

(2004) 07 SHI CK 0027
In the High Court Of Himachal Pradesh

National Insurance Company Ltd.

APPELLANT

Vs

Promila Devi and Others

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Citation : (2004) 3 ACC 900

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Judgement

V.K. Gupta, C.J.—Even though in the grounds of appeal the judgment and award of the Tribunal has been assailed on two counts, with respect to the finding about the rashness and negligence and the quantum of compensation, during the course of hearing of the case today Ms. Devyani Sharma, learned Counsel appearing for the appellant has submitted that she does not press the ground regarding the rashness and negligence and that the only ground which she is urging against the impugned award is with respect of the quantum of compensation. No other point was urged.

2. The Tribunal awarded a compensation of Rs. 7,92,000/-, apart from awarding Rs. 10,000/- each to every claimant under the Heading of "conventional damages on Account of loss of love and affection". The methodology adopted by the Tribunal for arriving at the compensation amount of Rs. 7,92,000/- was this;

The Tribunal even though found and held that as per the evidence adduced, the monthly income of *the deceased was Rs. 3,276.71 looking to his future prospects he treated his monthly income at Rs. 6,500/-and by deducting 1/3rd of this amount towards the personal expenses of the deceased (and hence 2/3rd of this amount as the loss of dependency), the loss of dependency as far as the claimants are concerned, was worked out at Rs. 4,400/- per month. By applying the multiplier of 15 to the annual loss of dependency on the aforesaid formula, the compensation amount was capitalized at Rs. 7,92,000/-.

3. The learned Counsel for the appellant has submitted that there was absolutely

no evidence adduced by the claimants before the Tribunal about the future prospects or the advancement in career as far as the deceased was concerned and that no evidence whatsoever was also led by the claimants to establish any fact as to whether at any point of time the deceased was to be promoted and if so on what basis and if he was to be promoted in future what would have been the scale of his pay and how much amount under various heads he would be getting from his employer. I agree fully with the aforesaid argument of the learned Counsel for the appellant and on careful scrutiny of the record do find that not a whisper or murmur was raised before the Tribunal to the aforesaid effect by the claimants nor was any evidence led with respect to the future promotion, future prospects, or the future advancement or increment in the career of the deceased.

4. In support of her aforesaid contention, Ms. Sharma has relied upon two Division Bench judgments of Delhi High Court in cases of *Ved Vati and Others Vs. Chatter Singh and Others*, and *Delhi Transport Corporation and Another v. Kumari Lalita* reported in 1983 A.C.J. 253. In both these cases, Delhi High Court has clearly taken a view that in the absence of positive evidence on this subject, the Tribunals cannot apply their imagination in structuring out either the inflationary trends or the future prospects and that the compensation has to be awarded, looking to the trends as have been prevalent as on the date of the Accident. In the case of *Delhi Transport Corporation (supra)*, Their Lordships of Delhi High Court have actually gone to the extent of saying that the award should keep pace with the time and that tort losses are ordinarily assessed as of the time when the cause of action accrues and that, therefore, the award by the Tribunal must be made in the context of the time. The computation of loss has to be made with reference to the date of Accident since damages must not be either unreasonably deficient or a windfall to the victims of the Accident. The damages must necessarily come to the estimated within a bracket ~ of justice, both to the sufferers and to the tort-feasor. In the subsequent judgment of the Delhi High Court in *Ved Vati (supra)*, the Division Bench actually made the following observations:

4. There is no dispute with the proposition that future advancement in life and career of the deceased Accident victim could form a valid factor/consideration for determination of his/her gross income as held by the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, and as followed by us in a number of cases. But this was not to be done as a matter of course or on taking judicial notice. On the contrary some proof was required to be furnished for this. It was for the claimants to adduce appropriate proof to substantiate their claim in this regard. Therefore, no judicial notice could be taken of any pay revision that might have been generally ordered or future salary position of a deceased as a matter of course.

5. Having made the aforesaid observations, the Delhi High Court went on to

observe that because there was no evidence adduced before the Tribunal, the future prospects of the deceased could not be taken into Account.

6. Mr. G.R. Palsra, learned Counsel appearing for the claimant-respondents has, refuting the aforesaid submission of Ms. Sharma relied upon a judgment of the Supreme Court in the case of Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, I have carefully perused the aforesaid judgment of the Supreme Court and find that while dealing with the issue of future prospects Their Lordships made a passing reference in paras 13 and 14 of the judgment which, for ready reference I quote herein below:

13. The deceased at the time of Accident was a young man. He had a stable job. A reasonably liberal view of his future prospects should have, therefore, been taken into consideration by the High Court as well as by the Tribunal

14. Having regard to the prospects and advancement of the future career, a higher estimate of the yearly income at Rs. 45,000/- would not be out of place. From the said amount, one-third of the gross income towards personal living expenses should be deducted. The amount of Rs. 3000/- should thus be determined as the loss of dependency. The said sum should be capitalized by applying the multiplier of 15, which comes to Rs. 4,50,000/-.

7. In the present case the claimants did not adduce any evidence before the Tribunal with respect to the future prospects, the promotion, the increment or the advancement with respect to the career of the deceased and applying the ratio in the aforesaid Delhi High Court two Division Bench judgments, could have easily gone ahead and modified the award by holding that, in the facts and circumstances of the present case, the compensation amount should be worked out on the basis of the monthly income of the deceased at Rs. 3,276.71 only, but since the Supreme Court in the case of Abati Bezbanmh (supra) has, even by making a passing reference indicated that "having regard to the prospects and advance of the future career, a higher estimate of the yearly income at Rs. 45,000/- would not be out of place", I feel that a slight increase linked with the future prospects and advancement of the future career may be considered in our case, even though the judgment in Abati Bezkirumh (supra) does not indicate or reveal to me whether in that case the, claimants had adduced any evidence or had not adduced any evidence with respect to the future prospects, the promotion and the advancement of the future career. I am saying so because in Abati Bezbanmh (supra). Their Lordships of the Supreme Court were not laying down a proposition of law as such, in abstract terms that even though there has not been any evidence, the monthly income as has been proved should be inflated linked with future prospects One thing is, however, clear and certain and that is that, with or without the aid of evidence, (which has not been revealed in the judgment) in Abati Bezbaruah (supra). Their Lordships of the Supreme Court granted an increase of less than 10% in the annual income of the deceased because admittedly, as per the evidence, the monthly income of the deceased in that case at the time of his death was Rs. 3,500/- (annual income being Rs.

42,000/-) whereas in para 14 of the judgment the annual income based on higher estimate was worked out at Rs. 45,000/- he., an increase of just Rs. 3,000/- per annum, which was much less than even 10% of the actual annual income. Taking a cue from the aforesaid judgment of the Supreme Court, therefore, in the present case, I may also increase the annual income, linked with future prospects and advancement of the future career, even though there is no evidence of this aspect The proven monthly income of the deceased being Rs. 3,276.71 and the annual income thus being Rs. 39320.52, giving an increase of 10% of this, based on the aforesaid formula, the annual income of the deceased should be treated at Rs. 43,252.51. Setting apart 1/3rd towards personal expenses of the deceased i.e., Rs. 14,41,750, 2/3rd of this amount comes to Rs. 28,835.02 which thus should be treated as the annual loss of dependency as far as the claimants are concerned. The Tribunal has applied the multiplier of 15 in the present case. In my considered opinion, looking to the fact that the deceased was 34 years old at the time of the death and he left behind as many as four dependents including his young widow, two minor children and mother, the multiplier of 17 should be more appropriate. Applying the multiplier of 17 to the aforesaid multiplicand of Rs. 28,835.02, the compensation amount is worked out at Rs. 4,90,19,534.

8. The award impugned in this appeal is Accordingly modified to the only extent that instead of the compensation amount of Rs. 7,92,000/-, the amount shall now stand revised to Rs. 4,90,19,534.

Rest of the award shall remain unaltered.

9. Based on the aforesaid reasoning, Accordingly this appeal is disposed of and it is directed, that in consequence of the modification of the award as indicated hereinabove, whatever amount has been deposited by the appellant in this Court, after suitable adjustment by the Registry of this Court in Accordance with and based upon the modification of the award as has been done in this appeal by this Court, whatever amount is found due in favour of the claimant-respondents, inclusive of the interest element shall be disbursed to them and the remainder shall be returned to the appellant.

10. The appeal is disposed of in terms of the aforesaid directions. Interim order shall stand vacated.