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(2008) 1 ILR Delhi 621

Delhi High Court

Case No: MAC. App. No. 662 of 2007

National Insurance Co. Ltd.	APPELLANT
Vs	
Sant Kumar and Others	RESPONDENT

Date of Decision: Nov. 14, 2007

Citation: (2008) 1 ILR Delhi 621

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Shantha Devi Raman, for the Appellant;

Judgement

Kailash Gambhir, J.
The present appeal is filed against the award of the Motor Accident Claims Tribunal dated 20.9.2007. The facts of

the present case in nutshell are: On 5.11.2005 at about 2.00 p.m., deceased Shri Dheeraj Singh was travelling as a pillion rider on the motorcycle

bearing registration No. DL-8S-Ap 7165, which was being driven by his cousin Shri Sohan Pal, while going from Delhi to Ghaziabad. At about

2.00 p.m., they reached near Loni Road in front of Pasaunda, when a DTC bus bearing registration No. DL IP B 0606, which was being driven

by respondent No. 1 at a very high speed in rash and negligent manner on the wrong side of the road. The said DTC bus hit the motorcycle and as

a result his cousin Sohan Pal sustained grievous injuries. The claim petition was filed on 2.6.2006 and the award was made on 20.9.2007.

Aggrieved with the said award, the appellant insurance company has preferred this appeal.

2. Counsel for the appellant contends mat the Tribunal has not taken into consideration the rational of the recent judgment of the Apex Court in the

matter of New India Assurance Co. Ltd. Vs. Satender and Others, .

3. The contention of the counsel for the appellant is that the notional income of the deceased who was 16 years old was taken into consideration as

per the Second Schedule of the Motor Vehicles Act and then the Tribunal has doubled the said notional income after taking into consideration the

inflationary trends and rise in price index and not only this then again the said assumed income of Rs. 30,000/- has been doubled as per the criteria

laid down by the Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, .

4. I have heard the learned counsel for the appellant and have also perused the impugned award as well as judgment cited by the counsel for the

appellant.

5. The deceased in the present case was 16 years old student of XIth standard. It is thus an admitted case that the child was not employed

anywhere and had no source of income. In such circumstances, the Tribunal has taken the notional income of the deceased at Rs. 15,000/- per

annum as provided in the Second Schedule of the Motor Vehicles Act. In New India Assurance Co"s case (Supra), accident of 9 years old child

was involved and the notional income of Rs. 15,000/- was applied. In the said case also the Tribunal had doubled the notional income to Rs.

30,000/- and thereafter the applicable multiplier was applied. The matter went before the Hon"ble Supreme Court after challenge was made by the

Insurance Company and the Hon"ble Supreme Court upheld the contentions of the Insurance Company by holding that in the case of young

children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their

income nor chances of advancement of their career are capable of proper determination on estimated basis. Relevant para 12 of the aforesaid

judgment is reproduced as under:

12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the

future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is

that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so

many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on

estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

6. Counsel for the appellant states that it is just possible that the said judgment was not brought to the notice of the Tribunal before passing of the

impugned award. Since the Tribunal has not gone through the said judgment of the Apex Court, therefore, it would be appropriate to remand the

matter back to the Tribunal for fresh consideration on that aspect of the matter.

7. With these directions, appeal is remanded back to the Tribunal. The appellant to appear before the Tribunal on 22.11.2007. Appeal stands

disposed of accordingly.