

\$~13

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

% *Judgment delivered on: 19th July, 2013*

+ **MAC.APP. No. 1123/2012 & CM Nos. 17994-95/2012**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K.Soni, Advocate.

Versus

VIJAY KUMAR & ORS. Respondents

Through: Mr. N.K. Jha, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. No. 1123/2012

1. The present appeal has been preferred against the impugned award dated 07.03.2012, whereby the learned Tribunal has granted the compensation in favour of the respondent No.1/claimant as under:-

“Pecuniary Head:

1.	<i>Loss of earning capacity</i>	<i>Rs.5,61,000/-</i>
2.	<i>Medical expenses</i>	<i>Rs.3,34,000/-</i>
3.	<i>Attendant Charges</i>	<i>Rs. 20,000/-</i>
4.	<i>Conveyance and special diet</i>	<i>Rs.20,000/-</i>

<i>Total Compensation</i>	<u><i>Rs.9,35,000/-</i></u>
---------------------------	-----------------------------

Non-Pecuniary Head

1.	<i>Pain and Suffering, mental trauma</i>	: Rs.1,00,000/-
2.	<i>Loss of amenities of life</i>	: Rs.1,00,000/-
3.	<i>Damages due to permanent disability</i>	:Rs.1,00,000/-
	<i>Total</i>	<u>Rs.3,00,000/-</u>

Hence the total compensation payable to petitioners as below:

<i>Compensation under non-pecuniary heads</i>	<i>Rs.9,35,000/-</i>
<i>Compensation under pecuniary heads</i>	<i>Rs.3,00,000/-</i>
<i>Total compensation</i>	<u><i>Rs.12,35,000/-</i></u>

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued the instant appeal only on the ground that the learned Tribunal has wrongly granted 50% towards future prospects. Keeping in view the age of the deceased at the time of the accident, as he was 35 years of age, therefore, the learned Tribunal should have been granted 30% towards future prospects instead of 50%.

3. On the other hand, learned counsel appearing on behalf of the respondent No.1/claimant has relied upon the case of ***Rajesh & Ors. Vs. Rajbir Singh, 2013 (6) SCALE 563***, wherein the Apex Court has held that in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

4. To support his arguments, he has also relied upon the cases of ***Sarla Verma & Ors. Vs. DTC & Anr., (2009) 6 SCC121*** and ***Reshma Kumari &***

Ors. Vs. Madan Mohan & Anr. delivered in ***Civil Appeal No. 4646 of 2009*** on 02.04.2013.

5. I have heard the learned counsel for the parties.

6. Issue raised by the appellant/Insurance Company is squarely covered by dictum of ***Rajesh & Ors. Vs. Rajbir Singh (supra)***, I do not find any discrepancy in granting 50% towards future prospects by the learned Tribunal.

9. Consequently, the instant appeal is dismissed with no order as to costs.

10. The Registry of this Court is directed to refund the statutory amount in favour of the appellant/Insurance Company.

11. Vide order dated 16.10.2012, 60% of the awarded amount has already been released in favour of the respondent No.1/claimant. The Manager, UCO Bank, High Court of Delhi is directed to release the balance compensation amount with upto date interest in favour of the respondent No.1/claimant in terms of the award dated 07.03.2012 passed by the learned Tribunal.

CM Nos. 17994/2012 (for stay) & 17995/2012 (for delay)

With the dismissal of the appeal itself, the instant applications have become *infructuous*. The same are disposed of accordingly.

SURESH KAIT, J.

JULY 19, 2013

sb