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

% *Date of Judgment: 18.8.2011*

+ **MAC APPEAL No. 435/2011**

KAVITA ARORA

.....Appellant
Through: Mr.Navneet Goyal, Advocate.

Versus

RAJEEV KUMAR & ORS.

.....Respondents
Through: Mr.R.C.Mahajan, Advocate.

CORAM:

HON'BLE MS. JUSTICEINDERMEET 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.404/2011.

INDERMEET KAUR, J.

AUGUST 18, 2011
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INDERMEET KAUR, J. (Oral)

1. These two appeals have impugned the Award dated 15.5.2011 whereby on the claim petition preferred by Kavita Arora, the widow of deceased Ramesh Arora and mother of minor Child Dev Arora; compensation in the sum of ₹14,11,386/- had been awarded qua the death of her husband; a sum of ₹5,90,000/- had been awarded qua the death of her minor child.

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2. The grievance of the claimant qua the claim of her husband is two-fold; her contention is that although the salary of the victim had been computed correctly in terms of his income tax return for the year 2007-2008, yet the benefit of future prospects, cost rise as also price index inflation had not been given. 50% should have accorded on this count. For this submission reliance has been placed upon a judgment of Dalvinder Kaur Vs. United India Insurance Ltd. reported in IV(2010) ACC 365. In this case the deceased was aged 38 years; he was a building contractor; income tax return had been filed; a Bench of this Court placing reliance upon the judgment of R.K.Malik Vs. Kiran Pal IV(2009) SLT 146 as also the judgment of Baby Radhika Gupta Vs. Oriental Insurance Company reported in VIII(2009) SLT 642 had added 50% towards future prospects of the deceased and the income was computed accordingly. There is no reason as to why the ratio of this judgment should not be made applicable in this instant case also. The income tax return for the last two preceding years i.e. for 2006-07 shows the gross income of the victim in the sum of ₹1,05,100/- and for the year 2007-08 showing his gross income in the sum of ₹1,12,181/- are a part of the trial court. The business of the victim was the sale-purchase of vehicles; the income tax

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returns had showed an inflation in his income in the last two years. There was no reason to overlook the fact that in the following ten years the income of the victim would have doubled. 50% is liable to be added on this count.

3. The second grievance of the petitioner qua the claim of her husband is that the Tribunal had directed the Insurance Company to deposit the FDR in the Bank at Chandani Chowk which is unsuitable for the claimant because the claimant is a resident of Tilak Nagar; this direction be modified and the amount be directed to be deposited in a suitable bank at Tilak Nagar. This submission has force.

4. Keeping in view the aforementioned scenario the modified award in the case of Ramesh Arora shall accordingly read as under:

$$\begin{aligned} & ₹1,12,181 + ₹56,091 \text{ (50\% of ₹1,12,181)} = ₹1,68,271.50 \\ & \text{(rounded off to ₹1,68,272) - ₹56,091 (1/3 dependency)} \\ & = ₹1,12,181 \times 17 = ₹19,07,077. \end{aligned}$$

5. The amount of ₹25,000/- towards funeral charges, ₹1,00,000/- towards love and affection and ₹10,000/- towards loss of consortium and ₹5,000/- towards loss of estate remain unchanged.

6. Total amount calculated is thus ₹19,07,077 + ₹1,40,000 = ₹20,47,077 along with interest @ 7.5 % per annum from the date
MAC APPEAL No.404/2011 & 435/2011

of filing of the petition till the date of realization minus any amount received as an interim compensation is accordingly awarded. The impugned Award is also modified to the extent that instead of the amount being deposited in the Bank of Maharashtra, Chandani Chowk Branch the Insurance Company is directed to deposit the amount in the UCO Bank, Tilak Nagar Branch. The other directions contained in the Award will remain unmodified.

7. The appeal has also challenged the compensation awarded qua the death of the child Dev Arora. Contention is that the guidance has been taken from the Second Schedule of the Motor Vehicle Act (M.V.Act) which is applicable to claim petition under Section 163 A of the M.V.Act and not to the petition under Section 166 of the M.V.Act; further contention is that the income of the child should have been taken as that of an unskilled worker. Last contention is that the amount directed to be deposited by the Insurance Company in the Chandani Chowk Branch is also unsuitable for the same reason that the claimant is residing at Tilak Nagar and the branch of the Bank at Chandani Chowk is not accessible to her.

8. The Award qua the compensation awarded for the death of the minor child suffers from no infirmity. The Tribunal has noted

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that the judgment of this Court in National Insurance Company Ltd. Vs. Farzana & Ors. in MAC APPEAL No.13/2007 decided on 14.7.2009 which had laid down the principles for ascertaining compensation on account of the death of a minor child; the notional income as mentioned in the Second Schedule was rightly taken into account of ₹15,000/- per annum to which multiplier of 15 has to be applied i.e. equivalent to ₹2,25,000/-. In terms of the judgment of R.K.Malik (supra) ₹75,000/- has been awarded towards future prospects as also another sum of ₹75,000/- has been awarded as non-pecuniary damages; total amount of ₹3,75,000/- has been awarded on account of the death of the child; a sum of ₹2,15,000/- has further been awarded on account of the expenses of medical bills incurred on the medical treatment of the child; bills of ₹1,89,482/- had been produced and ₹25,000/- has been awarded as compensation for special diet and conveyance to the claimant; total amount of ₹5,90,000/- has been awarded qua the claim of the death of the child. The Award qua this claim suffers from no infirmity. It requires no modification except that the Insurance Company is directed to deposit the compensation amount in the UCO Bank, Tilak Nagar, Branch which amount will be disbursed to the claimant Kavita Arora in terms of the MAC APPEAL No.404/2011 & 435/2011

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directions contained in the Award.

9. With these directions both the appeals are disposed of.

sd/-

INDERMEET KAUR, J.

AUGUST 18, 2011

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