

Unknown Vs. Leela Devi and ors

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Court : Delhi

Decided On : Jan-31-2012

Appellant : Unknown

Respondent : Leela Devi and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 31st January, 2012 + MAC.APP. 594/2011 NATIONAL INSURANCE CO. LTD
Appellant Through: Ms. Archana Gaur, Adv. versus LEELA DEVI and ORS.
Respondent Through: Mr. Aatreya Singh, Adv. for R-1 to.

5. Mr. S. Madhur Bajaj, Adv. for R-6. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J. (ORAL).

1. This Appeal is for reduction of compensation of ` 9,65,150/- awarded for the death of Prem Ram, who was aged about 49 years at the time of the accident, which took place on 05.09.2010..

2. Before the Motor Accident Claims Tribunal (the Claims Tribunal), PW-1 Bhupinder Kumar (the deceaseds son) deposed that his father was working as a Security Guard and was earning ` 8,000/- per month. In the absence of any cogent evidence with regard to the deceaseds income or his educational qualification, the Claims Tribunal took the minimum wages of an unskilled worker i.e. `5278/-, added 50% towards inflation; deducted one-fourth towards the personal and MAC.

APP. No.594/2011 *Page 1 of 7* living expenses, as per the number of dependents and applied the multiplier of 13 to arrive at the figure for loss of dependency as ` 9,30,150/-. After adding of notional sums towards the non-pecuniary damages, the overall compensation of `9,65,150/- was awarded..

3. The following contentions are raised on behalf of the Appellant National Insurance Company Limited:- (i) The Tribunal erred in adding 50% of the assumed income towards the inflation, although no addition could have been made on this count. (ii) As per the Ration Card, the deceaseds age was above 50 years whereas on the basis of the voter Identity Card, it was taken as 49 years by the Tribunal. In view of the contrary evidence, the deceaseds age should have been accepted as more than 50 years and a multiplier of 11 should have been applied..

4. There is no dispute that as per the attested copy of the Ration Card, proved on record, deceased was aged about 51 years whereas as per the attested copy of the Voter Identity Card, he was aged about 49 years on the date of the accident. Since provision of Chapter X of the Motor Vehicles Act with regard to the grant of compensation for injuries or death to the Claimants is a social welfare legislation, therefore, in view of the contradictory evidence, the age which is beneficial to the MAC. APP. No.594/2011 *Page 2 of 7* Claimant must be considered to compute the loss of dependency. The Tribunal was, therefore right in accepting the deceaseds age as 49 years. Otherwise also, the Voter Identity Card is a more authentic document than the Ration Card. The Tribunals discretion in accepting the age as mentioned in the Voter Identity Card which was prepared much before the accident, therefore, cannot be faulted..

5. In National Insurance Company Ltd. v. Renu Devi and Ors., III (2008) ACC 134, this Court held that the increase in the minimum wages is not on account of promotion of an unskilled worker or on account of advancement in his career but the same is due to increase in the price index and cost of living. It has also to be borne in mind that the minimum wages are revised not only to meet the inflation but also to improve the standard of living of the lowest paid workers and to give them benefit of growth in GDP..

6. A perusal of the Notifications issued under the Minimum Wages Act would show that the minimum wages of an unskilled worker were revised from ` 5,278/- as on 5.09.2010 (i.e. the date of accident) to ` 6,422/- on 01.04.2011. Thus, it has to be noticed that there was an increase of about 20% in the minimum wages in just six months. This was not on account of inflation but to provide a better standard of living to the lowest paid workers. MAC. APP. No.594/2011 Page 3 of 7.

7. In Renu Devi and Ors.(supra) it was held as under:- "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 MAC. APP. No.594/2011 *Page 4 of 7* 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."

8. At the same time it has to be noted that the deceased was 49 years of age on the date of the accident. Thus, the increase of 50% on account of indexation could not have been extended to the Claimants. MAC. APP. No.594/2011 Page 5 of 7.

9. It is true that the inflation and price indexation is not the same as the future prospects, yet the future prospects are considered where the deceased or injured is comparatively young. The principles as given in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, while considering the future prospects would equally apply while considering the inflation and price indexation in case of minimum wages i.e. addition of 50% towards inflation and indexation where the deceased / injured was below 40 years, addition of 30% where the deceased was above 40 years and below 50 years, and NIL where the deceased/injured was more than 50 years. Thus, in this case the increase towards minimum wages shall have to be restricted only to 30%..

10. The loss of dependency of the deceased taking into consideration `5,278/- as the deceaseds income comes to ` 8,02,783/- [$5,278/- + 30\% \times \frac{3}{4} \times 12 \times 13$)..

11. The Tribunal awarded a sum of ` 10,000/- towards loss of love and affection. I may mention that, where the Claimants are entitled to loss of dependency on actual basis, normally a nominal sum is awarded under the head of loss of love

and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma v. Bachitar Singh, (2011) 11 SCC 425 and in Baby Radhika Gupta v. Oriental Insurance Company MAC. APP. No.594/2011 Page 6 of 7 Limited, (2009) 17 SCC 627 granted only ` 25,000/- (in total to all the claimants) under the head of loss of love and affection. I would enhance the same to ` 25,000/-..

12. After adding notional sum of ` 25,000/- towards loss of love and affection; ` 10,000/- towards loss of consortium; ` 10,000/- towards loss to estate and ` 5,000/- towards funeral expenses, the overall compensation comes to ` 8,52,783/-..

13. The overall compensation is thus reduced from ` 9,65,150/- to ` `8,52,783/-. The compensation awarded along with interest @ 7.5% per annum from the date of filing of the Appeal till the date of deposit shall be paid to the Respondents No.1 to 5 in the proportion and the manner as awarded by the Tribunal..

14. The compensation awarded to Respondent No.1 shall stand reduced from ` 5,40,150/- to ` 4,27,783/-. Rest of the conditions regarding release of the amount and its deposit in the name of Respondents No.1 to 5 shall remain unchanged..

15. The excess amount deposited by the Appellant Insurance Company shall be refunded along with interest earned, if any, during the pendency of the Appeal. Statutory amount of ` 25,000/- shall also be refunded to the Appellant..

16. The Appeal is allowed in above terms. No costs. (G.P. MITTAL) JUDGE
JANUARY 31, 2012/vk MAC. APP. No.594/2011 Page 7 of 7

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