IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4816-4817 OF 2009
[Arising out of SLP(C) Nos. 19668-19669/2008]

MAMTA AND ORS. ... APPELLANT(S)

:VERSUS:

NATIONAL INSURANCE CO. LTD. ... RESPONDENT(S)

O R D E R

Leave granted.

One Radheyshyam Sharma, the predecessor in interest of the appellants herein, died in an accident which took place on 22.10.2003. He was an agriculturist. He was aged 22 years on the date of accident.

The Motor Accident Claims Tribunal believed the evidence adduced on behalf of the claimants – appellants that the monthly income of the deceased was Rs. 5000-6000 per month. To that effect two witnesses, namely, PW-1 and PW-2 testified. From the award passed by the learned Tribunal, it appears that the exhibits throwing a suggestion that the said witnesses were not cross-examined on the aforementioned statement. The age of the deceased was also not disputed. In the aforementioned premise the Tribunal awarded a sum of Rs.6,72,880/- to

the claimants, stating:

> **"16. At the time of death the date of the deceased was 22 years therefore, for sake of compensation for the dependents this Court fixes the multiplier as 15 therefore, compensation for the defendants is determined as 40x15 = 6,00,000/- (Rupees six lacs only). Rs. 2000/- were spent during the last rites and for applicant No.1 Mamtabai in view of her age Rs. 10,000/- is determined for her because of her deprivation from the comforts of her husband and Rs. 5,000/- to each of applicant Kanhaiyalal and Sajanbai for their deprivation form the comforts of their son.**
>
> **17. Thus the amount spent on the treatment of deceased Radheyshyam prior to his death by the applicants is Rs.50,880/-, for dependents compensation Rs. 6,00,000/-, Rs. 2,000/- for last rites and Rs 10,000/- for Mamtabai wife of the deceased and Rs. 5,000/- for each of the Kanhaiyalal and Sajanbai for the deprivation of their son."**

The respondent – National Insurance Company preferred an appeal thereagainst. The High Court opining that there was no evidence, whether oral or documentary evidence, as produced by the claimants to prove the income of the deceased, held that the notional income as stipulated in the Second Schedule appended to the Motor Vehicles Act, i.e. Rs. 15,000/- per annum, should be taken to be the income of the deceased Radheyshyam Sharma. On that basis, the amount of compensation towards loss of income was calculated at Rs. 1,70,000/-. For the said purpose, a multiplier of 17 was applied and 1/3rd of the income was deducted.

Our attention was drawn to paragraph 8 of the impugned judgment wherein the High Court proceeded on the basis that no evidence has been adduced by the respondent that the land was owned by the said Radheyshyam

Sharma.

The High Court, in our opinion, was clearly wrong. As noticed hereinbefore, in paragraph 7 of its judgment the High Court held that neither any oral nor documentary evidence was adduced by the claimants to prove the income of the deceased. Two witnesses testified to the income of the deceased Radheyshyam. It was in the aforementioned premises obligatory on the part of the respondent to test the correctness or otherwise of the statement made by the two witnesses, by cross-examining them. The High Court does not say that under no circumstances, the income of an agriculturist can be Rs.5000-6000 per month. Had the said two witnesses been cross-examined, they could have produced documentary evidence. The respondent, in our opinion, cannot take advantage of their own wrong.

The High Court, in our opinion, was not correct in arriving at the conclusion that that no evidence has been adduced by the claimants whatsoever. In view of Section 59 of the Evidence Act, the term evidence would include oral evidence. The Tribunal has relied on such oral evidence. It is now a well settled law, in view of a large number of decisions of the Federal Court as also this Court, that the Appellate Court shall not disturb the finding of fact arrived at by the Trial Court on the basis of the evidence as it had the occasion to notice the demeanour of the witnesses. Unfortunately, the High Court has not adverted to any of the aforementioned questions. Having regard to the fact that the deceased was an agriculturist, we are of the opinion that the multiplier of 17 should have

been used.

We, however, agree with the High Court that as some medical bills were not in the name of the deceased, the medical expenses incurred by the claimants to the extent of Rs. 50,000/- have not been proved. We, therefore, uphold the order of the High Court that the claim towards medical expenses should be confined to Rs. 40,000/-. In that view of the matter, the claimants are held to be entitled to a sum of Rs. 6,62,880/- towards compensation plus they may also be entitled to the interest as awarded by the Tribunal.

To the aforementioned extent, this appeal is allowed. No costs.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
JULY 29, 2009.