compensation thus, comes to Rs.13,46,045/-
13. The compensation is hence, enhanced by Rs.5,34,568/- which shall carry interest @ 7.5% per annum from the date of filing of

the claim petition till its payment.

14. The Insurance Company is directed to deposit the enhanced compensation along with proportionate interest with the Claims Tribunal within six weeks, failing which the claimants would be entitled to interest @ 12% per annum from the date of this judgment.
15. The compensation awarded by the Claims Tribunal shall be released/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.
16. 60% of the enhanced compensation along with proportionate interest shall be paid to Respondents no.2 to 4(claimants). Rest 40% shall enure for the benefit of Respondent no.1, who is the widow of the deceased.
17. 75% of the enhanced compensation payable to Respondents no.2 to 5 shall be released/held in Fixed Deposit for a period of two years. Rest shall be released on deposit.
18. 50% of the enhanced amount payable to Respondent no.1(claimant) shall be held in Fixed Deposit for a period of two, four and six years in equal proportion. Rest shall be released on deposit.
19. Both the appeals are disposed of in above terms.
20. Pending applications also stand disposed of.

21. Statutory amount, if any, deposited shall be refunded to the Insurance Company only after deposit of the enhanced compensation and filing of a certificate that the enhanced compensation has been deposited with the Claims Tribunal.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2015

pst