

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

% *Judgment reserved on: 3rd September, 2013*
Judgment delivered on: 17th September, 2013

+ **MAC.APP. 789/2011**

MOHINI JHA & ORS Appellants
Through: Mr.Maruf Khan, Advocate.

Versus

JAMAL KHAN & ORS Respondents
Through: Mr. L.K. Tyagi, Advocate for
Respondent No.3.
Ms. Neerja Sachdeva, Advocate for
Respondent No.6.

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is preferred for enhancement of the impugned award dated 21.02.2011, whereby the learned Tribunal has granted a sum of Rs. 27,60,000/- as compensation in favour of the appellants/claimants along with interest at the rate of 8% *per annum* from the date of filing of the petition till realization.

2. Learned counsel appearing on behalf of the appellants/claimants has submitted that the appellants have examined PW5 Sh. Surender Nagar, Executive Assistant of Express Trade Tower, Film City, Sector 16, Noida, who deposed that their office had issued a letter to the deceased Ex.PW 3/A which was signed by their Editor-in-Chief and according to the same, the

annual package of the deceased was Rs.7.20 lacs *per annum*. The deceased had to join the services w.e.f. 22.08.2005; however, the accident took place on 15.08.2005.

3. Learned counsel further submitted that the learned Tribunal has considered the salary of the deceased just Rs.20,000/- per month, whereas at the time of the accident he was getting Rs.50,000/- per month being working as PA with known film star Govinda.

4. On the other hand, learned counsel appearing on behalf of both the Insurance Companies, i.e., respondent Nos. 3 and 6 have pointed out that the learned Tribunal in its judgment dated 21.02.2011 has recorded as under:-

“20 This evidence is also not much relevant as court is of the opinion that the letter issued by the P.W5 was only an invitation to offer and not even an offer. If it would have been found fruitful and beneficial to the deceased, he would have fulfilled the requisite formalities like filing of formal application alongwith requisite documents so that the condition imposed upon him in Ex.P.W 3/A would have been complied with & he would have been appointed. However, that is not the case of the deceased. Non filing of the original application by the deceased in the office of IBN also supports\ the contention that such talks were only at the initial stage and had not taken any final shape.

21 Accordingly, the court comes to the conclusion that the deceased infact had not accepted the offer given to him by IBN till the date of accident. Therefore, this proposed salary of the deceased also cannot be taken into consideration for calculating the income of the deceased & the court is of the opinion that even P.W5 has not been able to prove the exact salary of the deceased.

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23 *There is yet another aspect which is necessary to be brought on record that P.W-1 has filed ITR of the deceased for the year 2003-04 which shows the income of the deceased only to the extent of Rs.44,016/-p.a. which means that although the deceased was working with NDTV in the year 2002-03 or 2003-04, his total income which he showed in ITR is less than Rs.4000/-p.m. In the ITR for the year 2004-05, the deceased claimed his salary only Rs.92,900/- p.a. which means that in the year 2004-05, he was earning even less than Rs.8000/-p.m.”*

Learned counsel for the respondents/Insurance Companies submitted that having no proof of definite income of the deceased, the learned Tribunal while relying upon the case of ***Oriental Insurance Co. Ltd. Vs. Deo Patodi II (2009) ACC 875 (SC)*** has considered the salary of the deceased as Rs.20,000/- per month.

5. The second issue argued by the learned counsel for the appellants is that the age of the deceased at the time of the accident was 28 years, however, the learned Tribunal has not granted any compensation towards the future prospects.

6. To support his contention, learned counsel relied upon a case of ***Vimal Kanwar & Ors. Vs. Kishore Dan & Ors. JT 2013 (8) SC 234***, wherein the Hon’ble Supreme Court has observed as under:-

“29. Admittedly, the date of birth of deceased Sajjan Singh being 1st February, 1968; the submission that he would have continued in service upto 1st February, 2026, if 58 years is the age of retirement or 1st February, 2028, if 60 years is the age of retirement is accepted. He was only 28 years 7 1/2 month old at the time of death. In normal course, he would have served the State Government minimum for about 30 years. Even if we do not take into consideration the future prospect of promotion

which the deceased was otherwise entitled and the actual pay revisions taken effect from 1st January, 1996 and 1st January, 2006, it cannot be denied that the pay of the deceased would have doubled if he would continued in services of the State till the date of retirement. Hence, this was a fit case in which 100% increase in the future income of the deceased should have been allowed by the Tribunal and the High Court, which they failed to do.”

7. He has also relied upon the case of ***R.D. Hattangdi Vs. M/s. Pest Control (India) Pvt. Ltd. & Ors, AIR 1995 SC 755***, wherein it is observed as under:-

“12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

8. I have heard the learned counsels for the parties.

9. The claimants / appellants have placed various documents relating to the income of the deceased including the ITR for the year 2002-03, 2003-04 and 2004-05. Moreover, claimants have proved that the deceased was working in NDTV; and also placed on record the offer letter of an employment to the post of guest coordinator. Importantly, the informant, in FIR no. 345/2005, is the wife of the film Star Govinda. As per the Claim Petition, the deceased was working as a Personal Secretary of film star Govinda. However, the exact income of the deceased has not been proved. Therefore, the Id Tribunal rightly relied upon a case of ***Oriental Insurance Co. v. Deo Patodi II (2009) ACC 875 (SC)*** and assessed the monthly income of the deceased to extent of Rs.20,000/- per month.

10. I note, while appreciating the evidence for assessing the income of the deceased, the Id. Tribunal has taken note of the experience and future prospects; rightly, opined that the assessment of the income of the deceased cannot be based on the minimum wages.

11. Thus, considering the facts and circumstances of the case, the Id. Tribunal has rightly assessed the income of the deceased. Therefore, I do not find any reason for the enhancement of compensation on account of future prospects.

12. With respect to non-pecuniary heads are concerned, keeping in view the dictum in *Rajesh and Ors. v. Rajbir Singh and Ors. 2013 (6) Scale 563*. I enhance the compensation amount on account of love and affection, funeral charges and loss of consortium for Rs.1,00,000/-, Rs.25,000/- and Rs.1,00,000/- respectively.

13. Consequently, the compensation amount is enhanced for Rs.1,95,000/- (Rs.29,55,000 – Rs.27,60,000).

14. The appellants / claimants are entitled for the enhanced amount with interest @ 8% per annum from the date of filing of the petition till realization.

15. The respondent / insurance company is directed to deposit the enhanced amount with interest accrued thereon before the Registrar General of this court within four weeks from today.

16. The Registrar General is directed release the enhanced amount in favour of the claimants as per the ratio of the award passed by the Id. Tribunal.

17. The appeal is disposed of on the above terms.

SURESH KAIT, J.

SEPTEMBER 17, 2013

Sb/jg