

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.547/2008

% Date of decision: 23rd March, 2009

NEW INDIA ASSURANCE CO. LTD. ...Appellant
Through : Mr. Atul Nanda and Mr. Sanjay
Bhardwaj, Advocates.

versus

PRATIBHA SHRIVASTAVA & ORS. ...Respondents
Through : None.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.28,70,000/- has been awarded to the claimants/respondents No.1 to 3.

2. The accident dated 2nd November, 2004 resulted in the death of Satish Kumar who was walking on foot near Tikona Park, DTC Pass Office, Main Road, Rani Market, Delhi when the offending bus bearing No.DL-1PA-7836 hit the deceased resulting in fatal injuries.

3. The deceased was permanently disabled being 100% blind. The deceased was working as a TGT Teacher with Government

Boys Senior Secondary School No.2, Model Town, Delhi drawing a salary of Rs.12,250/- per month at the time of the accident.

4. The deceased was survived by his widow aged about 35 years and two minor children aged 8 and 5 years respectively who filed the claim petition before the learned Tribunal.

5. At the trial, the widow of the deceased appeared as PW-1 and proved the ration card-Ex.PW1/1, FIR-Ex.PW1/2, driving licence-Ex.PW1/3, driver badge-Ex.PW1/4, registration cover-Ex.PW1/5, insurance certificate-Ex.PW1/6, post-mortem report-Ex.PW1/7, death certificate-Ex.PW1/8 and date of birth certificate-Ex.PW1/9. PW-1 deposed that the last drawn salary of the deceased at the time of the accident was Rs.12,250/- in the scale of Rs.5,500-175-9,000 as per Ex.PW1/10. She further deposed that the deceased had opted for government accommodation in lieu of 30% HRA amounting to Rs.3,026/-. The service confirmation letter of the pay scale dated 19th November, 2003 was exhibited as Ex.PW1/11.

5.1. PW-1 further deposed that her husband was eligible for getting upgradation of his salary under the ACP Scheme (Assured Career Progression Scheme) for Central Government civilian employees after 12 years of service in the grade of Rs.6,500-200-10,500 on first upgradation and in the scale of Rs.7,500-250-12,000 on second upgradation. The witness proved the office order dated 18th January, 2005 issued by the Directorate of Education, Government of NCT of Delhi as Ex.PW1/12. The

deceased was entitled to the first upgradation on 17th December, 2008.

5.2. PW-1 further deposed that the deceased was 100% blind and was therefore, entitled to avail free travel facility in city buses and had 100% tax benefits under Section 88(4) of the Income Tax Act. The disability certificate was proved as Ex.PW1/13. The identity card issued by the Directorate of Social Welfare, Delhi Administration showing the complete blindness of the deceased was exhibited as Ex.PW1/14.

5.3. PW-1 further deposed that the claimants were staying in the government accommodation allotted to the deceased in lieu of the 30% HRA and after his death they have to vacate the government accommodation to shift to the rented accommodation which would not be available for less than Rs.5,000/- to Rs.6,000/- per month and therefore, the HRA should also be added in the salary of the deceased for the purposes of computation. PW-1 further stated to have spent Rs.50,000/- on the treatment of the deceased from the date of the accident i.e., 3rd November, 2004 up to the date of the death on 9th November, 2004.

5.4. PW-1 was not cross-examined by the appellant on material particulars except a suggestion that the documents pertaining to age and income were not genuine and the amount of expenditure on the treatment of the husband was not correct and that she had wrongly deposed about the future prospects of the husband.

6. PW-2 produced the judicial file pertaining to FIR No.507/2004 and proved the FIR-Ex.PW1/2, registration cover-Ex.PW1/5, charge sheet-Ex.PW1/15, Ruqqa-Ex.PW1/16, notice under Section 133 of the Motor Vehicles Act-Ex.PW1/17A, reply-Ex.PW1/17B, seizure memo and original post mortem report-Ex.PW1/17, death certificate-Ex.PW1/8 and MLC-Ex.PW1/18.

7. The Vice Principal of the Government Boys Senior Secondary School, Model Town, Delhi appeared as PW-3 and produced the notification dated 25th August, 2003 and office order of Directorate of Education dated 16th September, 2004 and tentative pay fixation order prepared by the accounts section pertaining to the deceased as Ex.PW3/1, Ex.PW3/2 and Ex.PW3/3. The witness deposed that the basic pay of the deceased would have been Rs.12,250/- on 31st March, 2008. The witness also proved Ex.PW1/10 and Ex.PW1/11.

8. The Investigating Officer of Delhi Police appeared as PW-4 and proved the FIR-Ex.PW4/A, Ruqqa-Ex.PW1/16, notice under Section 133 of the Motor Vehicles Act-Ex.PW1/17A and reply-Ex.PW1/17B. PW-4 was recalled for further examination on 13th July, 2007 when he proved the site plan- Ex.Y1.

9. The learned Tribunal held that the total salary of the deceased at the time of the accident was Rs.12,250/- as per the Ex.PW1/10. The learned Tribunal deducted CCA of Rs.300/-, TA of Rs.200/- and medical allowances of Rs.75/- and computed the salary of the deceased to be Rs.11,675/- (Rs.12,250 – Rs.575/-).

The learned Tribunal added 30% of HRA to compute the net salary at Rs.14,700/- (Rs.11,675 + Rs.3,026) per month. The learned Tribunal considered the future prospects of the deceased according to the Ex.PW3/1, Ex.PW3/2 and Ex.PW3/3 by which the basic salary of the deceased would have certainly increased to Rs.12,250/-. The basic salary of the deceased at the time of the accident was Rs.6,725/- which would have increased to Rs.12,250/- as per Ex.PW3/3 which is approximately double and, therefore, the learned Tribunal computed the salary of the deceased by taking the average of Rs.14,700/- and its double i.e., Rs.29,400/- which comes to Rs.22,050/- $[(14,700 + 14,700 \times 2)/2]$. 1/3rd was deducted towards the personal expenses of the deceased and the multiplier of 16 was applied to compute the total loss of income at Rs.28,22,400/- (1,22,050 divided by 2/3 x 12 x 16). Rs.7,500/- was awarded towards medical expenses, Rs.30,000/- towards love, affection and consortium and Rs.10,000/- towards funeral expenses. The total compensation was computed at Rs.28,69,900/- (rounded off as Rs.28,70,000/-).

10. The only ground of challenge in this appeal is that the future prospects of the deceased should not have been taken into consideration. I do not find any merit whatsoever in this contention. It has been proved by sufficient evidence that the salary of the deceased would have doubled during the remaining service of the deceased. The Vice Principal of the school of employment of the deceased appeared as PW-3 and proved the promotion policy of the government- Ex.PW3/1 and Ex.PW3/2.

PW-3 also produced the exact computation of pay fixation and the future increase in pay of the deceased as Ex.PW3/3. No evidence was led by the appellant and, therefore, the evidence led by the claimants remains un-rebutted. The learned Tribunal has computed the compensation according to well settled principles of law. There is not even an iota of error in the award of the learned Tribunal. It appears that the Insurance Company did not apply their mind before taking the decision to file the appeal.

11. There is no merit in this appeal. The appeal is, therefore, dismissed with cost.

23rd March, 2009
aj

J.R. MIDHA, J