

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

**MAC APP.NO.417/2006**

Judgment reserved on: 10<sup>th</sup> October ,2007

Judgment delivered on: 20.12.2007

National Insurance Co. Ltd. .... Appellant.  
Through: Mr.L.K.Tyagi for the appellant.

versus

Smt. Kailash Devi & Ors. .... Respondents  
Through: Mr. O.P.Mannie for the respondent.

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

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

**KAILASH GAMBHIR, J.**

The present appeal preferred under Section 173 of  
The Motor Vehicles Act, 1988, arises out of the award dated 2<sup>nd</sup>  
March, 2006 of the Motor Accident Claims Tribunal, whereby

the Tribunal awarded a sum of Rs. 7,74,000/- along with interest @ 8% per annum to the appellant from the date of filing of the petition.

The brief facts of the present case for better appreciation of the matter are that the deceased Sh. Satyavir, aged 36 years along with Sh. Ram Karan was going to his house at Jhajjar from Rama Vihar via Karala Road on a scooter bearing registration no. HR 4A 7566 on 27/9/2001. At 7:00 pm on reaching Manjari Karala Road, the said scooter was hit by a tanker bearing registration no. HR 3B 3788, from behind and as a result of this both of them received injuries and were taken to the hospital, where Sh. Satyavir succumbed to his injuries on 3<sup>rd</sup> October, 2001. On 6<sup>th</sup> October 2004, the Tribunal allowed the application filed by the Insurance Company under Section 170 of the Motor Vehicles Act, 1988. On 20<sup>th</sup> November 2004 the claims petition was filed before the Tribunal and award was passed on 2<sup>nd</sup> March 2006 by the learned Tribunal. Respondents i.e. driver and owner were proceeded ex-parte by

the learned tribunal on account of non-appearance. For the purpose of computation of compensation towards loss of dependency, income of the deceased was taken as that of a matriculate as prevalent on the date of the death of the deceased under the Minimum Wages Act in the absence of any cogent evidence being brought and duly proved on record regarding income, which he was earning prior to his death. The learned tribunal applied multiplier of 17; calculated dependency at 3/4<sup>th</sup> and considered future prospects of increase in the income while calculating the quantum of compensation. The tribunal awarded a total sum of Rs. 7,74,000 @ 8% p.a.; out of which Rs. 7,14,000 were awarded towards pecuniary damages and remaining sum towards non-pecuniary damages. Aggrieved with the award passed by the learned tribunal, the appellant insurance company has assailed the award and has preferred the present appeal under Section 173 of The Motor Vehicles Act, 1988.

Sh. L. K. Tyagi, Counsel for the appellant has

assailed the impugned award on five grounds. Firstly, it was contended that the tribunal has erroneously considered the future prospects of the income of the deceased to the extent of double and has taken his average income at Rs. 4,650 pm when no cogent evidence on record has been placed in this regard. Secondly, it has been submitted by the counsel that the tribunal has taken dependency at  $3/4^{\text{th}}$  in place of  $2/3^{\text{rd}}$ . Thirdly, the counsel urged that the multiplier of 17 applied by the tribunal is on the higher side. Fourthly, the counsel asserted that the rate of interest allowed by the tribunal is on the higher side and should have been at 5% per annum in place of 8% per annum. Finally, the counsel maintained that the Tribunal erred while awarding Rs. 40,000 on account of general damages, which is on a higher side as compared to the amount allowed in the second schedule of the Motor Vehicles Act, 1988 on account of general damages, which should have been Rs. 9,500/-.

The counsel for the appellant has relied on the following judgements of the Hon'ble Supreme Court in support

of his contentions:

- (1) Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors. – (2006) 3 SCC 242;
- (2) Managing Director, TNSTC Ltd. Vs. K.I. Bindu & Ors. – 2006 ACJ 423 (SC);
- (3) Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya & Ors. – II (2005) ACC 476 (SC); and
- (4) General Manager, Kerela State Road Transport Corporation, Trivandrum vs. Susamma Thomas & Ors. – (1994) 2 SCC 176.

Per contra, Mr. O.P. Mannie, counsel for the respondents 1 to 5 has refuted all the contentions of the counsel for the appellant. The counsel has strongly justified the award dated 2<sup>nd</sup> March 2006 made by the learned tribunal. Counsel maintained that the tribunal has correctly taken into consideration the future prospects of the income of the deceased. Counsel averred that the deceased was survived by his widow, his three minor children, aged 10, 12 and 5 yrs besides his father at the time of the accident and hence, tribunal has rightly calculated dependency at 3/4<sup>th</sup>. The counsel has also

urged that the multiplier of 17 as applied by the tribunal in the facts and circumstances of the case is just and fair to meet the ends of justice. It was also contended by the counsel that the rate of interest and the general damages allowed by the learned tribunal are not on the higher side but are just and fair.

The counsel for the respondents no. 1 to 5 has relied on the following judgements in support of his contentions:

(1) A.P.S.R.T.C. vs. M. Pentaiah Chary  
– 2007 VIII AD (SC) 552;

(2) Kanhayalal Kataria & Ors. Vs.  
Mukul Chaturvedi & Ors. – 2007  
ACJ 1972 (SC);

(3) Supe Dei & ors. Vs. National  
Insurance Co. Ltd. & Anr. – 2002  
ACJ 1166 (SC);

(4) Abati Bezbaruah v. Dy. Director  
General, Geological Survey of India  
– 2003 ACJ 680 (SC);

(5) Chellammal v. Kailasam- 2006 ACJ  
854 (SC);

(6) Vishakha Devi & Ors. Vs. DTC &  
Anr. – 2006 ACJ 2076; and

(7) Unreported decision in MAC APP  
No. 40/2004 & Cross Objections  
/2004 dated 25<sup>th</sup> January 2007.

I have heard counsel for both the parties and have perused the record.

The main thrust of the argument of the counsel for the appellant is that the Tribunal has wrongly taken into consideration the future prospects of the income of the deceased to the extent of double by applying the criteria as laid down in **Sarla Dixit's case**. This argument of the counsel for the appellant is based on the judgment of the Apex Court in **Bijoy Kumar's case (Supra)** in which the Apex Court has taken a view that unless entitlement to the future prospects are established by way of some reliable evidence, the future prospects cannot be taken into consideration. The facts of the present case shows that no such evidence was placed by the respondent to claim future prospects and the Tribunal has allowed the future prospects by stating that one is entitled to certain gains in terms of money in future due to the advancement in career. This proposition as propounded by the

Tribunal may not hold good in view of the pronouncement of the decision of the Apex Court in **Bijoy Kumar's case (Supra)**. Relevant paras of the said judgment are reproduced as under:

"The mere assertion of the claimants that the deceased would have earned more than Rs 8000 to Rs 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be."

In the light of the aforesaid discussion, I feel that in the absence of any evidence proving the entitlement of the respondent to grant of any compensation towards future prospects, the criteria as laid down in **Salra Dixit's case (Supra)** cannot be adhered to.



The Tribunal has thus wrongly assessed the income of the deceased by applying the criteria laid down in **Sarla Dixit's case (Supra)**. The income of the deceased in the present case has been assessed at Rs.3100/-p.m. as per the Minimum Wages Act. As the respondents/claimants failed to prove the claimed income of Rs.4,500/- per month by producing any cogent evidence on record and once the resort has been made to the Minimum Wages Act, therefore, the increase in the future wages under the Minimum Wages Act can certainly be taken into consideration. This Court has already taken a view that the increase under the Minimum Wages Act which is based on the price index, inflation rate and other economic factors cannot be treated at par with the future income of a victim due to promotions, advancement in career, grant of increments and special grades etc. Perusal of the Minimum Wages Act shows that in the past, within a period of 10 years, the minimum wages almost get more than double; for instance, the minimum wages for a skilled workman in the year

1980 were Rs.320/- and the same got increased to Rs.1043/- in the year 1990, meaning thereby that there has been an increase of 225% from the year 1980-1990, therefore, it can be safely assumed that the income of the deceased would have doubled in the next 10 years. Applying the said criteria, the income of the deceased as assessed in the year 2001 would have been increased to Rs.6200/- and taking the average of the same it would come to Rs.4650/- per month.

The deceased was survived by his widow and three minor children besides his father, therefore, there is nothing wrong if the financial dependency of the dependents were taken as  $\frac{3}{4}^{\text{th}}$  and  $\frac{1}{4}^{\text{th}}$  of the income of the deceased is deducted towards his personal expenses. Making deductions of the  $\frac{1}{4}^{\text{th}}$  income towards the personal expenses of the deceased, the financial dependency of the respondents comes to Rs.3,100/- per month.

The age of the deceased at the relevant time was 36 years and as per the structured formula of the Second

Schedule of the Motor Vehicles Act, the appropriate multiplier applicable is 16. Applying the said multiplier with the multiplicand as arrived at above, the total compensation towards financial dependency would come to Rs.5,95,200/-. The multiplier of 17 as applied by the Tribunal is not correct as the Tribunal has not given any reason for deviating from the multiplier as laid down in the Second Schedule as applicable to the age of the victim in the present case. In this regard the Hon'ble Apex Court in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India,(2003) 3 SCC 148** , has observed as under:-

“11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.”

Regarding the plea of the counsel for the appellant claiming interest @5% per annum in place of 8% per annum as

awarded by the Tribunal, I do not find that there is any justification given by the appellant to interfere in the said interest rate. Even otherwise counsel for the appellant has not advanced any reason for such variation in the rate of interest from 8% to 5%. In **Susamma Thomas's case (Supra)** the Hon'ble Supreme Court has awarded 9% interest on the award amount, therefore, the award of interest of 8% in the present case cannot be considered to be on the higher side.

I also do not find any justification in the reasoning given by the counsel for the appellant to interfere with the grant of compensation amount of Rs.40,000/- towards the damages.

In the light of the above discussion, the appellant shall be liable to pay sum of Rs.6,55,200/-. Vide order dated 17.5.2006, directions were given for release of 75% of the award amount to the respondents without any security and the remaining 25% of the amount was to be released on furnishing security. In case the 25% of the amount has still not been released in favour of the respondents then the balance amount

in terms of the above discussion shall be released in favour of the respondents with upto date interest. In case the entire award amount has been received by the respondents then the remaining amount, if any, shall be paid by the respondents to the appellant.

With these directions appeal stands disposed of accordingly.

Parties are left to bear their own costs.

**December 20, 2007**  
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**KAILASH GAMBHIR**  
**JUDGE**