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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 14.09.2011*

+ **MAC Appeal No 178/2011**

SANJEEV KUMAR & ANOTHER Appellants
Through: Mr. Manish Maini, Advocate.

Versus

HAWA SINGH & OTHERS Respondents
Through: Ms. Suman Bagga, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

For order see MAC APPEAL No.176/2011.

INDERMEET KAUR, J.

SEPTEMBER 14, 2011
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 14.09.2011*

+ **MAC Appeal No 176/2011**

TINKU & OTHERS Appellants
Through: Mr. Manish Maini, Advocate.

Versus

HAWA SINGH & OTHERS Respondents
Through: Ms. Suman Bagga, Advocate.
AND

MAC Appeal No 178/2011

SANJEEV KUMAR & ANOTHER Appellants
Through: Mr. Manish Maini, Advocate.

Versus

HAWA SINGH & OTHERS Respondents
Through: Ms. Suman Bagga, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 These are two appeals filed by the claimants of two victims. Sanjeev Kumar is the father of the victim Sawan Kumar who was

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aged 5 years on the date of the accident. In this case, the Tribunal had awarded a sum of Rs.2,80,000/- as damages of which Rs.1,25,000/- was calculated as 'loss of dependency', Rs.5,000/- as funeral expenses, pecuniary damages to the tune of Rs.75,000/- and non pecuniary damages also to the tune of Rs.75,000/-. The Supreme Court in the case of R.K. Malik and other Vs. Kiran Pal and others 2007 ACJ 2010 has considered the law with regard to compensation to be awarded in a case of child victim; this has been followed by subsequently by a Bench of this Court in reported in II (2010) ACC 9 National Insurance Company Ltd. Vs. Farzana; in this case the child victim was aged 7 years; a Bench of this Court relying upon the judgment of R.K. Malik (Supra) had awarded a sum of Rs.75,000/- under the head of 'pain and sufferings' and another sum of Rs.75,000/- for 'loss of future prospects'; this sum of Rs.1,50,000/- was awarded under the head of 'non-pecuniary damages'; income of the child in view of the judgment of R.K. Malik (Supra) was taken at Rs.15,000/- per annum which figure was arrived at after taking guidance from the IIInd Schedule of Section 163-A of the Motor Vehicle Act; to this the multiplier of 15 was applied; Rs.2,25,000/- would be the amount under the pecuniary head and thus complied with the sum of Rs.1,50,000/- awarded under the head of 'non-pecuniary

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damages totaling a sum of Rs.3,75,000/-. The Award requires modification on this count. The impugned Award not following this principle has committed an error; the impugned Award is accordingly modified and the claimants of the child victim are accordingly entitled to Rs.3,75,000/- which is inclusive of the interim award of Rs.50,000/- already paid; this amount shall carry an interest @ 7.5% per annum from the date of filing of the petition till realization.

2 The second part of the Award relates to the claim filed by the legal representatives of deceased Sheela. As per the deposition on oath and in terms of the affidavit filed by the petitioner, deceased Sheela was earning Rs.9,000/- per month; the submission of learned counsel for the appellant that in terms of the salary certificate produced by PW-3 her salary income was evidenced at Rs.18,269/- is clearly beyond the pleading; the petitioner who is the son of the victim being in the best know how of the salary of his mother has categorically deposed that she was drawing the salary of Rs.9,000/- per month. In this view of the matter, the Tribunal had correctly appreciated that the salary of the victim was Rs.9,000/- per month. The victim had two married sons and two married daughters. The Court had noted that in the claim petition as also the affidavit by way of evidence filed by the

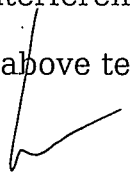
witness of the claimants, there was not a whisper anywhere in either that they were financially dependent upon their deceased mother Sheela. The class of legal representatives is distinct from the class which is financially dependent upon the deceased. The definition of a 'legal representative' as a claimant under the M.V. Act has been noted by the Apex Court in I (1987) ACC 475 Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai & another. The Apex Court had noted that expression 'legal representative' has not been defined anywhere in the Motor Vehicle Act; this definition finds mention under Section 2 (11) of the Code of Civil Procedure; i.e. a person who represents the estate of the deceased; a clue had also been taken from the proviso to Sub-section (1) of Section 110-A of the Motor Vehicle Act which expressly states (i) that an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such an application shall be made on behalf of or for the benefit of all the legal representatives. In this case, the Apex Court had noted that a claim petition even by the brothers of the deceased was maintainable. In MAC Appeal No 288/2011 titled Smt. Shakuntal & Others VS. Sh. Naresh Kumar & others decided on 16.05.2011, a Bench of this Court had noted that two married daughters of the victim were not *stricto sensu* dependent

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upon the deceased; however they are a part of the family and they may benefit from the gifts and cash amounts which may be given to them by their deceased parents. These factors have been correctly construed and noted by the Tribunal; since the two sons and two married daughters had neither averred in the claim petition and nor deposed on oath that they were financially dependent upon their deceased mother; their financial dependency was rightly not taken into account; however a lump sum compensation of Rs.2 lacs was awarded to them under the non-pecuniary head i.e. for 'loss of love and affection' and another sum of Rs.2 lacs for 'loss of estate'. These amounts of Rs.4 lacs would even otherwise off set and would balance the amount not awarded for 'loss of dependency'. A separate amount of Rs.10,000/- has also been awarded for funeral expenses. The findings in this part of the Award merits no interference.

3 Both the appeals are disposed of in the above terms.


INDERMEET KAUR, J.

SEPTEMBER 14, 2011

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