

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

+ MAC. APP. 254/2010

NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

SHITLA PRASAD UPADHYAY & ORS. Respondents
Through: Mr. Anshuman Bal, Advocate

% Date of Decision : 25 May, 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. This appeal seeks to assail the judgment and award dated 23.12.2009 on the short ground that the amount of compensation allowed by the Claims Tribunal on account of the death of Shri Bishamber Nath Upadhyay in a vehicular accident was not in accordance with the provision of Section 163A read with the Second Schedule of the Motor Vehicles Act, 1988 and the structured formula delineated therein.

2. With the consent of the parties, the appeal is being taken up for final hearing at the admission stage.
3. To recapitulate the facts, the Claims Tribunal, in the instant case, after coming to the conclusion that the aforesaid Shri Bishamber Nath Upadhyay (hereinafter referred to as “the deceased”) had died on account of injuries sustained in a road accident, which occurred on 14.12.2007, involving Tempo No. DL-1LE-0086, owned by respondent no. 4 and insured with the appellant, proceeded to quantify the compensation due and payable to the respondents No.1 to 3/claimants. For the aforesaid purpose, the Claims Tribunal assessed the income of the deceased in the sum of ₹ 39,000/- per annum, as claimed by the respondents no. 1 to 3 in the claim petition. Thereafter, applying the principles laid down by the Supreme Court in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121*, the Tribunal held that the aforesaid income of the deceased would have increased by 30% by the end of his working career, that is, by ₹ 11,700 per annum, and thus his average annual income for the purpose of calculating the loss of dependency was ascertained by the

Tribunal to be in the sum of ₹ 50,700/- per annum. Deducting 1/3rd therefrom for the personal expenses of the deceased, the Claims Tribunal assessed the remaining amount of ₹ 33,800/- per annum to be the loss of dependency of the claimants. The aforesaid multiplicand was multiplied by 14 and the total loss of dependency was assessed to be in the sum of ₹ 4,73,200/-. In addition, the claimants were held entitled to a sum of ₹ 10,000/- under the head of loss of estate, ₹ 10,000/- towards funeral expenses, and ₹ 1,00,000/- for loss of love and affection of the deceased. In all, the Tribunal awarded to the respondents no. 1 to 3 a sum of ₹ 5,93,200/-, rounded off to ₹ 5,93,000/-, alongwith interest at the rate of 7.5% per annum from the date of the petition till the date of deposit of the award amount.

4. Aggrieved by the aforesaid findings of the Tribunal, the appellant- Insurance Company has preferred the present appeal in which the only ground sought to be urged by Ms. Neerja Sachdeva, the learned counsel for the appellant, is that the claim petition having been filed under Section 163A of the Act, the Claims Tribunal, while computing the compensation payable to the legal representatives of the deceased, was required to strictly

adhere to the structured formula laid down in the said Section read with the Second Schedule to the Act. In this context, Ms. Sachdeva has sought to challenge the award of the Tribunal on the following two grounds:

- (i) The Claims Tribunal could not have taken into consideration the future prospects of the deceased to the extent of 30% by relying upon the judgment of the Supreme Court in the case ***Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121.***
- (ii) The Claims Tribunal erred in awarding a sum of ₹ 1 lakh under the head of loss of love and affection and likewise erred in awarding amounts on the higher side under the head of loss of estate and for funeral expenses of the deceased which were not in accordance with the Second Schedule of the Motor Vehicles Act, 1988.

5. Mr. Anshuman Bal, the learned counsel for the respondents No.1 to 3/Claimants sought to support the award by rebutting all the aforesaid contentions of the learned counsel for the appellant. In addition, he submitted that the multiplier adopted by the Claims Tribunal was not in accordance with the Second Schedule, which required a multiplier of 15 to be applied to the age group of victims between 40 and 45 years of age. Since the deceased in the instant case was admittedly aged 42 years at the time of the accident, the Claims Tribunal should have applied the

multiplier of 15 instead of the multiplier of 14 to augment the multiplicand constituting the loss of dependency of the respondents No.1 to 3.

6. In a recent decision of this Court rendered in ***MAC. APP. No.190/2011*** titled as ***“Jagdish and Anr. vs. Madhav Raj Mishra and Anr.”*** on April 19, 2011, this Court, relying upon the judgment of the Supreme Court in the case of ***Deepal Girishbhai Soni and Ors. versus United India Insurance Co. Ltd. (2004) 5 SCC 385***, upheld the contention of the appellant therein that the structured formula referred to in the Second Schedule of the Motor Vehicles Act, 1988 is required to be strictly adhered to while assessing compensation under section 163A of the said Act. In the said case, the claimants had challenged the award of the Tribunal on the ground that one-half of the income of the deceased had been deducted towards the personal and living expenses of the deceased, however, in view of the fact that the petition had been filed under section 163A of the Act, only one-third should have been deducted therefrom. This Court, accepting the contention of the claimants-appellants, held as under -

“11. It cannot, however, be lost sight of that in the ***Sarla Verma’s case (supra)***, the Supreme Court was laying down the guiding principles to be followed by all Courts and Tribunals in claim petitions under Section 166 of the Act and was not dealing with the principles to be followed while deciding claim petitions under Section 163-A of the Act. Significantly, the Court itself observed that the principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the Motor Vehicles Act than claims under Section 166 of the said Act. It was clarified that Section 163-A of the Second Schedule in terms does not apply to determination of compensation in applications under Section 166. On the aspect of deduction for personal and living expenses, the Court specifically ruled that deduction on account of personal living expenses cannot be at a fixed 1/3rd in all cases ***unless the calculation is under Section 163-A read with the Second Schedule to the Act.*** Accordingly, in my view, the learned Tribunal ought to have adhered to the Second Schedule and the reliance placed by it upon the case of ***Smt. Sarla Verma (supra)*** in the given context was entirely misplaced.”

7. In a subsequent decision in the case of ***Oriental Insurance Co. Ltd. versus Anita Devi and Ors.*** in ***MAC APP. No. 212/2010*** dated 10.05.2011, this Court, on an appeal filed by the Insurance Company, upheld the contention of the appellant that strict adherence to the provisions of Section 163-A was

envisaged by the Legislature and re-computed the compensation payable to the claimants in accordance with the structured formula laid down in the Second Schedule appended thereto.

8. In view of the aforesaid, it must be held that the Claims Tribunal, in the instant case erred in not adhering to the structured formula laid down in the Second Schedule and in relying upon the judgement of Supreme Court in the case of **Sarla Verma (supra)** while calculating the compensation payable to the respondents no. 1 to 3. In doing so, the learned Tribunal completely lost sight of the fact that the decision in **Sarla Verma (supra)** was rendered by the Hon'ble Supreme Court in a case under Section 166 of the Act and the Court itself had drawn a distinction between the guidelines to be adopted for the computation of compensation in cases under Section 166 and those under Section 163-A of the Act. This being so, the amount of compensation awarded to the respondents No.1 to 3 in the present case is required to be re-computed in accordance with the Second Schedule.

9. The Tribunal has taken the income of the deceased to be in the sum of Rs. 39,000/- per annum, as stated in the petition and as the said income does not exceed the maximum limit of ₹ 40,000/- per annum provided for in the Second Schedule, the same is justified. However, as already stated, the Tribunal erred in adding 30% of the said income towards the future prospects of the deceased and income of the deceased has to be considered as ₹ 39,000/- per annum without making any addition on account of the future prospects. Deducting 1/3rd therefrom towards personal and living expenses of the deceased, the annual loss of dependency of the respondents No.1 to 3 comes to ₹ 26,000/- per annum. The age of the deceased at the time of the accident being 42 years, the appropriate multiplier for augmenting the aforesaid multiplicand, as laid down in the Second Schedule would be the multiplier of 15 and not the multiplier of 14. Thus calculated, the total loss of dependency of the respondents No.1 to 3 works out to ₹3,90,000/-, that is, ₹26,000/- x 15. Coming to the non-pecuniary damages payable to the respondents no. 1 to 3, the Tribunal has awarded ₹10,000/- towards the loss of estate of the deceased, ₹10,000/-

towards funeral expenses of the deceased and a sum of ₹1,00,000/- under the head of loss of love and affection. The award of ₹1,00,000/- cannot be upheld having regard to the fact that the the present claim petition has been filed under Section 163A. Accordingly, the respondents no. 1 to 3 are held entitled to a sum of ₹10,000/- under the head of loss of love and affection. The total amount of compensation payable to the respondents No.1 to 3, thus works out to ₹4,20,000/-. The award stands modified accordingly.

10. In view of the fact that cheques in the sum of ₹4,25,000/- are lying deposited with the Tribunal, the claimants shall be at liberty to withdraw the same. The balance amount towards the interest payable to the respondents no. 1 to 3 shall be paid by the appellant within 30 days from the date of receipt of this order by the counsel for the appellant.

11. The appeal is allowed to the aforesaid extent and stands disposed of.

12. A copy of this order be sent to the counsel for the appellant for compliance thereof.

13.The appellant shall be entitled to the release of sum of ₹25,000/-
deposited in this Court as statutory deposit by them.

**REVA KHETRAPAL
(JUDGE)**

May 25, 2011