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SLP(C)No. 1410 OF 2002

ITEM No.37

Court No.10

SECTION IVA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.1410/2002

(From the judgement and order dated 06/10/2001 in MA 253/95  
of The HIGH COURT OF M.P AT INDORE)

LALITA MEHTA & ORS.

Petitioner (s)

VERSUS

AHAMAD SHERKHAN & ORS.

Respondent (s)

( With Appln(s). for directions )

Date : 15/11/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s) Mr. Vipin Gogia,adv.  
Ms. Jaspreet Gogia,adv.

For Respondent (s) Mr. Arun K. Sinha,Adv.

UPON hearing counsel the Court made the following  
O R D E R

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time. Heard learned counsel for the parties for some  
Leave granted.  
Appeal is disposed of.

.SP1

(Suman Wadhwa) (S. Malkani)  
Court Master Court Master

Signed order is placed on the file.

Item No.37

Ct.No.10

Draft  
15.11.2002.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2002@@  
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(Arising out of SLP(C) No. 1410/2002)

Lalit Mehta & Ors. ...Appellants

Vs.

Ahamad Sher Khan & Ors. ...Respondents

ORDER@@  
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Leave granted.

The appellants before us are the heirs (being the widow and three minor children) of one Suresh Mehta who was killed in an accident caused by a truck in which both Suresh and his brother Sudhir succumbed. The respondents 1 and 2 are the owners, the respondent No.3 is the driver, and Respondent No.4, the insurer of the truck.

The appellants filed a claim against the respondents before the Motor Accidents Claim Tribunal, Indore. Being aggrieved with the Tribunal's decision the appellants took up the matter by way of an appeal before the High Court. The High Court following its earlier decision in Sudhir's case (Vasanti Devi vs. Ahamad Sher Khan and others, Misc. Appeal No. 253/95) enhanced the compensation amount to two lakhs sixty five thousand with interest at 9%. The enhancement was done by using a multiple of 16 instead of 15 of the salary income.

According to the appellants before us even this enhancement was insufficient and High Court in following its decision in Vasanti Devi's case, had applied a principle of deduction which was not applicable in the facts and circumstances of the appellants' case. The heirs of Sudhir also filed a similar application for compensation before the Tribunal (Vasanti Devi & Ors. vs. Ahamad Sher Khan & Ors.) As far as the appellants were concerned they claimed that Suresh earned a monthly salary of Rs.3000/- which was likely to be raised to Rs.5000/-. He was also earning Rs.20,000/- a year as a partner of a firm and that therefore by Suresh's death, the appellants had suffered an annual loss of Rs.80,000/-. The Tribunal held that no loss had been suffered on account of Suresh's earnings as a partner of the firm, as his widow, the appellant No.1 before us had been admitted to the benefits of the partnership in place of Suresh. As far as the monthly salary was concerned, taking into account the travelling

expenses and other living expenses, the Tribunal concluded that only Rs,1,300/- was expended by Suresh on his family per month. Since Suresh was about 38 years old when he died and his widow 36, and the three minor daughters 13, 10 and 6 years old respectively, the Tribunal computed the loss of income by using a multiple of 15 at Rs.2,25,000/-

and Rs. 25,000/- on account of loss of consortium making a total of Rs.2,50,000/-. According to the learned counsel appearing on behalf of the appellants, the High Court erred in holding that the deceased was spending about Rs.21,000/- on himself annually out of the annual income of Rs.36,000/- and to allow deduction accordingly. The learned counsel for the appellants has drawn our attention to a document exhibited before the Tribunal in which it was clearly stated that the travelling and other expenses of Suresh incurred on behalf of the Company in which he was employed were reimbursible by the Company. Section 163-A(1) of the Motor Vehicles Act 1988 provides:

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"163A(1): Special provisions as to payment of compensation on structured formula basis:-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

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The second Schedule to the Motor Vehicles Act, 1988 provides for calculation of compensation in respect of the fatal accidents/injuries claims. After providing for the

mode of arriving at the total amount of compensation the note to the Schedule specifies that "the amount of compensation so arrived at in the case of fatal accidents claims shall be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive." Although this Court has, in U.P.State Road Transport Corporation and Others vs.@@

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Trilok Chandra and Others reported in 1996 (4) SCC 362,@  
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said that the Schedule can be used as a guide-line and not as setting out an irrefutable formula, it appears to us that the ratio of the decision is that guide-line shall be followed unless there are especial considerations warranting a deviation. We have considered the facts of this case and do not find any evidence in support of the deviation from one-third deduction on account of the deceased's expenditure on himself from his total income. The deduction should not have been Rs.21,000/- but Rs.12,000/- per year on account of the deceased's personal expenses. In the circumstances, the order of the High Court is modified to the extent that the awarded amount on account of income loss will be enhanced after allowing the deuction on account of the deceased espenses at one-third of the total compensation computed as indicated in the Second Schedule of the Act. The enhanced compensation on

-5-

this basis works out to Rs.4,9000,00/- (Rupees four lakhs and nine thousand only). The appellants are entitled to this amount with interest at 9% thereon, as directed by the High Court.

The Appeal is accordingly disposed of.

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.....J.  
(RUMA PAL)

.....J.  
(B.N.SRIKRISHNA)

New Delhi;  
November 15,2002.