

(2008) 05 DEL CK 0079

In the Delhi High Court

Case No : MAC Appeal No. 280 of 2008

New India Ass. Co. Ltd.

APPELLANT

Vs

Sh. Vijay Singh, Smt. Krishna Devi, Shri Dan Singh and Sh.
Trilok Singh, (owner)

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 1 ILR Delhi 61

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Rakesh Mittal and Meenu Pandey, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed by New India Assurance Company Ltd. against the judgment dated 17.01.08, passed by Ms. Neena Bansal, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), Delhi.

2. Brief facts leading to dispute are that on 13.07.06 at about 9 pm, while the deceased, Sh. Sandeep was going to his house on his by-cycle, he was hit by tempo bearing no. DL-1LB-6226 which was being driven by Sh. Dan Singh, while in the employment of Sh. Trilok Singh, owner of the said vehicle, in a rash and negligent manner at a high speed. Because of the impact, deceased Sandeep sustained injuries and he was taken to Sushrut Trauma Center, where he died after one day.

3. The Tribunal vide impugned judgment, awarded compensation of Rs. 3,85,000/- by adopting multiplier of 13 on account of loss of dependency; Rs. 40,000/- on account of loss of love and affection & consortium; Rs. 15,000/- for funeral expenses, totaling Rs. 4,40,000/- along with interest @ 7.5% per annum

from the date of filing of the petition till its realization.

4. It has been contended by learned Counsel for the Appellant that the Tribunal has wrongly assumed income of the claimant and thus, awarded very high amount of compensation under different heads. The said accident took place on account of rash and negligent driving on the part of the deceased himself.

5. Thus, the residual question is "whether the compensation as awarded by the Tribunal is on the higher side as claimed by the Appellant - Insurance Company?"

6. It was well established before the Ld. Tribunal by the testimony of Ravinder Kumar, PW1 considered along with the other documents i.e. FIR copy registered in this case Ex.PW-1/1 and the postmortem report, that the deceased, Sandeep died on account of injuries sustained in the accident, due to rash and negligent driving of the offending vehicle by respondent no. 4, herein.

7. The father of the deceased, Vijay Singh in his testimony has deposed that the deceased was 21 years old and had studied up to 5th standard. He was doing private job as sign board painter and was earning Rs. 5,000/- per month. His mark sheet is Ex.PW1/7.

8. However, the claimants have not been able to prove the income of the deceased, as no documentary evidence had been placed on record and no employer of the deceased had been examined. Thus, the Tribunal has determined the income of the deceased as Rs. 3,271/- per month on the basis of Minimum Wages Act and after taking into consideration the fact that:

there has been about 300% increase in the price index since 1985-2006. Considering the inflationary trends and rise in price index, it would not be unreasonable to assume that the income of the deceased, who was 21 years of age at the time of death, would have doubled with the passage of time had he lived his whole life. The assumed increased income can, thus, be held as Rs. 6,542/- per month. The average income of the deceased can, thus, be calculated as Rs. 3,217/- + Rs. 6,542/- / 2, which is equal to Rs. 4,906/- per month or Rs. 58,878/-.

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.

10. In all cases where the claimants are able to sufficiently establish the income of the deceased, the benefit of granting any compensation for future prospects can be taken into consideration only when sufficient and reliable evidence is placed and proved by the claimants as per the dictum laid down in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, . While in other cases, where in the absence of sufficient evidence, the Tribunal applies the yardstick of minimum wages, in all such cases, the Tribunals can take judicial notice of the revision of minimum wages, as laid down under the Minimum Wages Act.

11. As the claimants failed to produce any cogent evidence on record and once the resort has been made to the Minimum Wages Act, Therefore, the increase in the future wages under the Minimum Wages Act can certainly be taken into consideration. Perusal of the Minimum Wages Act shows that in the past, within a period of 10 years, the minimum wages almost get more than double; for instance, the Minimum Wages for a skilled workman in the year 1980 were Rs.

320/- and the same got increased to Rs. 1043/- in the year 1990, meaning thereby that there has been an increase of 225% from the year 1980-1990, Therefore, it can be safely assumed that the income of the deceased would have doubled in the next 10 years.

12. Since the accident in the present case had occurred on 13.07.06 and the multiplier of 13 has been applied, Therefore, the wages that the deceased would have earned for this period of 13 years has to be taken into consideration. The said 13 years period from the date of accident would expire in the year 2019. Therefore, the increase in index for the past 10 years can be taken into consideration. Since the minimum wages have doubled in the past 10 years as per the Minimum Wages Act, Therefore, safely the said increase at least can be taken in view as a future increase of double Minimum Wages under the Minimum Wages Act. Applying the said criteria, the income of the deceased as assessed in the year 2006 would increase to Rs. 6,542/- and taking an average of the same, the Tribunal rightly assessed the income of deceased at Rs. 4,906/- per month.

13. It has been contended by learned Counsel for the appellant that the Tribunal should have taken the multiplier of 11 and not 13.

14. The age of the deceased at the relevant time was 21 years and as per the structured formula of the Second Schedule of the Act, the appropriate multiplier is 13. Thus, the multiplier of 13 adopted by the Tribunal is as per the Schedule and is fully justified.

15. Even assuming for arguments sake that the Tribunal has taken the income of deceased on higher side and has also taken into consideration the relevant facts with regard to increase in the minimum wages, but it should not be lost sight of the fact that the Tribunal also has deducted 1/2 of the income of the deceased towards his personal expenses, which under any circumstances is on much higher side.

16. In a plethora of cases, the Apex Court and various High Courts have held that 1/3rd amount of the income should be deducted towards self-expenses of the deceased.

17. In *New India Assurance Co. Ltd. Vs. Charlie and Another*, , the Apex Court has observed as under;

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned Counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.

18. Thus, the Tribunal ought to have made 1/3rd deduction for personal expenditure but has deducted 1/2 of the income of the deceased towards his personal expenses, which is on much higher side. Thus, the income of deceased

even assessed on somewhat higher side, stands neutralized with 50% deductions towards personal expenditure.

19. In the light of the above discussion, it is clearly borne out from the record that the tribunal has correctly assessed the income of the deceased and thus, I find myself in agreement with the order of the Ld. Tribunal. I, Therefore, do not find any infirmity in the impugned order and the compensation awarded by the learned Tribunal is just and fair.

20. As a result, the present appeal is hereby dismissed.

21. Copy of this judgment be sent to the Trial Court.