

Date of Decision: 31<sup>st</sup> July, 2009

%

**+     MAC.APP. 332/2008**

NEW INDIA ASURANCE CO.LTD               ..... Appellant  
Through : Mr. S.D. Wadhwa, Adv.

versus

MASTER NAMAN BANSAL  
@ NONI & ORS                                       .... Respondents  
Through : Mr. Jatinder Kamra, Adv. for  
R-1 to 3.

**AND**

**+     MAC.APP. 334/2008**

NEW INDIA ASSURANCE CO. LTD               ..... Appellant  
Through : Mr. S.D. Wadhwa, Adv.

versus

KALAWATI DEVI & ORS                               ..... Respondents  
Through : Mr. Jatinder Kamra, Adv. for  
R-1 to 3.

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

- |    |   |            |
|----|---|------------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | <b>YES</b> |
| 2. | To be referred to the Reporter or not?                                | <b>YES</b> |
| 3. | Whether the judgment should be reported in the Digest?                | <b>YES</b> |

**JUDGMENT (Oral)**

1.     The appellant has challenged the common award of the learned Tribunal.

2. On 29<sup>th</sup> March, 2005, the family of Sadhu Ram Bansal was returning from the pilgrimage to Delhi. They were travelling in a Maruti Car bearing No.DL-9C-3295. When the car reached Aronda Hanstra near Khedi Ghatta, District Bharatpur (Rajasthan), a speeding truck bearing No.MP-06E-3190 hit their Maruti Car as a result of which Sadhu Ram Bansal, his wife Asha Bansal and their daughter, Shruti died. Two children of Sadhu Ram Bansal, namely, son Naman aged 3 years (three) and daughter Samriti aged 13 years at that time suffered injuries. Shalu Bansal, wife of Sadhu Ram Bansal's brother Ram Meher and her two children, Agesh and Ankit were also travelling in the car and they suffered injuries.

3. Eight claim petitions were filed before the learned Tribunal out of which three claim petitions related to the death of Sadhu Ram Bansal, his wife Asha Bansal and daughter Shruti whereas remaining five claim petitions related to the injuries suffered by the aforesaid persons.

4. The learned Tribunal passed a common award in respect of the eight claim petitions. The appellant has challenged the award of compensation in respect of the death of Sadhu Ram Bansal and his wife, Asha Bansal. The appellant has satisfied the award with respect to the remaining six claim petitions.

5. Sadhu Ram Bansal was aged 42 years at the time of the accident and was carrying on metal business in the name

and style of S.R. Enterprises. PW-1 deposed that the deceased was earning about Rs.30,000/- per month but the returns of Income Tax were not traceable as all the major persons of the family had expired in the road accident and the minor children were ignorant of these facts. However, PW-1 proved the register of employment and remuneration in Form 'G' - Ex.PW1/1. Ex.PW1/1 contains the names of the six employees who were working under the deceased out of which four employees were drawing salary of Rs.3,300/- per month, one employee was drawing salary of Rs.3,100/- per month and one employee was drawing salary of Rs.2,900/- per month. The register-Ex.PW1/1 shows the number of hours worked by each employee, signatures of the employees against the salaries drawn for the months of January, February and March, 2005. PW-1 further deposed that the deceased was a graduate in Commerce and Chartered Accountant and had bright future prospects. PW-1 placed on record the certificates showing educational qualifications which were proved as Ex.PW1/2 (colly.). PW-1 further deposed that Asha Bansal was aged 38 years at the time of the accident and was an educated self-employed lady who used to run the computer training centre and food preservation training from her house and used to earn Rs.5,000/- per month. The educational qualifications of Asha Bansal were proved as Ex.PW1/3 (colly.).

6. PW-1 was not cross-examined by the appellant as to

the material particulars. The learned Tribunal took the income of the deceased as Rs.15,000/- per month from the business. The deceased was aged 42 years. The learned Tribunal applied the multiplier of 15 and deducted 1/3<sup>rd</sup> towards personal expenses of the deceased to compute the loss of dependency at Rs.18,00,000/-. Rs.10,000/- has been awarded towards funeral expenses, Rs.10,000/- towards transportation of dead body and Rs.10,000/- towards loss of estate. The total compensation awarded is Rs.18,30,000/-.

7. With respect to the death of Asha Bansal, the learned Tribunal took the income of the deceased to be Rs.5,000/- per month from the computer training centre run by her considering that Asha Bansal held a degree in Bachelor of Arts, Civil Defence Examination certificate as well as Web Designing certificate proved on record. Considering the age of the deceased to be 38 years, the multiplier of 16 was applied and after deducting 1/3<sup>rd</sup> towards personal expenses, the loss of dependency was computed as Rs.6,40,000/-. Rs.10,000/- has been awarded towards funeral expenses, Rs.10,000/- towards transportation of dead body and Rs.10,000/- towards loss of estate. The total compensation awarded to the claimants in respect of the death of Asha Bansal is Rs.6,70,000/-.

8. The only ground of challenge by the appellant in these appeals is that the income of the deceased taken by the learned Tribunal is on a higher side. According to the

learned counsel for the appellant, the income of the deceased should not be taken to be more than Rs.8,000/- per month and even adding 50% towards future prospects, the income of the deceased should not be more than Rs.12,000/- per month for the purposes of computation of compensation. With respect to the Asha Banal, the learned counsel for the appellant submits that her income should not be taken to be more than Rs.4,000/- per month inclusive of future prospects.

9. The sole question which has arisen for consideration in these appeals is the raising of presumption as to the income to the deceased. PW-1 has proved that the deceased was running metal business in the name of S.R. Enterprises and had employed six employees out of which four were being paid Rs.3,300/- per month, one employee was being paid Rs.3,100/- per month and one employee was being paid Rs.2,900/- per month. The total amount of salary being paid by the deceased was Rs.19,200/- per month. The deceased was an educated person having cleared the Intermediate Examination of Chartered Accountancy. The documents pertaining to his qualifications were proved as Ex.PW1/2 (colly.). Similarly, Asha Bansal was also a well educated lady. She had a degree in Bachelor of Arts from Punjab University, Civil Defence Organization certificate from Chandigarh Administration, certificate from St. John Ambulance Association, certificate from Food and Nutrition

Board, Ministry of Food and Civil Supplies, certificates on computer education from Naptune.

10. Considering the evidence on record, the income of the deceased Sadhu Ram Bansal and Asha Bansal taken by the learned Tribunal is fair and reasonable following the test/guidelines under Section 114 of the Indian Evidence Act. Notwithstanding, the fairness and reasonableness of the income of the deceased, the appellant cannot raise the objection at this stage. The appellant had to lay the foundation of challenge before the learned Tribunal by cross-examining PW-1 when he was in the witness box and by leading the evidence to rebut the evidence led by the claimants/respondents. Admittedly, the appellant did not cross-examine PW-1 before the learned Tribunal and also did not lead any evidence to rebut the evidence led by the claimants before the learned Tribunal. It is also noted that the learned Tribunal has not awarded any compensation to the claimants towards loss of love and affection. The loss of love and affection is gravest in the present case. The claimants are two minor children who were aged 3 years and 13 years at the time of the accident and they lost both parents and a sister in the accident. The claimants were also injured in the accident. The claimants are now living with their grandmother who is aged about 80 years. Both the children are present in the Court along with their grandmother. The grandmother apart from being old is also

illiterate. The children are now 7 years and 17 years old. One of the children is studying in Government school and the other in a private school. The destiny has snatched away both the parents and a sister from the two small children. The family was returning to Delhi after pilgrimage. No one has control over the destiny. The learned Tribunal ought to have awarded sufficient compensation towards loss of love and affection. However, since there are no cross-objections by the claimants, no compensation is being awarded on account of loss of love and affection.

11. Both these appeals are dismissed. No orders as to costs.

12. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

**JULY 31, 2009**  
aj

**J.R. MIDHA, J**