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

Date of decision: 29th August, 2012

MAC. APP. No.122/2011

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Suman Bagga, Advocate.

Versus

HARI SINGH & ORS.

..... Respondents

Through: Mr. R.L. Sharma, Advocate for the
Respondent No.1.

Mr. Chandan Malik, Advocate for the
Respondent No.3

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. In view of the verification report dated 13.07.2011 submitted by the learned counsel for the Respondent No.3, the learned counsel for the Appellant does not press the Appeal with regard to recovery rights.
2. The only contention raised on behalf of the Appellant Insurance Company is that although there was no evidence with regard to the future prospects, yet the Motor Accident Claims Tribunal(the Claims Tribunal)

made an addition of 50% in the deceased's income towards future prospects/inflation.

3. On the other hand, the learned counsel for the First Respondent urges that the deceased Rekha was running a dairy. She used to sell milk and milk products at her house and was earning ₹15,000/- per month. Thus, the Claims Tribunal ought to have accepted the deceased's income to be ₹15,000/- per month.
4. The learned counsel for the First Respondent relies on the affidavit Ex.PW1/A (of the Appellant) and Ex.PW2/A of one Mahavir Singh, their neighbour. Both these witnesses in their examination-in-chief testified that the deceased was earning ₹15,000/- per month by selling milk and milk products. No documentary evidence with regard to the deceased's profession was produced. On an income of ₹1,80,000/-, there is liability to pay Income Tax. No Income Tax Return was produced on the record. The Claims Tribunal declined to believe that the deceased was earning ₹15,000/- and thus took into consideration minimum wages of an unskilled worker to award loss of dependency. Para 14 of the impugned judgment is extracted hereunder:

"The age of the deceased as per Election Card Ex.PW1/1 is 24 years as on 01.01.2007. The date of accident is 15.06.2009. Hence the age of the deceased was around 26 years of age as on the date of accident. The petitioner has claimed the income of the deceased in first petition to be as ₹15,000/- per month. In order to establish this fact, the petitioner has produced the PW2 who was a co-villager. The said PW2 deposed before this court that the deceased was earning around ₹15,000/- pm as she was a milk vendor and the PW2 used to purchase milk from the deceased. The testimony of PW2 is not supported with any document and hence is not satisfactory. Therefore, this court will assess



the income of the deceased on the basis of the chart available in the Minimum Wages Act. The date of accident was 15.06.2009 on which the minimum wages for an unskilled labour were ₹3934."

5. The reasoning given by the Claims Tribunal cannot be faulted. The Claims Tribunal was right in awarding loss of dependency on minimum wages.
6. Admittedly, there was no evidence with regard to the future prospects. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav.* (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

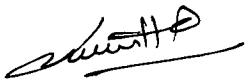
"14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra

efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

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7. Thus, the First Respondent would be entitled to an addition of 30% towards inflation instead of 50% towards future prospects. The loss of dependency thus comes to ₹5,21,648/- ($₹3934 + 30\% \times 12 \times 1/2 \times 17$).
8. It is urged that a compensation of ₹1,00,000/- awarded towards loss of love and affection and ₹25,000/- towards funeral expenses is on the higher side.
9. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh (2011) 11 SCC 425* and in *Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627* granted ₹ 25,000/- (in total to all the claimants) only under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.
10. Funeral expenses are awarded on the basis of actual expenditure. No evidence was led with regard to the expenditure on last rites. In the absence of any evidence, Courts usually award a sum of ₹10,000/- towards funeral expenses. The compensation awarded towards funeral expenses is thus reduced from ₹25,000/- to ₹10,000/-.
11. A further sum of ₹5,000/- awarded under loss to estate is raised to ₹10,000/- and the award of compensation of ₹10,000/- towards consortium is maintained.
12. The overall compensation thus comes to ₹5,76,648/-.
13. The excess amount of ₹1,65,356/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

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14. The Appeal is allowed in above terms.
 15. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
 16. Pending Applications stand disposed of.


(G.P. MITTAL)
JUDGE

AUGUST 29, 2012

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