

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

Date of decision: 12th October, 2012

+ **MAC. APP. 369/2012**

USHA & ANR. Appellants

Through: Mr. Manish Maini, Adv.

versus

PRAMJEET SINGH & ANR. Respondents

Through: Mr. Onkar Pandey, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹5,10,550/- awarded for the death of Vaibhav Kumar, a B.Tech first year student from MGM College of Engineering & Technology, Noida, U.P. who died in a motor vehicle accident which occurred on 14.12.2008.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
3. While computing the loss of dependency, the Claims Tribunal observed that the deceased Vaibhav Kumar was a student of B.Tech. first year. The Claims Tribunal, therefore, took the minimum wages of an under Graduate; and made an addition of 50% towards future prospects to compute the loss of dependency.
4. It is urged by the learned counsel for the Appellants that since the deceased was a student pursuing a professional course, the prospective

income ought to have been taken into consideration to compute the loss of dependency.

5. It is no longer *res integra* that potential income of a student pursuing professional course has to be taken into consideration to award the loss of dependency.
6. In the case of *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.
7. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors.*, MAC APP. 359/2008, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of ₹ 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of ₹ 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ₹ 16,000/- per month to ₹ 25,000/- per month. Thus, the average monthly income of the deceased was taken as ₹ 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ₹ 21,36,000/.
8. A Division Bench of Andhra Pradesh High Court in *B.Ramulamma & Ors. v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar & Anr.*, 2011 ACJ 1702, held that it was very difficult to determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take a salary at the entry level fixed by

the Govt. for such jobs. It was further held that a deduction of 10% for each year may be made for the residual duration of the course.

9. In the instant case, no evidence whatsoever was produced by the Appellants to prove educational performance of the deceased in the 10th standard and the 12th standard. The deceased did not get admission in any good college and that is why he took admission in a private B. Tech College by the name of MGM College of Engineering & Technology. Thus, taking into consideration the fact that the deceased was only a first year student and that he was pursuing engineering only from an ordinary college, I would take his potential income to be about ₹15,000/- per month; make a deduction of 50% towards personal and living expenses and apply the multiplier of 13 as per the age of the deceased's mother, the loss of dependency thus comes to ₹11,70,000/- (15,000/- x 1/2 x 12 x 13).
10. The Appellants are further entitled a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards funeral expenses and loss to estate. The overall compensation thus comes to ₹12,15,000/-.
11. Thus, there is an enhancement of ₹7,04,450/- in the overall compensation which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
12. Respondent No.2 New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
13. Seventy five percent of the enhanced compensation shall be payable to the First Appellant, that is, the deceased's mother. Rest 25% shall go to the Second Appellant, the deceased's father.

14. Seventy five percent of the enhanced compensation shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.
15. The Appeal is allowed in above terms.
16. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 12, 2012

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