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

Date of decision: 11th October, 2012

+ **MAC. APP. No.168/2005**

BIMLA RANI & ORS. Appellants
Through: Mr. O.P. Mannie, Advocate.

Versus

HARBHAJAN SINGH & ORS..... Respondents
Through: Mr. Pradeep Gaur, Advocate for the
Respondent No.2 Insurance Company

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants seek enhancement of compensation of ₹ 85,000/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal)for the death of Amar Nath who died in a motor vehicle accident which occurred on 06.06.1995.
2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.
3. During inquiry before the Claims Tribunal, it was claimed that the deceased Amar Nath was running a shop and earning ₹2,900/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took minimum wages of an unskilled worker, deducted

1/3rd towards personal and living expenses, applied a multiplier of 5 considering that the children were adults.

4. It is urged by the learned counsel for the Appellants that the compensation awarded is too meagre keeping in view that the deceased was running a shop and his income should have been taken to be at least that of a semi-skilled person. Moreover, there were seven dependents, thus, there should have been deduction of 1/10th of the deceased's income towards personal and living expenses. Reliance is placed on *New India Assurance Co. Ltd. v. Gopali & Ors.*, 2012 (6) SCALE 534.
5. No evidence was led by the Appellants to prove that the four adults, i.e., two son and two daughters were dependent on the deceased. In the circumstances, it was only the First Appellant who was primarily dependent on the deceased, at the most it could be said that the deceased also had the responsibility of his two daughters although they were not financially dependent, but yet to be married. In the circumstances, deduction towards personal and living expenses would be 1/4th and not 1/10th. *Gopali* cited by the learned counsel for the Appellants is not attracted to the facts of the present case.
6. In the circumstances of the case, I would award a compensation taking the deceased's income as that of a semi skilled person. The Appellants would not be entitled to any addition as the deceased was aged 55 years. The loss of dependency thus comes to ₹1,64,439/- (₹1,661/- x 3/4 x 12 x 11).
7. I would make a provision of ₹25,000/- towards love and affection and ₹5,000/- each towards loss to estate, loss of consortium and funeral expenses. The overall compensation thus comes to ₹2,04,439/-.

8. Thus, there is an enhancement of ₹1,19,439/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
9. The Respondent No.2 National Insurance Company Ltd. is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks which shall enure for the benefit of the First Appellant.
10. The Appeal is allowed in above terms.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 11, 2012
pst