

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

Date of decision: 2nd November, 2012

+ **MAC APP.886/2011**

RANI MASHI & ORS. Appellants

Through: Mr. Anuj Saini Proxy Counsel for
Mr. D.K. Sharma, Adv.

Versus

LOKENDER & ORS. Respondents

Through: Ms. Suman Bagga, 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. Learned Counsel for the Respondent No.3 Insurance Company states that there is no breach of the terms and conditions of the policy. In this view of matter, service of Respondents No.1 and 2 is dispensed with.
2. With the consent of the parties, the Appeal is taken up for final disposal.
3. The Appeal is for enhancement of compensation of ₹5,99,120/- awarded in favour of the Appellants for the death of Pooran Mashi who died in a motor vehicle accident which occurred on 04.04.2010.
4. In the absence of any Appeal by the driver, owner of the Insurance Company, the finding on negligence reached by the Claims Tribunal has attained finality.

5. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a welder and was earning ₹9,000/- per month. In the absence of any cogent evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of a skilled worker fixed by the Govt. of NCT of Delhi under the Minimum Wages Act to compute the loss of dependency. The Claims Tribunal deducted one-third towards the personal and living expenses and since the deceased was 50 years old, the Claims Tribunal applied the multiplier of 13 to award a sum of ₹5,49,120/- towards the loss of dependency.
6. At the time of hearing, the following contentions are raised by the learned counsel for the Appellants:-
 - (i) Even in the absence of any evidence with regard to future prospects, the Appellants were entitled to an addition of 30% towards inflation as the deceased was aged just 50 years. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
 - (ii) The legal representatives of the deceased included the widow, no compensation was awarded by the Claims Tribunal towards loss of consortium.
7. The Appeal must succeed on both the grounds.
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 even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victim's income in case of self employed persons and persons having fixed income.

9. Thus, the Appellants would be entitled to 30% increase in the deceased's income towards inflation/future prospects.
10. The loss of dependency thus comes to ₹7,13,585/- (5278/- + 30% x 2/3 x 12 x 13) as against ₹ 5,49,120/-.
11. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 it was laid down that a notional sum of ₹5,000/- to ₹10,000/- should be awarded towards loss of consortium. In the circumstances of the case, I would make a provision of ₹10,000/- towards loss of consortium.
12. Thus the compensation stands enhanced by ₹1,74,465/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
13. The enhanced compensation shall enure for the benefit of the First Appellant and shall be deposited with the Claims Tribunal within six weeks.

14. Seventy five percent of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years and eight years in equal proportion; rest 25% shall be released on deposit.
15. The Appeal is allowed in above terms.
16. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 02, 2012
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