

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

Date of decision: 15th October, 2012

+ **MAC.APP. 507/2011**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through Ms. Amrita Sharma, Adv.

versus

RAJESHWAR PRASAD & ORS Respondents
Through Mr. D.N. Singh, Adv. for R-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 ₹22,31,747/- awarded for the death of Kumar Shekhar, a bachelor who was aged 28 years at the time of his death in a motor vehicle accident which occurred on 21.01.2004.
2. The finding on negligence is not challenged by the Appellant Insurance Company, thus, the same has attained finality.
3. On appreciation of evidence, the Claims Tribunal took the deceased's income to be ₹2,20,692/- per annum on the basis of his salary certificate and Form 16 issued by the deceased's employer; added 50% towards future prospects; deducted 50% towards personal and living expenses (in case of a bachelor); and applied the multiplier of 13 as per the age of the deceased's mother to compute the loss of dependency as ₹21,51,747/-.

4. The Claims Tribunal awarded another sum of ₹80,000/- towards non pecuniary damages to award an overall compensation of ₹22,51,747/-.
5. The following contentions are raised on behalf of the Appellant:-
 - (i) In Form 16 issued by the deceased's employer a sum of ₹27,250.81 was paid as conveyance reimbursement. The same should not have been taken into consideration to compute the loss of dependency.
 - (ii) There was no evidence with regard to deceased's future prospects. Thus, addition of 50% towards future prospects was not justified.
 - (iii) The compensation of ₹60,000/- awarded towards loss of love and affection is on the higher side.
6. I have before me, the salary certificate as also Form 16 issued by ADDI Industries Limited, A-106, Sector 4, Noida, U.P. This salary was for the period of 28.07.2003 to 02.01.2004. the breakup of the salary paid to the deceased Kumar Shekhar is extracted hereunder:-

PARTICULARS	GROSS AMOUNT	
	AS PER FORM NO.12BA	OTHER
Basis Salary	--	24,134.14
Variable D.A.	--	24,134.14
HRA	--	27,250.81
Conveyance Reimbursement	--	27,250.81
Medical	23,047.32	--

Reimbursement		
Any Other Perquisites	--	8,000.00
TOTAL	23,047.32	110,769.90
R/OFF	23,047	110,770

7. From the salary certificate as reflected in Form 16, it is evident that a sum of ₹27,250/- was paid on account of reimbursement on conveyance. The same was, therefore, not to be included in the deceased's income. If the same is excluded and this salary is taken for five months 22 days, the annual income of the deceased would come to about ₹1,75,000/-.
8. As far as deceased's future prospects are concerned, the deceased was working in a large company i.e. ADDI Industries Limited as Senior Merchandiser. Since he was in permanent employment, the Claimants were entitled to an addition of 50% towards future prospects.
9. Thus, applying the principle of *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 in case of death of a bachelor, loss of dependency comes to ₹15,11,250/- (1,75,000/- - 20,000/- (income tax) + 50% x 1/2 x 13).
10. The Claims Tribunal awarded a sum of ₹60,000/- towards loss of love and affection. 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.

11. The Claimants are further entitled to a sum of ₹10,000/- each towards funeral expenses and loss to estate.
12. The overall compensation thus comes to ₹15,56,250/-
13. The overall compensation is reduced from ₹ 22,31,747/- to ₹ 15,56,250/-.
14. The excess amount of ₹ 6,75,497/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
15. The award amount shall be released in favour of the Respondents No.1 and 2 in terms of the order passed by the Claims Tribunal.
16. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
17. The Appeal is allowed in above terms.
18. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 15, 2012

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