

\$~ 21

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

Date of Decision: 5th November, 2012

+ **MAC. APP. 471/2012**

HDFC ERGO GENERAL INSURANCE CO. LTD. Appellant
Through Mr.Sunil Kapoor, Advocate

versus

UJJALA GOSWAMI & ORS. Respondents
Through Mr. S.K. Parsy, Advocate for the
Respondents No.1 & 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 reduction of compensation of ₹8,00,912/- awarded in favour of the Respondents No.1 and 2 by the Motor Accident Claims Tribunal(the Claims Tribunal) for the death of Swapan Goswami who died in a motor vehicle accident which occurred on 11.07.2009.
2. The finding on negligence is not challenged by the Appellant Insurance Company.
3. During inquiry before the Claims Tribunal, it was claimed that the deceased was running a restaurant and had an income of ₹10,000/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker, added 50% towards future prospects/inflation, deducted 1/3rd

towards personal and living expenses and applied a multiplier of 14(as per the age of the deceased) to compute the loss of dependency. The Claims Tribunal awarded a sum of ₹25,000/- towards funeral expenses, ₹10,000/- towards loss of consortium, ₹5,000/- towards loss to estate and ₹1,00,000/- towards loss of love and affection.

4. The following contentions are raised on behalf of the Appellant Insurance Company:
 - (i) There was no evidence with regard to the deceased's future prospects. The Claims Tribunal erred in making an addition of 50% towards future prospects.
 - (ii) The compensation of ₹1,00,000/- towards loss of love and affection is on the higher side.
5. The Appeal must succeed on both the grounds. Admittedly, there was no evidence with regard to the future prospects of the deceased. In the circumstances, the Respondents No.1 and 2 were entitled to an addition of 30% in the deceased's income only on account of inflation in view of the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, relied on and discussed by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012. The loss of dependency thus comes to ₹5,72,790/-(₹3934/- + 30% x 2/3 x 12 x 14) as against an award of ₹6,60,912/- granted by the Claims Tribunal.

6. 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/- only (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹25,000/- only.
7. The overall compensation thus stands reduced from ₹8,00,912/- to ₹6,37,790/-.
8. The excess amount of ₹1,63,122/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
9. The compensation awarded shall be released/held in fixed deposit in terms of order passed by the Claims Tribunal.
10. The Appeal is allowed in above terms.
11. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
12. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 05, 2012
pst