

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

Date of decision: 10th October, 2012

+ **MAC. APP. 562/2007**

SMT. SARITA & ORS. Appellants
Through: Mr. Manish Maini, Adv.

versus

KESHAV RAM & ORS. Respondents
Through Mr. K.L.Nandwani, Adv. for R-3.

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 enhancement of compensation of ₹7,80,000/- awarded for the death of Rajesh Kumar who died in a motor vehicle accident which occurred on 07.10.2006.
2. The finding on negligence reached by the Claims Tribunal is not challenged by the driver, owner or the insurer of the offending vehicle. Thus, the same has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the deceased was earning ₹30,000/- per month as he was in business of fabrication in the name and style of M/s. S.P. Enterprises. In support of the averments, the Appellants proved bank accounts being run by deceased Rajesh Kumar as Proprietor of M/s. S.P. Enterprises. There was however, no evidence with regard to the deceased's income. It was proved that the deceased carried the work (of fabrication) worth

₹5,93,184/- in the financial year 2004-05 for M/s. Kuluman Export. The Claims Tribunal made the assessment of the deceased's income as 10% of the said work and awarded loss of dependency at a multiplier of 17; after making deduction of one-third towards personal and living expenses.

4. It is urged by the learned counsel for the Appellant that the percentage of profit for the job worth ₹5,93,184/- should have been taken at least 20% thereof.
5. It is submitted that the Appellants were entitled to addition of 30% towards inflation on the basis of the judgment of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559*.
6. The Claims Tribunal made guess work about the deceased's income on the basis of job work carried by the deceased and on the fact that he was running bank accounts in the name of M/s. S.P. Enterprises. I have no material to disagree with the guess work made by the Claims Tribunal and would therefore abide by the income of ₹60,000/- per annum taken by the Claims Tribunal. But, at the same time, the deceased was a self-employed person. The Appellants were entitled to an addition of 30% towards inflation on the basis of *Santosh Devi*; the appropriate multiplier at the age of 24 was 18 as against 17 taken by the Claims Tribunal.
7. The loss of dependency comes to ₹9,36,000/- (60,000/- + 30% x 2/3 x 18).

8. It is stated by the learned counsel for the Respondent Insurance Company that compensation of ₹80,000/- awarded towards loss of love and affection and ₹20,000/- towards funeral expenses is on the higher side.
9. 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.
10. I would make a provision of ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses.
11. The compensation is thus enhanced from ₹7,80,000/- to ₹9,91,000/-.
12. The enhanced compensation of ₹2,11,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
13. Respondent No.3 the United India Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
14. Fifteen percent of the enhanced compensation shall be payable to each of the Appellants No.2 to 4. Rest 55% shall enure for the benefit of the First Appellant.
15. The Appeal is allowed in above terms.

16. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 10, 2012

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