

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

Date of decision: 6th November, 2012

+ **MAC. APP. 463/2012**

HDFC-ERGO GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. Sunil Kapoor, Adv.

versus

SHARDA DEVI & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 & 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 reduction of compensation of ₹7,15,112/- granted in favour of Respondents No.1 and 2 for the death of Sanjay, a bachelor, aged 22 years who died in a motor vehicle accident which occurred on 17.08.2010.
2. The finding on negligence has not been 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 was working as a helper and was earning ₹8,000/- per month. In the absence of any evidence with regard to deceased Sanjay's income the Claims Tribunal took the minimum wages of an unskilled worker as fixed by the Govt. of NCT of Delhi under the Minimum Wages Act, that is, ₹5278/- per month. The Claims Tribunal added 50% towards inflation,

deducted 50% towards personal and living expenses and applied the multiplier of 14 to compute the loss of dependency as ₹6,65,112/-.

4. The Claims Tribunal further awarded a sum of ₹20,000/- each towards loss of estate and loss of love and affection and ₹10,000/- towards funeral expenses. Thus, the overall compensation of ₹7,15,112/- was awarded in favour of Respondents No.1 and 2.
5. It is urged by the learned counsel for the Appellant that there was no evidence whatsoever to show that the deceased had future prospects. The Claims Tribunal, therefore, erred in making an addition of 50% towards future prospects. It is contended that the award of ₹20,000/- towards loss to estate was on the higher side.
6. The Appeal must succeed on both grounds.
7. There was no proof with regard to deceased's income. Thus, the Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of dependency. In the absence of any evidence with regard to future prospects, an addition of 50% in the income of ₹5278/- could not have been made. On the other hand, there could have been an addition of 30% towards inflation on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559; .
8. The loss of dependency thus comes to ₹5,76,357/- (5278/- + 30% x 1/2 x 12 x 14) as against ₹6,65,112/- awarded by the Claims Tribunal.
9. The Claims Tribunal awarded a sum of ₹20,000/- towards loss to estate. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 the Supreme Court laid down that normally a sum of ₹

5,000/- to ₹10,000/- should be awarded towards loss to estate. The deceased was only a menial worker. When full loss of dependency on the basis of the income of the deceased is awarded only a notional sum can be awarded towards loss to estate. In view of *Sarla Verma* I award a sum of ₹10,000/- towards loss to estate.

10. The compensation of ₹20,000/- awarded towards loss of love and affection is enhanced to ₹25,000/- (*Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627).
11. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Dependency	₹5,76,357/-
2.	Loss of Love and Affection	₹ 25,000/-
3.	Funeral Expenses	₹ 10,000/-
4.	Loss to Estate	₹ 10,000/-
	Total	₹6,21,357/-

12. The compensation is thus reduced from ₹7,15,112/- to ₹6,21,357/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
13. The excess compensation of ₹93,755/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appellant shall be refunded to the Appellant Insurance Company.

14. The compensation awarded in favour of the Claimants shall be disbursed/held in fixed deposit in the proportion and in the manner as directed by the Claims Tribunal.
15. The Appeal is allowed in above terms.
16. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 06, 2012

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