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

Reserved on: 19th July, 2013
Pronounced on: 6th September, 2013

\+ **MAC.APP. 138/2011**

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. K.L. Nandwani, Advocate with
Mr. Vaidant Chadha, Advocate

versus

HARPAL SINGH & ORS ..... Respondent
Through: Mr. Navneet Goyal, Advocate for R-1.

\+ **MAC.APP. 143/2011**

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. K.L. Nandwani, Advocate with
Mr. Vaidant Chadha, Advocate

versus

SATTO & ORS ..... Respondents
Through: Mr. Navneet Goyal, Advocate for R-1

\+ **MAC.APP. 744/2011**

SATTO & ORS ..... Appellants
Through: Mr. Navneet Goyal, Advocate

versus

NEW INDIA ASSURANCE CO LTD ..... Respondent
Through: Mr. K.L. Nandwani, Advocate with
Mr. Vaidant Chadha, Advocate

+ **MAC.APP. 30/2012**

HARPAL SINGH & ORS ..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

NEW INDIA ASSURANCE CO LTD ..... Respondent

Through: Mr. K.L. Nandwani, Advocate with
Mr. Vaidant Chadha, Advocate

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

J U D G M E N T

G. P. MITTAL, J.

1. These four Appeals relate to a motor vehicle accident which took place on the night intervening 11-12.09.2005. Five separate Claim Petitions were preferred by the victims/legal representatives of the deceased claiming various amounts of compensation. The accident resulted in death of the two occupants and injuries to three who were travelling in a tempo No.UP-12K-5797. The compensation awarded in respect of three injury cases has been paid by the New India Assurance Company Limited (the Insurance Company) whereas two appeals (MAC APP.138/2011 and MAC APP.143/2011) have been preferred by the Insurance Company challenging its liability and the quantum of compensation. Other two appeals (MAC APP.744/2011 and MAC APP.30/2012) have been preferred by the legal representatives of the deceased Naresh (son of Kashmira) and Naresh Kumar @ Setu (son of Harpal Singh).

2. In the Claim Petition (relating to MAC APP.30/2012) preferred by Harpal Singh father of the deceased Naresh Kumar @ Setu, the Appellant Harpal Singh has claimed that his son Naresh Kumar @ Setu, aged 18 years was travelling in tempo No.UP-12K-5797 as owner of the goods (*guava*) which were being transported to Keshav Puram for the purpose of sale. His son was earning ₹4500/- per month from the business of selling *guava*.

3. Similarly, in the Claim Petition (MAC APP.744/2011) filed by Smt. Satto Devi she claimed that her son Naresh Kumar aged 21 years was travelling in the earlier said tempo as representative of the owner of the goods and that he was getting a salary of ₹3300/- per month from the owner Ajay Pal.

4. In both the Claim Petitions it was stated that the Respondent Sunil Kumar was driving the tempo at about 12:00 midnight in a rash and negligent manner. When the tempo reached near Harijan Basti, Bhalasva, Outer Ring Road, one of its tyre bursted. Because of the high speed on which the tempo was being driven, the driver lost its control and it capsized. A case FIR No.611/2005 was registered under Sections 279/337/304-A IPC in Police Station Jahangirpuri against the driver respondent Sunil Kumar.

5. The Insurance Company contested the claim filed by the Claimants in MAC APPs.744/2011 and 30/2012 by way of filing separate written statements. It disputed its liability to pay the compensation on the ground that the deceased were travelling in the vehicle as gratuitous passengers. The Insurance Company also took up the plea that the driver of the tempo did not possess a valid and effective driving licence to drive the vehicle involved in the accident. Thus, it was stated that it had no liability to pay

the compensation. The Insurance Company further took up the plea that the compensation awarded is excessive and exorbitant.

6. On appreciation of evidence, the Motor Accident Claims Tribunal (the Claims Tribunal) found that the accident was caused on account of rash and negligent driving of the tempo by its driver respondent Sunil Kumar. With regard to the Claim Petition filed by Harpal Singh, the Claims Tribunal held that in the absence of any documentary evidence with respect to the deceased's income the compensation could be assessed only on the basis of minimum wages payable to an unskilled worker. The Claims Tribunal made an addition of 50% on account of inflation, deducted 50% towards personal and living expenses and applied the multiplier of 14 as per the age of the father of the deceased to compute the loss of dependency as ₹3,99,000/-. The Claims Tribunal awarded a sum of ₹5,000/- towards funeral charges and ₹10,000/- each towards loss to estate and loss of company.

7. Similarly, in reply to the Claim Petition preferred by Smt. Satto, the Claims Tribunal granted the compensation on the basis of minimum wages and after making an addition of non-pecuniary damages awarded an overall compensation of ₹2,24,500/-.

8. The Claims Tribunal held that the deceased were travelling as owner of the goods and thus, the Insurance Company was liable to pay the compensation. At the same time, relying on *National Insurance Company Limited v. Kusum Rai & Ors. (2006) 4 SCC 250,* the Claims Tribunal opined that since the driver was not competent to drive a transport/commercial vehicle, there was intentional and willful breach of the terms and conditions of the policy and thus, while making the

Insurance Company liable to pay the compensation initially also granted it recovery rights.

9. In the two Appeals filed by the Insurance Company (MAC APP.138/2011 and MAC APP.143/2011) the following contentions are raised by the Appellant Insurance Company:-

(i) Since the deceased were travelling as gratuitous passengers, the Insurance Company was not liable to pay the compensation even if it is assumed that the deceased were the owner /representative of the owner of the goods, they could travel only in the cabin beside the driver. Since the deceased were travelling on the top of the tempo, the Insurance Company is not liable to pay the compensation.

(ii) The Insurance Company successfully proved the breach of the terms and conditions of the policy as the owner willfully allowed its driver to drive the vehicle involved in the accident without holding a valid and effective driving licence to drive the same. Thus, the Insurance Company was not liable to pay the compensation.

(iii) In the absence of any evidence with regard to future prospects, no addition in the income of the deceased could have been made by the Claims Tribunal. In MAC APP.138/2011 it is also urged that the father of the deceased Naresh Kumar @ Setu was not dependent on the deceased and thus, there was no loss of dependency.

10. On the other hand, learned counsel for the Claimants urges that:-

(i) The Claims Tribunal rightly opined that the deceased were travelling as owner/representative of the owner of the goods.

(ii) The liability to pay the compensation to the third party is statutory. The Claims Tribunal, therefore, rightly made the Insurance Company liable to pay the compensation and granted it recovery rights.

(iii) The compensation awarded is inadequate and paltry.

11. I have heard Mr. K.L. Nandwani learned counsel for the Insurance Company and Mr. Navneet Goyal learned counsel for the Claimants.

12. I am expected to go only into the quantum of compensation and the liability of the Insurance Company as the finding on negligence is not challenged by the Appellant Insurance Company.

GRATUITOUS PASSENGER

13. In MAC APP. 30/2012 relating to the death of deceased Naresh Kumar @ Setu his father Harpal Singh filed his Affidavit Ex.PW-1/A and deposed that his son was travelling in the tempo in the capacity of owner of the goods. In cross-examination also Harpal Singh reiterated the stand and denied the suggestion that his son was not carrying his goods in the tempo or that he was travelling as a gratuitous passenger.

14. Similarly, Smt. Satto in her Affidavit Ex.PW-2/A testified that her son Naresh Kumar was travelling in the tempo as representative of the owner of the goods, as the goods were owned by one Shri Ajay Pal. In cross-examination Smt. Satto denied the suggestion that the deceased was

travelling as a gratuitous passenger. PW-3 Ram Saran with regard to status of the persons travelling in the tempo deposed as under:-

> *"On the night of 11/12.09.05, I myself along with one Naresh, Setu, Lokender and one Harpal were travelling in a tempo no.UP-12K-5797. We started our journey from village Harsoli, Mazaffarnagar, U.P. and we were proceeding towards Azadpur Mandi,Delhi. The driver of the said tempo was driving at a very fast speed rashly and negligently and without caring for the rules of traffic. We repeatedly asked the driver to drive at a moderate speed but he did not pay any heed and continue to drive recklessly. Myself, Naresh, Setu and Lokender were travelling in the cabin of the tempo and we were sitting beside the driver. We all were travelling in the tempo in the capacity of the owners of the Guava which was being carried/transported in the said tempo. We all were the owners of our respective goods……"*

15. In cross-examination Ram Saran deposed that out of five persons, four persons were travelling in the driver's cabin while one was sitting on the rear portion of the tempo. He stated that he was carrying 17 cases of guava each weighing 18 kg. He denied the suggestion that he was not carrying his goods in the said tempo or that he was a gratuitous passenger. No suggestion was given to this witness that deceased Naresh Kumar @ Setu and deceased Naresh Kumar son of Kashmira were not travelling as owner of the goods/representative of the owner of the goods in the tempo at the time of the accident.

16. PW-4 Lokender Kumar also supported PW-3's stand with regard to five persons travelling in the tempo as owner of the goods and that the two deceased amongst others were travelling in the cabin of the tempo along with the driver.

17. It is urged by the learned counsel for the Appellant Insurance Company that the testimony of PW-3 Ram Saran and PW-4 Lokender Kumar, who

were eye witnesses to the accident and who were travelling in the tempo is contrary to what has been stated in the FIR with regard to the place where the two deceased were sitting in the tempo. Mr. K.L. Nandwani argues that as per the FIR lodged on the statement of Lokender Kumar (PW-4) the two deceased were sitting on the top of the vehicle after placing wooden *fatta* (plank). No suggestion was given to either PW-4 Lokender Kumar or to PW-3 Ram Saran that deceased Naresh Kumar @ Setu and Naresh Kumar son of Kashmira were travelling on the wooden plank fixed on the top of the tempo nor they were confronted with the FIR lodged with the police. In the circumstances, on the basis of the evidence adduced it has to be held that the two deceased persons along with PWs Ram Saran and Lokender Kumar were travelling inside the cabin of the tempo. A three Judge Bench decision of the Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223* while overruling the judgment in *New India Assurance Co. Ltd. v. Satpal Singh, (2000) 1 SCC 237* that the provisions of the Motor Vehicles Act prior to its amendment in 1994 included liability in respect of every person travelling in a goods vehicle ruled that after the amendment to Section 147 of the Motor Vehicles Act w.e.f. 1994 (by virtue of Section 6 of Act of 1994) it was compulsory for the insurer to insure the risk of the owner of the goods or his authorized representative being carried in a goods vehicle.

18. It is true that in the case of *National Insurance Co. Ltd. v. Cholleti Bharatamma, (2008) 1 SCC 423,* the Supreme Court held that the risk of the owner of the goods or his representative would be covered only if he travels in the cabin with the driver. I have already observed above that there is ample evidence to show that the two deceased were travelling in

the cabin along with the driver. A copy of the certificate of insurance as also a certificate Ex.RW-2/1 has been proved on record which shows the sitting capacity of the vehicle involved in the accident to be three, that is, 1+2. Thus, only two persons could have been carried in the vehicle as owner of the goods.

19. Admittedly, five Claim Petitions were preferred, that is, three for the injuries suffered by the persons travelling in the vehicle and two for the persons who died in the accident. Mr. Nandwani submits that the Insurance Company has not preferred any appeal in respect of the three injury cases as the amount of compensation awarded was very small.

20. In *National Insurance Co. Ltd. v. Anjana Shyam & Ors.*, *(2007) 7 SCC 445* the Supreme Court laid down that where persons more than the carrying capacity of a vehicle are carried by the driver/owner of the vehicle, the liability of the Insurance Company will be limited to the number of passengers which the owner was authorized to carry. It was further held that in case of injury to persons more than the carrying capacity in a vehicle the Insurance Company will pay the highest compensation payable to the persons as per the carrying capacity which shall be pro rata distributed amongst all the claimants and rest of the compensation would be recoverable from the driver/owner of the vehicle. In the instant case, as stated earlier, the Insurance Company has preferred not to challenge the award of compensation in three injury cases. It is stated that the compensation awarded in those three cases was very small. Thus, in the absence of any Appeal, the Insurance Company cannot shy away from its liability to pay the compensation to the legal representatives of the two deceased as it is proved that the deceased

Naresh Kumar @ Setu was travelling as owner of the goods whereas the deceased Naresh Kumar son of Kashmira was travelling as representative of the owner (Ajay Pal) of the goods.

BREACH OF THE TERMS OF THE POLICY

21. The Claims Tribunal on the issue of liability held that a notice under Order XII Rule 8 CPC was duly served upon the owner and driver of the offending vehicle to produce the original policy and driving licence, etc. which were not produced in the court by them. The copy of the insurance policy and the postal receipts were duly proved during inquiry before the Claims Tribunal. The Claims Tribunal further held that as per the certificate Ex.R2W1/C issued by Transport Authority, Muzaffarnagar, the driver possessed a licence to drive only a Light Motor Vehicle (Non Transport) whereas he was found to be driving a goods vehicle which was a commercial vehicle. Thus, the Claims Tribunal opined that the Insurance Company successfully proved the breach of the terms and conditions of the policy, yet while granting recovery rights made it liable to pay the compensation.

22. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by a three Judge Bench report in *Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21*. As per Section 149(2) of the Motor Vehicles Act (the Act), an insurer is entitled to defend the action on the grounds as mentioned under Section 149(2)(a)(i)(ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the condition of the policy. It is well settled that the breach must be conscious and willful. Even if a conscious breach on the part of the insured is established, still the insurer has a statutory liability

to pay the compensation to the third party and will simply have the right to recover the same from the insured/tortfeasor either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court. The question of statutory liability to pay the compensation was discussed in detail by a two Judge Bench of the Supreme Court in *Skandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654* where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The three Judge Bench of the Supreme Court in *Sohan Lal Passi* analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia*. In *New India Assurance Co., Shimla v. Kamla and Ors., (2001) 4 SCC 342*, the Supreme Court referred to the decision of the two Judge Bench in *Skandia*, the three Judge Bench decision in *Sohan Lal Passi* and held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

> *"21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to*

pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22.To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23.It is advantageous to refer to a two-Judge Bench of this Court in Skandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become suffers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the raison d'etre for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24.The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21.

25.The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence……"

23. Again in *United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338*, in para 18 of the report the Supreme Court referred to the decision in *Skandia, Sohan Lal Passi* and *Kamla* and held that even where it is proved that there was a conscious or willful breach as provided under Section 149(2)(a) (ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

"18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance……."

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xxxx xxxx xxxx xxxx xxxx

20…….If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the

licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

24. The three Judge Bench of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors., (2004) 3 SCC 297* again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decision in *Sohan Lal Passi, Kamla* and *Lehru*. Paras 73 and 105 of the report are extracted hereunder:

"73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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xxxx xxxx xxxx xxxx xxxx

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle."

25. This Court in *MAC APP. No.329/2010 Oriental Insurance Company Limited v. Rakesh Kumar and Others* and other Appeals decided by a common judgment dated 29.02.2012, noticed some divergence of opinion in *National Insurance Company Limited v. Kusum Rai & Ors., (2006) 4 SCC 250, National Insurance Company Limited v. Vidhyadhar Mahariwala & Ors., (2008) 12 SCC 701; Ishwar Chandra & Ors. v. The Oriental Insurance Company Limited & Ors., (2007) 10 SCC 650* and *Premkumari & Ors. v. Prahalad Dev & Ors., (2008) 3 SCC 193* and held

that in view of the three Judge Bench decision in *Sohan Lal Passi(supra)* and *Swaran Singh*, the liability of the Insurance Company vis-à-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.

26. The driver and owner of the offending vehicle have not challenged the finding of the Claims Tribunal granting recovery rights.

27. In view of the above discussion, there is no manner of doubt that the liability of the Insurance Company to satisfy the award in the first instance is statutory; it is bound to satisfy the same and will be entitled to recover the amount of compensation paid from the driver and the owner Sunil Kumar and Mohd. Qayum (Respondents No.2 and 3 in MAC APPs.138/2011 and 143/2011) in execution of this very judgment without having recourse of independent civil proceedings.

AMOUNT OF COMPENSATION

MAC APP. 30/2012 & MAC APP.138/2011

28. The only challenge to the quantum of compensation laid by the appellant Insurance Company in MAC APP.138/2011 is that addition of 50% towards future prospects/inflation could not have been given by the Claims Tribunal. In support of the submission, reliance is placed on *Reshma Kumari & Ors. v. Madan Mohan & Anr. 2013 (5) SCALE 160.*

29. On the other hand, learned counsel for the claimant urges that Claimant's testimony as PW-1 that his deceased son Naresh Kumar @ Setu was earning ₹4500/- per month from his business as a fruit supplier was not

challenged in cross-examination and thus the deceased Setu's income should have been taken as ₹4500/- per month to compute the compensation. Learned counsel for the Claimant presses into service another three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors. 2013 (6) SCALE 563* to submit that addition towards inflation was rightly made by the Claims Tribunal.

30. To determine the income of the deceased Naresh Kumar @ Setu it would be relevant to refer to the testimony of PW-1 Harpal Singh. He testified that his son was dealing in the supply of guava and was earning ₹4500/- per month. This part of PW-1's testimony was not challenged in cross-examination. It is not necessary that in every case there must be some documentary evidence to support the income of the deceased. In every case the Court has to reach to the conclusion on the basis of preponderance of probabilities. Since PW-1's testimony with regard to deceased's income was not challenged and the income of ₹4500/- was not unreasonable, the same ought to have been accepted by the Claims Tribunal.

31. In *Reshma Kumari,* the three Judge Bench was dealing with a reference made by a two Judge Bench (S.B. Sinha and Cyriac Joseph, J.J.). The two Hon'ble Judges wanted an authoritative pronouncement from a Larger Bench on the question of applicability of the multiplier and whether the inflation was built in the multiplier. The three Judge Bench approved the two Judge Bench decision of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* with regard to the selection of multiplier. It further laid down that addition towards future prospects to the extent of 50% of the actual

salary shall be made towards future prospects when the deceased had a permanent job and was below 40 years and addition of 30% should be made if the age of the deceased was between 40-50 years. No addition towards future prospects shall be made where the deceased was self-employed or was getting a fixed salary without provision of annual increment.

32. Of course, three Judge Bench of the Supreme Court in its later judgment in *Rajesh* relying on *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (6) SCC 421* observed that there would be addition of 30% and 50%, depending upon the age of the deceased, towards future prospects even in the case of self-employed persons. It may, however, be noted that in *Rajesh*, the three Judge Bench decision in *Reshma Kumari* was not brought to the notice of their Lordships.

33. In view of *Union of India & Ors. v. S.K. Kapoor (2011) 4 SCC 589*¸ the three Judge Bench decision in *Reshma Kumari* shall be taken as binding precedent. Since the deceased was not in permanent or regular employment, he would not be entitled to any addition towards future prospects. The loss of dependency thus comes to ₹ 3,78,000/- (₹4500/- x 1/2 x 12 x 14).

34. In *Rajesh* the three Judge Bench laid down that keeping in view the inflation, unless there is evidence to the contrary for higher expenses, a sum of ₹25,000/- should be awarded towards funeral expenses. Thus, the Claimant would be entitled to a sum of ₹25,000/- towards funeral expenses. The compensation of ₹10,000/- awarded towards loss of company and ₹5,000/- towards loss to estate was on the lower side; I

would rather award a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- towards loss to estate.

35. The overall compensation thus comes to ₹4,38,000/-. The compensation stands enhanced from ₹4,24,000/- to ₹4,38,000/-. The enhanced compensation of ₹14,000/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.

36. The compensation awarded by the Claims Tribunal shall be released in terms of the impugned judgment. The enhanced compensation will be released in favour of the Appellant Harpal Singh on deposit.

37. Both the appeals stands disposed of accordingly.

MAC APP. 744/2011 & MAC APP.143/2011

38. The only challenge laid by the Insurance Company is to the addition of 50% towards inflation/future prospects.

39. Admittedly, the deceased was having a temporary job and in view of the observations made earlier, the Claimant would not be entitled to any addition towards future prospects/inflation. The loss of dependency thus comes to ₹1,32,972/- (3166/- x 1/2 x 12 x 7).

40. If a sum of ₹25,000/- each towards funeral expenses and loss of love and affection and ₹10,000/- towards loss to estate is added, the overall compensation comes to ₹1,92,972/-. It may, however, may be noticed that this Court in catena of judgments including *National Insurance Company v. Farzana & Ors., 2009 ACJ 2763; Satender Mahto & Ors. v. Mohd. Sahbir & Ors., Manu/DE/3608/2012* and *Pardeep Rai & Anr. v. Rajiv Kumar Saini & Anr.,* (MAC.APP.115/2011) decided on 18.11.2011,

this Court has held that even in case of death of a minor school going child a total compensation of ₹3,75,000/- is to be awarded(₹2,25,000/- towards loss of dependency, ₹75,000/- towards non-pecuniary damages and ₹75,000/- towards future prospects). The compensation in case of death of a young son of the claimant who is a widowed mother cannot be less than that of a school going child. Hence, the compensation stands increased from ₹2,24,500/- to ₹3,75,000/-.

41. Enhanced compensation of ₹1,50,500/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal. Claimant Satto was about 62 years at the time of accident which took place in the year 2005. Keeping in view the age of the Claimant, 50% of the enhanced compensation shall be held in Fixed Deposit for a period of one year; rest 50% to be released on deposit. The compensation awarded shall be released in terms of the orders passed by the Claims Tribunal, if not already released.

42. Both the appeals are disposed of in above terms.

43. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company in MAC APP.138/2011 and MAC APP.143/2011.

44. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 06, 2013
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