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

-1 **MAC.APP.260/2010**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Pankaj Seth, Advocate**

versus

DIVYA MISHRA & ORS Respondents
Through: **Mr. Deepak Tyagi and Mr. Sushil
Thakur, Advocates for the
respondents No.1 to 3**

i **MAC.APP. 303/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Pankaj Seth, Advocate**

versus

DIVYA MISHRA & ORS. Respondents
Through: **Mr. Deepak Tyagi and
Mr. Sushil Thakur, Advocates
for the respondents No.1 to 3**

% **Date of Decision : April 21, 2011**

MAC. APP. 260/2010 and MAC. APP. 303/2011

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Signature Not Verified

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Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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| 1. Whether reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether judgment should be reported in Digest? | Yes |

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. By way of this order it is proposed to decide two appeals against the judgment and award of the Motor Accident Claims Tribunal, Delhi dated 16.12.2009 passed in case MACT No. 278/07, one bearing MAC App. No. 260/2010, being the appeal filed by the appellant -- M/s. National Insurance Company Ltd., and the other bearing MAC App. No. 303/2011, being the cross objections filed by the claimant Smt. Divya Mishra.

2. The brief facts relating to the filing of the present appeal and the cross objections thereto are that one Sh. Shokhar Mishra died in a motor vehicular accident on 26.10.06. A claim petition under the Motor Vehicles Act, 1988 was filed by the widow and the parents of the deceased against the driver, the owner and the insurer of the

offending vehicle. The learned Tribunal relying upon the judgment of this Court in the case of *United India Insurance Company Ltd. vs. Reeta Devi*, MAC. APP. No.651/2007 decided on 04.11.08 held the appellant – Insurance Company liable to pay a sum of Rs. 5,150/- per month each to the mother and the father of the deceased till their death, in addition to a sum of Rs. 4,05,200/- alongwith interest at the rate of 7.5% per annum from the date of institution of petition till the date of realization. The operative part of the impugned award reads as under:

“19. In the judgment delivered by Hon’ble Justice Mr. V.B.Gupta in the case titled as United India Insurance Company Ltd. vs. Reeta Devi, decided on 04.11.08 and was circulated to the Tribunals for compliance, wherein it has been held that:

It would be just & reasonable if provision is made for each of the dependents as per their ages by way of monthly payment and also secure the interest of the claimants till they would have remained dependent upon the earnings of the deceased.

20. Since the deceased would have been earning ₹ 15,517/- p.m. and would have been contributing about ₹ 10,300/- p.m. towards

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petitioner No.2 & 3, the share of each of petitioner under these circumstances is assessed as under:-

1. Petitioner No.2, Smt. Deepa Mishra : ₹5,150/- p.m.

2. Petitioner No.3, Sh. Ram Lakhan Mishra : ₹5,150/- p.m.

21. The present claim petition was filed on 23.03.2007. This case is being disposed of today i.e. 15.12.2009 and by January, 2010 about 34 months would have passed. Petitioner No. 2 & 3 are entitled to compensation @ ₹10,300/- p.m. and accordingly for this period the amount of compensation comes to $\text{₹}10,300 \times 34 = \text{₹}3,50,000/-$.

22. In addition to it, Petitioner No.1 being the widow of deceased is entitled to be compensated for loss of consortium. Let she be paid ₹10,000/- towards loss of consortium. ₹5,000/- is also granted to petitioners towards loss of estate.

23. In addition to it, all the petitioners are entitled to be compensated for loss of love and affection. Deceased died at young age. He left behind young wife and aged parents. They will miss him through out their lives. Nothing can ever compensate the actual loss. Only a humble attempt is made by the Tribunal to apply soothing balm over their wounds. As such Petr. no. 2 & 3 being parents of deceased and Petr No.1 being his wife are granted ₹30,000/- for loss of love and affection.

24. In addition to it, petitioners are entitled to be compensated for funeral expenses. The second schedule has prescribed a figure of ₹ 2,000/- which is very much on the lower side. When price of all the commodities are revised from time to time and even minimum wages are being periodically increased, there is no point in sticking to low figure of ₹ 2,000/-. Let petitioners be paid ₹ 5,000/- towards funeral expenses as lot of money is required to be spent on numerous religious rites and ceremonies and also on transportation of body.

25. In view of above additions, total compensation payable to petitioners is as under besides the future monthly dependency mentioned separately :

1.	Loss of dependency for the period from the date of filing of petition till today:	3,50,200/-
2.	Loss of consortium :	10,000/-
3.	Loss of estate :	5,000/-
4.	Lose of love and affection :	30,000/-
5.	Funeral expenses :	<u>5,000/-</u>
	Total :	<u>4,05,200/-</u>

26. As far as compensation for future period is concerned, i.e. from 1st February, 2010 onwards, petitioner No.2 & 3 shall be paid ₹ 5,150/- each p.m. till their death.

27. Both the petitioner Nos. 2 & 3 shall have to furnish Life Certificate to National Insurance Company once in a year i.e. in the month of

February every year. These certificates are to be submitted to the insurance company in February, 2010 and thereafter every year.

28. Further, keeping in view the run-away inflation and price rise and the fact that deceased's salary would have increased with the passage of time, the claimants shall be entitled to increase in compensation by 25% after every 5 years on their monthly compensation i.e. Petitioner no.2 & 3 shall get 25% increase in the monthly compensation with effect from February 2015 and so on subject to the abovesaid limitation subject to death of petitioner no.2 & 3.

29. So far as the liability to pay the compensation is concerned, it is primarily of R1 & R2 being driver and owner of offending vehicle and R3, being insurer is vicariously liable for the damages suffered by the petitioners. The vehicle was duly insured with R-3 as on the date of the accident and R1 was having valid and effective driving license, therefore, R-3 is liable to pay the compensation.

30. R-3 shall send the respective share of monthly payment to the petitioner no.2 & 3 by way of crossed cheques by 10th of every month at the addresses mentioned in the memo of the parties or at any other address to be furnished by them to the insurance company directly.

31. In case, there is any default on the part of the insurance company in making payment in time, the claimants shall be entitled to interest at the rate of 7.5% per annum for the delayed period.

32. As far as compensation from the date of the filing of the petition till January, 2010 is concerned alongwith compensation under the heads discussed above, I hold that Petitioners are entitled to receive compensation of Rs.4,05,200/- (including interim compensation of Rs.50,000/- already awarded) to be payable by insurance company as discussed above. This issue is decided accordingly.

33. **RELIEF:**

In view of the aforesaid discussions, I hereby hold that all the petitioners are entitled to total amoun of ₹ 3,55,200/- (after deduction of interim award of ₹ 50,000/-) to be paid by R-3, insurance company within 60 days of today alongwith interest to be calculated @ 7.5% per annum from the date of institution of the petition till date of its realization. This compensation alongwith proportionate interest is apportioned between the petitioners as under:

1. Petitioner no. 1, Smt. Divya Mishra: ₹ 35,000/-
2. Petitioner no. 2, Smt. Deepa Mishra ₹ 1,60,000/-
3. Petitioner no. 3, Sh. Ram
Lakhan Mishra: ₹ 1,60,000/-."

3. As stated hereinabove, aggrieved by the aforesaid award, the Insurance Co. as well as the widow of the deceased have come in appeal before this Court. Although a number of grounds have been taken by the Insurance Company in its appeal, the only ground

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this court at the time of the hearing was as to the mode of disbursement of the award amount. Mr. Pankaj Seth, the learned counsel for the Appellant submits that in place of monthly payments awarded by the Tribunal, the award amount be disbursed to the claimants in the form of a lumpsum. Mr. Deepak Tyagi , the learned counsel for the claimants (Respondents no. 1 to 3 in MAC App. No. 260/2010) echoes the sentiments of the counsel for the appellant stating that a lumpsum award would be in the interest of all concerned.

4. The aforesaid controversy regarding the mode of disbursement of the award amount has already been set at rest by the Hon'ble Supreme Court in SLP (Civil) No. 15796/2009 titled as "***Reeta Devi and Anr. versus United India Insurance Co. Ltd. and Anr.***" decided on 22.02.2010, wherein the judgment of this Court relied upon by the learned Tribunal in the case of ***Reeta Devi and Ors (supra)*** was reversed and the award by way of monthly instalments was held to be not proper. The aforesaid decision of Supreme Court has been followed by this Court in ***New India Assurance Co. Ltd. versus***

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Balpreet Kaur, MAC App. 250/2010 decided on 21.04.2010. The relevant part of the said judgment is as follows:

"There is no provision under Motor Vehicles Act for fixing compensation on monthly payment basis or like pension as fixed by the learned Tribunal. The compensation has to be awarded to the parties as a lumpsum amount. This Court vide order dated 4th November 2008 in MAC Appeal No.651 of 2007 had passed a similar order of fixing pension and the matter was taken to the Supreme Court in SLP. The order of fixing of pension was set aside by the Supreme Court and a lumpsum payment was directed to be given to the claimants.

Keeping in view the fact that grant of compensation as monthly payment has not found favour with the Supreme Court, I consider that the Tribunal should fix lumpsum compensation in accordance with law.

In the result, both the appeals are allowed and the matter is remanded back to the Tribunal for adjudicating lumpsum compensation payable to the claimant as per law."

5. In a recent decision of this Court in the case of **Ramkali and Ors. versus Ashok Kumar and Ors.**, MAC App. No. 170/2009 dated 22.01.2011, following the decisions in **Reeta Devi and Balpreet Kaur (supra)**, the order of the learned Tribunal awarding a sum of Rs. 3,987/- to be paid to each of the two claimants every month till their

death was set aside and a lumpsum compensation was awarded in its place. Thus, the settled legal position is that lumpsum compensation rather than payment of compensation on monthly instalment basis must be paid.

6. Adverting to the facts of the present case, the mode of calculating the compensation by the Tribunal was as follows. After adding future prospects and deducting personal and living expenses of the deceased, the Tribunal calculated the monthly loss of dependency of the claimants to be in the sum of ₹ 10,300/- per month. Thereafter, instead of calculating the annual loss of dependency and multiplying the resultant figure by an appropriate multiplier to ascertain the total loss of dependency suffered by the claimants, the Tribunal apportioned the monthly loss of dependency between the mother and the father of the deceased equally and directed the Insurance Company to pay a sum of ₹ 5,150/- per month to each of them till their death.

7. The Tribunal, thus, erred in not calculating lumpsum compensation payable to the claimants, and by not augmenting the

multiplicand of Rs. 10,300/- per month by multiplying it with an appropriate multiplier. Admittedly, the age of the deceased in the instant case was 27 years and nine months. The appropriate multiplier applicable for the age group of victims between 26 and 30 years of age, it is well settled, is the multiplier of 17. The total loss of dependency thus ought to have been calculated at ₹ 21,01,200/- (i.e. ₹ 10,300/- x 12 x 17). Deducting ten per cent from this amount towards income-tax payable by the deceased annually, the loss of dependency of his legal representatives works out to ₹ 20,61,080/-

8. Adding to the aforesaid pecuniary damages, non pecuniary damages of ₹ 10,000/- towards loss of consortium, ₹ 5,000/- towards loss of estate, ₹ 30,000/- for loss of love and affection and ₹ 5,000/- towards funeral expenses, as awarded by the Tribunal, the total compensation payable to the claimants works out to ₹ 21,11,080/- (including the compensation of ₹ 4,05,200/- awarded by the Tribunal till the date of the award and also including the monthly installments already received by the claimants.) The claimants are accordingly held entitled to receive the sum of ₹ 21,11,080/- in all as

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compensation for the untimely demise of the deceased with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

9. Adverting now to the cross appeal filed by the widow of the deceased, the sole grievance raised in this appeal is that the Tribunal has not awarded loss of dependency to the widow of the deceased. As can be seen from the award, the Tribunal observed that Smt. Divya Mishra, widow of the deceased was working as a teacher in a school, which showed that she was not financially dependent upon the deceased. The Tribunal, thus, held her not to be a dependent upon the deceased and did not apportion any part of the loss of dependency in her favour.

10. Mr. Deepak Tyagi, the learned counsel for the appellant submits that the widow of the deceased is the real victim who has to suffer a lot of financial loss apart from emotional distress during her entire life and, therefore, at least one-third of the compensation ought to be awarded in her favour. I am in agreement with the learned counsel for the appellant. In my opinion, the total compensation of ₹

21,11,080/- with the interest thereon has to be equally apportioned amongst the claimants in the ratio of one-third each. It is accordingly held that the appellant shall be entitled to one-third share of the award amount.

11. It is apparent from the record that a sum of ₹ 4,69,950/- has already been deposited by the Insurance Company with the Tribunal. The balance amount shall be deposited by it with the Tribunal within a period of one month from the date of the receipt of this order.

12. Both the appeals stand disposed of in the above terms.

13. The records of the Claims Tribunal be sent back.


REVA KHETRAPAL
(JUDGE)

April 21, 2011