(2012) 09 AHC CK 0151

In the Allahabad High Court

Case No : First Appeal From Order No. 91 of 2009

Baij Nath APPELLANT

Vs

National Insurance Co.Ltd.and Others RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2012) 09 AHC CK 0151

Hon'ble Judges : Devi Prasad Singh, J and Vishnu Chandra Gupta, J

Final Decision : Allowed

Judgement

Devi Prasad Singh and Vishnu Chandra Gupta, JJ.—This appeal under section 173 of the Motor Vehicles Act for enhancement of award, has been preferred against the impugned award dated 26.9.2008, passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 4, Barabanki in M.A.C. Case No. 45 of 2006, on the ground that compensation awarded to the appellant is inadequate, as it has been passed without application of mind wrongly assessing the notional income provided in the structural form of Motor Vehicles Act.

2. While assailing the impugned award and stalling the claim for higher compensation, it has been submitted by the learned Counsel for the appellant that the notional income of the deceased has wrongly been assessed in pursuance to Second Schedule at the rate of ? 15,000/ per annum. The appellants'' Counsel has relied upon an Apex Court''s judgment in Laxmi Devi and others v. Mohammad Tabbar and another, 2008 (2) TAC 394 (SC), where their Lordships of Hon''ble Supreme Court ruled out that the Second Schedule of the Act has lost its utility being an old one and even a daily wage employee gets minimum hundred rupees per day. Accordingly, their Lordships held that the notional income should be assessed at the rate of Rs. 3,000/ per month.

3. In view of the Apex Court''s judgment in Laxmi Devi (supra), followed by different Division Benches of this Court assessing notional income at the rate of Rs. 3,000/ per month, we are of the view that the income of the deceased should

be assessed at the rate of Rs. 3,000/ per month. Accordingly, the impugned award requires modification by enhancing the compensation payable to the appellant.

4. Keeping in view the fact that the deceased was bachelor and multiplier of 17 is applied, then total amount of compensation would come to Rs. 36,000 x 17=6,12,000/ and adding the expenses of cremation i.e., Rs. 2,000/, the total amount of compensation would come to Rs. 6,14,000/.

5. Therefore, the appeal is allowed. The award dated 26th September, 2008 stands modified to the extent that the compensation of Rs. 6,14,000/ is awarded in place of Rs. 1,29,500/ alongwith interest in terms of award from the date of filing of appeal.

6. The respondents shall deposit the rest of the amount inclusive of statutory deposit, in case already not deposited, within a period of two months before the Tribunal in terms of the modified award. The amount deposited in this Court shall be remitted to the Tribunal by the registry forthwith and the Tribunal shall release the same immediately in favour of the claimants within next two months.

