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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. App. No.81 of 2009 & C.M. Appl. No.1681 of 2009

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31.05.2010

M/S. NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. D.D. Singh, Advocate.

Versus

VINOD MASSEY & ORS. Respondents
Through: Mr. V.P. Singh, Advocate.

Reserved on: 19th April, 2010
Pronounced on: 31st May, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. This appeal has been preferred assailing order dated 26th September, 2008 of learned Tribunal on the ground that the Tribunal wrongly took the age of the deceased as 19 years and wrongly granted compensation of Rs.3,69,888/- to the claimants.

2. The claim petition under Section 166/140 of Motor Vehicles Act (hereinafter referred to as 'the Act') was filed by the parents of the deceased Sh. Ajit, who received fatal injuries in an accident on 18th March, 2005. This petition was converted on an application of the claimants to one under Section 163A of the Act. Thus, the issue of negligence became irrelevant. The learned Tribunal took the earnings of the deceased as Rs.3,044.90 per month, being the minimum wages of an unskilled workmen at that time, deducted 1/3rd towards his personal expenses, applied a multiplier of 15 and calculated

the compensation. The Tribunal awarded Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Thus, the award of compensation has been strictly in terms of Schedule II of the Act and under Section 163A of the Act. The award is assailed on the ground that no document was placed on record by the claimants about age of the deceased and as per post-mortem report, the age of deceased was 17 years. The deceased was, therefore, a minor at the time of accident and cannot be presumed to be doing any job and his income could not have been taken more than Rs.15,000/- per annum. It is, thus, stated that the Tribunal wrongly took income of the deceased as Rs.3,044.90 per month.

3. In a country where 40 per cent of the population lives below the poverty line and where children of the age of 8-9 years work on *dhabas* and tea stalls, to say that a person of age around 17 years should not be considered as a person who would work, is far from reality. There is no bar on a boy, of age of 17 years, from doing labour work and earning his livelihood or supporting his parents. Even if it is considered that the age of deceased was 17 years and not 19 years, I consider that the award of compensation as made by the Tribunal under Section 163A of the Act is as per law and need not be disturbed.

4. The present appeal is a frivolous appeal and is liable to be dismissed with costs. The amount of Rs.25,000/- deposited by the insurance company under Section 173 of the Act be forfeited and paid to the respondents as costs.

SHIV NARAYAN DHINGRA J.

MAY 31, 2010
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