



time of death. He died due to rash and negligent driving of the driver of the truck owned by respondent No. 3. She claimed compensation to the tune of Rs. 7,52,208.

5. The written statements were filed by the owner of the truck as well as the insurance company. They denied the claim. The widow got herself examined as PW 1 and one Raju Prasad Yadav, an eyewitness of the accident, was examined as PW 2 in support of her case.

6. No documentary evidence was filed by the insurance company. The claimant in support of her case filed certified copies of the F.I.R., map of the site of accident, post-mortem examination report, technical inspection report of the vehicle, certified copy of the charge-sheet, original pay slips of her deceased husband, photocopy of the insurance policy of the truck and of the driving licence of the driver and service book of the deceased as well as succession certificates before the Motor Accidents Claims Tribunal. No documentary evidence whatsoever was given by the opposite parties in the claim application including the petitioner insurance company. Motor Accidents Claims Tribunal allowed the claim of the wife to the tune of Rs. 4,12,000.

7. The impugned award has been challenged on the ground that Motor Accidents Claims Tribunal has failed to appreciate the correct law while determining the compensation.

8. It is submitted by Mr. Manish Goel, the counsel for the petitioner that the son who was also one of the dependants was not made party to the claim petition as such claim petition on behalf of respondent No. 2 was not maintainable and that respondent No. 2 cannot be said to be financially dependent on the income of her husband deceased as she was having independent monthly income of Rs. 7,000 apart from the income of the deceased husband. It is further submitted that the widow had herself not seen the accident and could not be sure about the death of her husband and as such she could not be granted compensation. It is then submitted by Mr. Goel that PW 2 was a minor on the date of accident, hence his evidence is unreliable and cannot be taken into consideration for proving the claim regarding the manner in which the accident took place. He relied upon the judgments rendered by the Supreme Court in *State of Delhi Vs. Vijay Pal*, and *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, in support of this contention.

9. In the case of *State of Delhi Vs. Vijay Pal*, it has been held that the prosecution story was based on testimony of child eyewitness and oral extra-judicial confession as such in the circumstances a serious doubt had arisen on child's claim to being an eyewitness which affected the veracity of his evidence regarding alleged confession.

10. In the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, in which it has been held that since the insurer has a remedy by filing an appeal before the High Court, as such the High Court ought not to have

entertained the petitions under Article 226/227 of the Constitution and filing of the writ petition by the insurer is wholly misconceived.

11. The counsel for the petitioner then urged that the Tribunal is to hold inquiry according to Section 168 of the Motor Vehicles Act, 1988 and thereafter determine the claim u/s 168 in respect of each of the claims specifying the amount which appear to it to be just and proper to be paid to them by the insurer, owner or driver involved in the accident or by all of them, but the Tribunal has acted against the spirit of the aforesaid provisions as it has directed payment to the son also who was not a claimant before the Tribunal. He submits that in the circumstances that there are some discrepancies in the evidence also and Motor Accidents Claims Tribunal has committed an error in law and fact in granting compensation to her. He also submits that there was no proof regarding the age and the income of the deceased as such the compensation was wrongly computed.

12. Mr. Ram Singh, learned Counsel for the respondents submits that the fact that claimant was having independent income is immaterial and would not oust the jurisdiction of the Tribunal on this score as the compensation is determined on the death of an earning member of the family and loss caused by the family member and not on the factum of income of other members of the family. He further submits that under law any of the legal representatives of the deceased who died in the motor accident can file the claim under the provisions of the Motor Vehicles Act, 1988 and as such the Tribunal did not commit any error in law or on facts in entertaining the claim or determining the compensation. It is lastly submitted that evidence of an eyewitness who may be a minor cannot be discarded if the court finds assurance from the evidence pointing to the guilt of the accused. Relying upon para 7 of *Sachchey Lal Tiwari Vs. State of Uttar Pradesh*, , he urged that evidence of a child witness or a minor cannot be discarded or viewed with suspicion on the ground that they are chance witnesses. On the contrary they should be described as independent witnesses. The evidence of such a witness is not to be ignored by the courts and is to be tested on the touchstone of reliability, credibility and trustworthiness like any other witness as was held in *Ramakant Rai Vs. Madan Rai and Others*, .

13. I have considered the submissions made by the parties and perused the record.

14. The contention of the counsel for the petitioner that claim petition filed by her alone was not maintainable and that since she was having independent income was not entitled to any compensation is devoid of merit. Admittedly the son was minor. He was aged about 16 years at the time of death of his father and was studying in the High School. Sub-section (1)(c) of Section 166 of the Motor Vehicles Act, 1988 provides that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made by all or any of the legal representatives of the deceased. The widow was undisputedly the only major legal representative of the deceased for which

there was ample document and oral evidence before the court in this regard. The application filed by the widow was, therefore, maintainable.

15. The contention of counsel for the petitioner that Claims Tribunal u/s 168 of Motor Vehicles Act, 1988 has determined the compensation in respect of the son and has thus violated the spirit of Sections 166 and 168 of the Act is misconceived and has no force. It is apparent from issue No. 4 and the operative portion of the award that the widow and the son of the deceased who was minor at the time of death of his father have been awarded compensation by the Claims Tribunal. The Tribunal has awarded specified amount of Rs. 4,12,000 to be paid by the insurance company equally to each of them, i.e., the widow and her son and further directed that out of the awarded sum of Rs. 1,00,000 be paid in cash and rest to be invested in a fixed deposit account in a nationalized bank for a period of 3 years which would neither be withdrawn by them nor they can take loan or create charge against it during its period of deposit. Since the son was minor at the time of filing the claim, it was maintainable by the widow. Tribunal has awarded specified compensation to each of the claimants and has thus taken ample care that money awarded to them remains safe till the son attains the majority. The interest of the minor has thus been protected by the court below. Thus, there is no illegality or infirmity in the impugned award on this score. The argument that the widow had not seen the accident herself as such it cannot be said that she was not sure about the accident of her husband also has no force. She may not have seen the accident but had seen the body of her husband in S.R.N. Hospital. Post-mortem examination report was there and the last rites of the husband were preformed by the family friends and relatives. Thus there can be no doubt that her husband had died in the aforesaid accident. There was also cogent material before the Claims Tribunal that the death had occurred in an accident due to rash and negligent driving of the truck driver and in these circumstances, widow could not have been denied compensation merely on the objections that she had not seen the accident. The Tribunal has rightly awarded compensation to the family.

16. As regards admissibility of evidence by a child witness or a minor, the law has well entrenched the principles that if the evidence by the child witness or minor is reliable, credible and trustworthy, it should not be ignored. In *Suryanarayana Vs. State of Karnataka*, , the Supreme Court has held that testimony of child witness "should not be rejected only on the ground of the witness being of tender age". Court may seek corroboration of such testimony not as a rule but as a caution. Discrepancies in the testimony, if not in material particulars would lend evidence to it. If the child withstands the cross-examination and if the testimony inspires confidence, so as to rule out possibility of tutoring, it can be relied upon as the sole basis for convicting the accused.

17. In the aforesaid case testimony of sole eyewitness of a girl aged about 4 years at the time of the accident and 6 years at the time of deposition before the trial court that appellant inflicted fatal knife blows on the deceased was held to

be truthful and corroborated in material particulars for conviction of the accused u/s 302, Indian Penal Code.

18. To the same effect are the decisions in State of Maharashtra Vs. Bharat Fakira Dhiwar, and State of Rajasthan Vs. Om Prakash, .

19. In Dhanraj and Others and Smt. Venubai Kelbaji Raut Vs. State of Maharashtra, , the court while deciding question of reliability of statement of a child witness aged about twelve years and studying in 8th standard held his evidence to be reliable and credible. The court observed that "these days a child of 8th standard acquires sufficient understanding to perceive the fact and narrate the same".

20. Similarly in Ratan Singh Dalsukhbhai Nayak v. State of Gujarat, Hon"ble Apex Court held that conviction on the basis of child witness/minor is permissible, if such witness found competent to testify and the court is convinced about the quality and reliability of the same. In that case there was nothing to show animosity against the accused. The conviction was held to be justified. The Hon"ble Supreme Court held that such a child can testify if it has intellectual capacity to understand and give rational answer thereto. The decision on the question whether the minor has sufficient intelligence primarily rests with the trial Judge.

21. In the instant case the minor was more than 17 years of age when the accident in which the husband of claimant had died. He was an eyewitness and had given his deposition before the court about 15 months of the accident when he was about 18 years of age. Neither there is any plea or evidence that he was a tutored witness. His evidence was corroborated with the evidence of the wife of deceased and the material on record. Any minor discrepancy would not render the evidence unreliable. The witnesses withstood cross-examination and the court below found their evidence to be reliable, credible, convincing and trustworthy. It appears from record that Raju Prasad Yadav was at the site of accident with the son of the deceased and they took the victim to the S.R.N. Hospital and F.I.R. was lodged by the son of the deceased. This shows that the witness had sufficient understanding to procure the fact, take the proper action in emergency and narrate the same. He also had intellectual capacity to understand and give rational evidence and was competent to testify and the court was convinced about the reliability and quality of his evidence. Admittedly there was no animosity with the owner, or the driver of the truck involved in the accident, hence for aforesaid reasons the evidence of Raju Prasad Yadav, PW 2, who was minor cannot be rejected as he was a chance or independent witness. Any minor discrepancy in his evidence would not be fatal to the case of respondent in the facts and circumstances of the case. Compensation is paid for the death of the member of the family and the same is payable for the loss of dear one.

22. There is no bar in the Motor Vehicles Act, 1988 which precludes an earning

member from receiving compensation in respect of the death of a member of the family. No documentary evidence was submitted by the petitioner in support of its case. There is no question of any mistaken identity that the deceased was not the husband of the claimant wife and father of the son. It is apparent from the award that the court below had considered the technical report and has given a finding of fact that the truck in question was not properly maintained and this could be one of the reasons for the accident. Insofar as the contention of the counsel for the petitioner regarding there being no proof of age and amount of salary of the deceased is concerned, suffice is to say that the service book and pay slip had been filed by the claimant wife before the Motor Accidents Claims Tribunal which contain the said information apart from oral evidence in the case. The Tribunal has rightly held that compensation is paid for the loss suffered by the family of the deceased and cannot be denied merely because the wife is having independent income. The income of the wife is the remuneration for her service which is quite distinct from compensation for loss of her husband. The law presumes that the deceased must be spending 2/3rd of his total income on the family and 1/3rd on himself as provided in the Schedule. She had not been given service by the opposite parties as compensation as she was already in service, hence her income could not be adjusted in the compensation awarded by Tribunal. The arguments of the counsel that a person having independent income is not entitled to be paid compensation by insurance company on the death of family member in an accident by an insured vehicle would result in miscarriage of justice. The family would be deprived of the compensation for their loss. Such an interpretation is opposed to the object of the Act which is a welfare legislation. The cases of State of Delhi Vs. Vijay Pal, and Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , cited by counsel for the petitioner are not applicable to the facts of the present case.

23. For the reasons stated above, I do not find any force in this petition and it is accordingly, dismissed.

24. The compensation shall be paid by the petitioner to the claimant along with interest at the rate of 9 per cent per annum as per terms of the award within 1 month from today. If any amount has been paid not by the petitioner that amount shall be adjusted.

No order as to costs.