

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

Date of Decision: 16th November, 2012

+ **MAC. APP. 312/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD. Appellant
Through Mr.Rajat Brar, Advocate

versus

SUNIT DEVI & ORS. Respondents
Through None.

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 reduction of compensation of ₹ 8,34,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No.1 and 2 for the death of Keshav Kumar Jha, who died in a motor accident, which occurred on 04.08.2008.
2. The finding on negligence is not challenged by the Appellant Insurance Company, thus, the same has attained finality.
3. During inquiry before the Claims Tribunal, it was claimed that the deceased Keshav Kumar Jha was a matriculate and was engaged in teaching.

4. In the absence of any proof with regard to the deceased's employment, or his income, the Claims Tribunal took the minimum wages of a matriculate; added 50% towards inflation, deducted one-third towards the personal and living expenses and applied a multiplier of 16 (as per the age of the deceased), to compute the loss of dependency as ₹ 7,94,000/-.
5. The Claims Tribunal further awarded a sum of ₹ 10,000/- towards loss of consortium; ₹20,000/- towards loss of love and affection and ₹ 5,000/- each towards loss to estate and funeral expenses, the overall compensation comes to ₹ 8,34,000/-.
6. The only ground of challenge is that the Claimants did not produce any evidence with regard to the deceased's future prospects, thus, the addition of 50% towards inflation was not justified. On the other hand, there would have been an addition of 30% on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
7. 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."

8. Accordingly, there would be an addition of 30% towards inflation in the instant case also. The loss of dependency thus comes to ₹ 6,87,897/- (4134/- + 30% x 2/3 x 12 x 16).
9. The Claimants would be further entitled to a sum of ₹25,000/- towards Loss of Love and Affection, ₹ 10,000/- towards Loss of Consortium and ₹ 10,000/- each towards Loss to Estate and Funeral Expenses. The overall compensation comes to ₹7,42,897/-.
10. The compensation is thus reduced from ₹ 8,34,000/- to ₹ 7,42,897/-.
11. The excess amount of ₹ 91103/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
12. The amount payable to the Respondents (Claimants) shall be disbursed/held in fixed deposit in terms of the order passed by the Claims

Tribunal.

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

(G.P. MITTAL)
JUDGE

NOVEMBER 16, 2012

v