(2012) 09 AHC CK 0175

In the Allahabad High Court

Case No : First Appeal From Order No. 93 of 2009

Gayatri Devi and Others	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 0175

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

Final Decision : Allowed

Judgement

Vishnu Chandra Gupta, J.

This appeal under Section 168173 of the Motor Vehicles Act, 1988 has been preferred against the impugned award dated 26.09.2008 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 4, Barabanki in M.A.C. Case No. 22 of 2006.

Appellants'' counsel submits that the Tribunal has wrongly assessed the notional income of the deceased at the rate of Rs.2500/ per month. Further submission is that since the award is not based on notional income, the Tribunal had assessed the income at the rate of Rs.3000/ per month but deducted Rs.500/ on the ground that working days of the deceased, who was driver, shall not be more than 25 days. The claimant further pleaded that the income of deceased was 4000/ per month.

There appears to be wrong assessment by the Tribunal with regard to salary of the deceased of Rs.2500/ per month instead of Rs.3000/ as the salary of the driver which seems to be not reasonable. The Tribunal failed to assess the notional income of the deceased while exercising its jurisdiction in view of the judgment of the Hon''ble Supreme Court reported in 2008 (2) T.A.C. 394 (SC) Laxmi Devi and Ors. Vs. Mohammad Tabbar and another, where, Hon''ble Supreme Court has held the notional income at Rs.3000/ per month. The judgment of Laxmi Devi (supra), has been followed by different Division Benches of this Court in identical matters.

Accordingly, we assess the income of the deceased at the rate of Rs.3000/ per month which is also the notional income. Accordingly, after deducting 1/3 of the notional income, the total income of the deceased comes to Rs. 24,000/ per year and by applying multiplier of 18, the total amount comes to Rs.4,32,000/ (24000x 18=432000). After adding the amount of Rs. 5000/ in lieu of funeral expenses and loss of state, the total compensation comes to Rs.4,37,000/.

Accordingly, the appeal is allowed. The impugned award dated 26th September, 2008 stands modified. The appellants shall be entitled the compensation to the extent of Rs. 4,37,000/ along with interest in terms of award from the date of filing of appeal.

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. 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 appellant within next two months.

