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

Date of Decision: 7th November, 2012

+ **MAC. APP. 525/2012**

HDFC ERGO GENERAL INSURANCE CO. LTD. Appellant
Through Ms.Neerja Sachdeva, Advocate

versus

TOFA DEVI & ORS. Respondents
Through Mr. Sanjeev Srivastava, Advocate

+ **MAC. APP. 1175/2012**

TOFA DEVI & ORS. Appellants
Through Mr. Sanjeev Srivastava, Advocate

versus

BABLU SINGH & ORS. Respondents
Through Ms.Neerja Sachdeva, Advocate for the
Respondent No.3.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM.APPL.8814/2012(delay) in MAC.APP.525/2012

For the reasons stated in the application, the delay of 17 days in filing the Appeal is condoned.

The application stands disposed of.

CM.APPL.18973/2012(delay in refiling) & CM. APPL.18972/2012 (delay) in MAC.APP.1175/2012

For the reasons stated in the applications, the delay, if any, in refiling the Appeal and delay of 137 days in filing the Appeal is condoned.

The applications stand disposed of.

MAC.APP.525/2012 & MAC. APP.1175/2012

1. These two Appeals (MAC.APP.525/2012 and MAC. APP.1175/2012) arise out of a common judgment dated 24.01.2012 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹13,70,200/- was awarded in favour of the legal representatives of deceased Bal Kishan for his death in a motor vehicle accident which occurred on 07.08.2011.
2. The MAC. APP.525/2012 has been filed by the HDFC ERGO General Insurance Co. Ltd., the insurer of vehicle No.RJ-14-GB-4616 involved in the accident, on the ground that the compensation awarded is exorbitant and excessive. MAC.APP. 1175/2012 has been preferred by the legal representatives on the ground that the compensation awarded is too low and niggardly.

3. For the sake of convenience, the Appellant in MAC.APP.525/2012 shall be referred to as the Insurance Company, whereas the Appellants in MAC. APP.1175/2012 shall be referred to as the Claimants.
4. The finding on negligence is not challenged by the Appellant Insurance Company. The same has, therefore, attained finality.
5. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a driver and was earning ₹12,500/- per month. During evidence, the salary certificate was proved which showed that the deceased was getting a salary of ₹8,500/- in addition to overtime @ ₹30/- per hour whenever he worked as such. This salary certificate was also verified by the investigating officer of the case while filing DAR(Detailed Accident Report). The Claims Tribunal made an addition of 20% because of inflation, deducted 1/4th towards personal and living expenses as the number of dependents were 5 and applied a multiplier of 14 as per the age of the deceased to compute the loss of dependency. The Claims Tribunal further awarded a sum of ₹50,000/- towards loss of love and affection, ₹15,000/- towards funeral expenses and ₹10,000/- each towards loss of consortium and loss to estate.
6. It is urged by the learned counsel for the Appellant Insurance Company that addition of 20% towards inflation was not justified and the Claims Tribunal ought to have granted compensation on the income of the deceased on the date of his death. Reliance is placed on *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr, (2009) 6 SCC 121*. It is

further contended that award of compensation of ₹50,000/- towards loss of love and affection is on the higher side.

7. On the other hand, learned counsel for the Claimants argued that even if there was no evidence with regard to the deceased's bright future prospects, the Claimants were entitled to an addition of 30% towards inflation. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559. It is stated that as per the School Leaving Certificate placed on record, the deceased's date of birth was 15.07.1974. Thus, he was only 37 years on the date of the accident which took place on 07.08.2011. The appropriate multiplier at the age of 37 years was 15. The Claims Tribunal was not justified in taking the age of the deceased to be 42 years on the basis of the Voter Identity Card issued by the Election Commission of India.
8. 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."

9. Thus, even in the absence of any evidence with regard to the future prospects, the Claimants were entitled to an addition of 30% towards inflation.
10. As far as multiplier is concerned, although as per the age mentioned in the Voter Identity Card, the deceased Bal Kishan was aged 42 years on the date of the accident. In the Voter Identity Card, age is given by approximation. In the School Leaving Certificate, it is not the age but the date of birth which is mentioned which in the instant case is 15.07.1974. Thus, I would prefer the date of birth as mentioned in the School Leaving Certificate. Therefore taking the age to be 37 years, the appropriate multiplier would be 15 as against 14 selected by the Claims Tribunal. In

view of the discussion above, the loss of dependency thus comes to ₹14,91,750/- (₹8,500/- + 30% x 3/4 x 12 x 15)

11. 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 only ₹25,000/- (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.
12. The overall compensation is computed as under:

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Dependency	₹14,91,750/-
2.	Loss to Estate	₹10,000/- (as awarded by the Claims Tribunal)
3.	Loss of Consortium	₹10,000/- (as awarded by the Claims Tribunal)
4.	Funeral Expenses	₹15,000/- (as awarded by the Claims Tribunal)

5.	Loss of Love & Affection	₹ 25,000/-
	Total	₹ 15,51,750/-

13. It may be noted that the Claims Tribunal awarded interest @ 7.5% per annum. This accident took place in the year 2011. Rate of interest on long-term deposit in the year 2011 were in the vicinity of 9% per annum. In *Smt. Dhaneshwari & Anr. v. Tejeshwar Singh & Ors.*, (MAC.APP. 997/2011) decided on 19.03.2012, this Court held as under:

“70. Rate of interest were in double digits in 1980’s and 1990’s. The interest rate started falling at the beginning of this century. They started rising and firming up since 2007. Since the rate of interest on long term deposit is now about 9% per annum, it is unreasonable to award interest @ 7.5% per annum to the victims of the motor accident.”

14. Thus, grant of interest @ 7.5% by the Claims Tribunal was on the lower side. The same is enhanced to 9% per annum. The enhanced compensation of ₹1,81,550/- along with difference in the interest shall be deposited by the Insurance Company with the Claims Tribunal within six weeks. The entire enhanced compensation shall enure for the benefit of the Appellant No.3 (Bhagwati, deceased’s widow).
15. Both the Appeals are allowed in above terms.

16. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
17. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 07, 2012
pst