

SUPREME COURT OF INDIA

Raghuvir Singh Matolya

Vs.

Hari Singh Malviya

C.A.No. 2050 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

31.03.2009

JUDGMENT

S.B. Sinha, J:

1. Leave granted.
2. Whether dearness allowance and house rent allowance payable to a deceased should be taken into consideration for the purpose of computing the amount of compensation payable in terms of the provisions of Section 166 of the *Motor Vehicles Act, 1988* (for short "the Act") is the question involved in this appeal which arises out of a judgment and order dated 14.02.2007 passed by the High Court of Madhya Pradesh in M.A. No. 2177 of 2005.
3. The basic fact of the matter is not in dispute.

“The deceased Puspa Matolya was travelling in a Tata Sumo on the fateful day, viz., 30.11.2002 at about 11.00 a.m. It dashed against a mango tree. She died on the spot.

Indisputably, the deceased was an Assistant teacher in a primary school. The said school was a State-run one. She was to superannuate on 28.02.2011. She at the time of her death was aged about 52 years and 9 months. The salary certificate produced on behalf of the claimants - appellants showed that she was drawing a monthly salary of Rs.8611/- (Rs.6050/- basic pay, Rs.2481/- dearness allowance and Rs.80/- house rent) per mensum.

The Tribunal, however, taking into consideration only the basic pay passed an award awarding compensation for a sum of Rs. 3,38,000/-. For the said purpose, the Tribunal applied the multiplier of 7.

An appeal in terms of Section 173(1) of the Act was preferred by the appellants. The High Court, by reason of the impugned judgment, enhanced the amount of compensation to Rs. 5,28,000/- by applying the multiplier of 11.

Still not satisfied with the quantum of compensation awarded in their favour, the appellants are before us.”

4. Ms. Pragati Neekhara, learned counsel appearing on behalf of the appellants would contend that the Tribunal as also the High Court committed a serious error as they failed to take into consideration that in computing the net income of the deceased, dearness allowance as also the house rent allowance should be taken into consideration.

5. Mr. Atul Nanda, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

6. Before the learned Tribunal, salary as also a pension certificate was produced.

7. Dearness allowance, in our opinion, should form part of income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in *National Insurance Co. Ltd. v. Indira Srivastava and Others*¹ wherein it was held:

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term "income" in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) has been defined as under:

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated:

" 'Income' signifies 'what comes in' (per Selborne, C., *Jones v. Ogle*). 'It is as large a word as can be used' to denote a person's receipts (per Jessel, M.R., *Re Huggins*). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. *Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Brothers*. Ref. *Vulcun Insurance Co. Ltd. v. Corpn. of Madras*."

21. If the dictionary meaning of the word "income" is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."

To the same effect is the decision of this Court in *Oriental Insurance Co. Ltd. v. Ram Prasad Varma & Ors.*²."

8. We, therefore, are of the opinion that 'Dearness Allowance' and 'House Rent Allowance' payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation.

9. For the reasons aforementioned, we direct that in calculating the amount of compensation, the dearness allowance as also the house rent allowance should also be taken into consideration.

10. The matter is remitted to the trial court. An award may be passed accordingly. The appeal is allowed with the aforementioned directions. There shall, however, be no order as to costs.

¹[(2008) 2 SCC 763]

²[2009 (1) SCALE 598]