NATIONAL INSURANCE COMPANY LTD. A

v.

KHIMLIBHAI & ORS.

(Civil Appeal No. 5089 of 2009)

AUGUST 4, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Motor Vehicles Act, 1988: s.166 – Personal expenditure of deceased – Deduction of, from total income of deceased for arriving at compensation amount – Carpenter – 40 years C *of age – Died in a motor accident – Family consisting of 8 dependents – High Court fixed Rs.100 as daily income of deceased, adopted multiplier of 17 and deducted 1/4th of total income on account of personal expenditure of the deceased and awarded compensation of Rs.4.84 lacs – Held: No* D *infirmity in order of High Court.*

The claimants, respondent 1 to 8 were widow, sons, daughter and parents of deceased who died in motor accident. The deceased was 40 years old and carpenter by profession. Tribunal awarded compensation amounting to Rs.2.32 lacs. On appeal, High Court held E **that deceased was earning Rs.100 per day and since deceased's family consisted of dependents in all 8 persons, directed to deduct 1/4th of the total income towards personal expenditure of deceased. High Court awarded total compensation of Rs.4.84 lacs by adopting multiplier of 17. The present appeal is filed by the Insurance Company.** F

Dismissing the appeal, the Court G

HELD: 1.1. Deceased was working as a carpenter. Thus, working as such, even in the year 1997 he could have comfortably earned Rs.100/- per day. This was also admitted by P.W.3 with whom the deceased was H

A employed that he was being paid Rs.100/- per day. Even assuming that he was working only for six months in a year as carpenter and for remaining six months he was working in his own field, that would not materially affect his income. While he was working in his own field, he was B contributing to augment his income and thereby was saving Rs.100/- per day on the labour that he would have spent, if he had not worked himself. Thus, looking to the matter from that angle, it is clear that he would have continued to earn Rs.100/- per day, whether he worked C as a carpenter or in his own field. [Para 16] [305-G-H; 306-A-C]

1.2. As far as application of proper multiplier is concerned, looking at the age of the deceased and that of the widow multiplier of 17 which was applied by the D High Court is proper and does not call for interference. [Para 17] [306-C]

1.3. It stands proved that deceased left behind a large family to be looked after, who all were dependents on his E income. Keeping in view the family background, High Court committed no error in deducting only 1/4th amount from the total income of the deceased towards the expenses which would have been incurred on himself. [Paras 19 and 20] [306-E; 306-F-G]

F *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121, relied on.

Case Law Reference:

G (2009) 6 SCC 121 relied on Para 20

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5089 of 2009.

From the Judgment & Order dated 18.5.2006 of the High Court of Madhya Pradesh Bench at Indore in M.A. No. 1492 of H 2004.

Pankaj Bala Verma, Kiran Suri for the Appellants. A

T.N. Singh, V.K. Singh, S.N. Singh, Vikas Mehta for the Respondents.

The Judgment of the Court was delivered by B

DEEPAK VERMA, J. 1. Leave granted.

2. Vir Singh aged about 40 years, carpenter by profession met with a motor accident on 24th May 1997, while he was travelling in a jeep bearing No.MP11-4690 which was hit from behind by an offending truck, bearing No.MP09-D-5665. He sustained injuries, was given first-aid in the hospital but succumbed to the same at 5.00 p.m. on the same date. C

3. Respondent nos.1 to 8 herein, claiming to be the widow, sons, daughter and aged parents of the deceased, filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') before Motor Accident Claims Tribunal, Jhabua, M.P. (for short, 'the Tribunal') registered as Claim Case No.202 of 2003. They claimed a total compensation of Rs.8,31,000/- against the respondents, i.e., insurance company (appellant herein), owner and driver of the truck. D E

4. Both, the owner and the driver of the truck, were proceeded ex-parte and they did not file any written statement. F

5. The appellant herein, arrayed as respondent no.3 in the Claim Case, filed its written statement generally denying the averments made in the Claim Case.

6. It was contended by the insurance company before the Tribunal that respondent no.2-driver did not have a valid and proper licence to drive the truck at the relevant point of time and no information was given to the appellant nor was any claim form submitted. Therefore, it was not liable to pay any compensation. G H

A 7. It further contended that the driver of the jeep, which was hit from behind by the offending truck, also did not have a valid driving licence and the deceased was travelling as a gratuitous passenger. Thus, in any case no liability can be fastened on the appellant-insurance company and prayed for its B exoneration.

8. On the strength of the pleadings of the parties, the Tribunal framed issues. It appears that the appellant did not lead any evidence in rebuttal to the evidence that was led by the respondent-claimants. C

9. From the voluminous material available on record, it has neither been disputed before us, nor was it agitated in the High Court that the accident was caused due to rash and negligent driving of the truck and at the relevant point of time, it was D owned by respondent no.9/10 and driven by respondent no.11.

10.These facts having not been disputed before us, we have only to consider whether the amount awarded by the Tribunal and as enhanced in appeal by the Division Bench of the High Court of Madhya Pradesh, Indore Bench, was proper E or not.

11. On appreciation of evidence available on record, the Tribunal awarded a total amount of Rs.2,32,762/- together with interest at the rate of 9% against the appellant and respondent F nos.9, 10 and 11 herein. The said figure was arrived at on the basis that the deceased was earning Rs.84/- per day and adding certain expenses towards conventional heads and then applying the multiplier of 15.

G 12. Feeling aggrieved by the said award and order passed by the Tribunal on 20th February 2004, an appeal was carried under Section 173 of the Act to the High Court.

13. In appeal, the High Court came to the conclusion that it can safely be assumed that deceased Vir Singh, who was H working as carpenter before his death in the year 1997, must

be earning Rs.100/- per day. Thus, his monthly income would be Rs.3,000/-. Keeping in mind the large family of dependents, as mentioned hereinabove, i.e., the widow, sons, daughter and aged parents, in all 8 persons, 1/4th of the total income so arrived at, was directed to be deducted towards the amount which the deceased would have spent on himself and the multiplier of 17 was applied. Thus, the High Court awarded compensation of Rs.4,59,000/-. The High Court awarded an additional lump sum amount of Rs.25,000/- under various conventional heads thereby making a total compensation of Rs.4,84,000/- with further stipulation that the enhanced sum would carry interest at the rate of 6% p.a. from the date of the application till its realisation.

14. Appellant-insurance company is in appeal challenging the impugned award and order primarily on the following two grounds :

(i) that the amount enhanced by the High Court is excessive and exorbitant, more so, without there being any basis, it has been assessed that deceased could have earned Rs.100/- per day; and

(ii) that deduction of only 1/4th towards his personal expenses from his total income has wrongly been allowed and it should have been 1/3rd of his total income.

15. In the light of the aforesaid, we have heard Ms. Pankaj Bala Verma, learned counsel appearing for the appellant-insurance company; Mr. Vikas Mehta, learned counsel appearing for respondent nos.1 to 8; and Mr. T.N. Singh, learned counsel appearing for respondent nos.9 to 11.

16. It could not be disputed before us that deceased was working as a carpenter. Thus, obviously working as such, even in the year 1997 he could have comfortably earned Rs.100/- per day. This has also been admitted by P.W.3 with whom the

A deceased was employed that he was being paid Rs.100/- per day. Even if we assume that he was working only for six months in a year as carpenter and for remaining six months he was working in his own field, that would not materially affect his income. While he was working in his own field, he was B contributing to augment his income and thereby was saving Rs.100/- per day on the labour that he would have spent, if he had not worked himself. Thus, looking to the matter from that angle, it is clear that he would have continued to earn Rs.100/- per day, whether he worked as a carpenter or in his own field.

C 17. As far as application of proper multiplier is concerned, looking to the age of the deceased and that of the widow, in our opinion, multiplier of 17 which has been applied by the High Court is proper and does not call for interference.

D 18. Thus, the first question is answered against the appellant.

19. As far as question no.2 is concerned, it stands proved that deceased had left behind a large family to be looked after, who all were dependents on his income. To reiterate, his widow, E sons, daughter and aged parents - total 8 members in the family.

20. Keeping in mind the family background, the High Court has deducted 1/4th amount as the amount which the deceased F would have spent on himself. In our opinion, the High Court committed no error in deducting only 1/4th amount from the total income of the deceased towards the expenses which would have been incurred on himself. It has also been held so in a recent judgment of this Court in *Sarla Verma (Smt) & Ors. v.* G *Delhi Transport Corporation & Anr.* (2009) 6 SCC 121:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *U.P.SRTC v. Trilok Chandra* (1996) 4 SCC 362, the general practice is to apply H

standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

It was further held in para 48 of the said judgment as under:

"48. The appellants next contended that having regard to the fact that the family of the deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one-third, nor one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under Section 163-A read with the Second Schedule to the MV Act). The percentage of deduction on account of personal and living expenses can certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants."

21.In the light of the aforesaid discussion, we are of the opinion that there is no substance in this appeal. It is accordingly hereby dismissed with costs to be borne by the appellant.

22. Counsel fee assessed at Rs.10,000/-.

D.G. Appeal dismissed.