

\$~10

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

% *Judgment delivered on: 2nd April, 2014*

+ MAC.APP. 761/2012

RAKESH AND ANR.

..... Appellants

Represented by: Mr. S.N. Parashar, Adv.

Versus

NATIONAL INS CO LTD AND ORS.

..... Respondents

Represented by: Mr. Ram Ashray, Adv. for
R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 28.04.2012, whereby Ld. Tribunal has awarded compensation for an amount of Rs.15,62,560/- with interest @ 7.5% *per annum* from the date of filing of the Claim Petition till realization of the amount.

2. Vide the present appeal, appellants are seeking enhancement of the compensation amount as noted above.

3. Mr. S.N. Parashar, Ld. Counsel appearing on behalf of the appellants submits that deceased Rohan Tyagi was a Graduate (B.Sc.) and MBA from Pune. He was working as Marketing Associate in MA-Foi Management Consultants Limited under M/s. CRISIL, Sarita Vihar, Delhi and was

earning Rs.24,165/- per month. The employment of the deceased has been proved by PW5, Sh. Dharampal, Sr. Executive of the above noted establishment, who deposed that Sh. Rohan Tyagi was working in their office as a Marketing Associate for the last 8 – 10 months. Pay slip of the same is proved as Ex.PW5/1. After deducting the allowances, Ld. Tribunal has assessed the monthly income of the deceased as Rs.19,520/- per month.

4. PW1, father of the deceased stated that his son was a Graduate (B.Sc.) and MBA from Pune and was working as a Marketing Associate in MA-Foi Management Consultants Ltd. under M/s. CRISIL, Sarita Vihar and was earning Rs.24,165/- per month.

5. Mr. Parashar further submits that on the date of accident, deceased was 24 years of age. His salary was assessed as Rs.19,520/- per month by the Ld. Tribunal. Therefore, keeping in view the age of the deceased, Ld. Tribunal ought to have added 50% in his actual income towards future prospects.

6. To strengthen his arguments, ld. Counsel has relied upon a case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** wherein held as under:

*“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, 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. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.*

7. Mr. Parashar further submits that keeping in view the age of the mother of the deceased, Ld. Tribunal applied the multiplier of 13 whereas as per the settled law, the age of the deceased had to be considered.

8. He also submits that towards non-pecuniary damages, Ld. Tribunal has awarded only Rs.40,000/-, which is on the lower side.

9. On the other hand, Mr. Ram Ashray, Ld. Counsel appearing on behalf of the Insurance Company submits that the claimants failed to prove the employment of the deceased with M/s. CRISIL and his income of Rs.24,165/- per month. No proof of the same is brought on record and no witness has been examined from his employer. Thus, in the absence of the same, Ld. Tribunal has assessed the monthly income of the deceased as Rs.19,520/- per month.

10. He further submits that since the appellants failed to establish the employment of the deceased, therefore, keeping in view the dictum of the Apex Court in *Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121*, Ld. Tribunal has not added any amount in his actual towards future prospects.

11. On the issue of multiplier, Ld. Counsel for the respondent / insurance company submits that Ld. Tribunal has applied the multiplier of 13 after considering the age of the mother of the deceased, as he was a bachelor.

12. On the issue of non-pecuniary damages, Ld. Counsel submits that keeping in view the facts and circumstances of the case, Ld. Tribunal has awarded a consolidated amount of Rs.40,000/- as compensation towards non-pecuniary losses.

13. I have heard Ld. Counsel for the parties.

14. On the issue of income, the appellants have failed to prove the employment of the deceased. Therefore, I am of the considered opinion that Ld. Tribunal has rightly assessed the monthly income of the deceased as Rs.19,520/- per month.

15. As far as the issue of future prospects is concerned, this issue has been dealt with by this court in the case bearing MAC. APP. No.846/2011 titled as *ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.*, decided on 30.09.2013 while relying upon the dictum of *Rajesh (Supra)*.

16. Admittedly, deceased was 24 years of age on the date of accident. Accordingly, keeping his age into view, I add 50% in his actual income towards future prospects.

17. As regards the issue of multiplier is concerned, this issue has been dealt with by this Court in the case of **Mohd. Hasnain & Ors. Vs. Jagram Meena & Ors.** bearing **MAC. APP. No. 152/2014**, decided on 24.03.2014, wherein held as under:-

“21. The maximum value of the multiplier is fixed at ‘18’, which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

*22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in **Trilok Chandra**, introduced a structural change by increasing the numerical value of multiplier from ‘16’ to ‘18’, whereas it had been fixed at ‘16’ as per **Susamma Thomas**. Specifically, there was no variation in respect of fundamental premise of ‘multiplier method’ as held in **Susamma Thomas**. In **Trilok Chandra**, the apex court has taken the second schedule as a guiding factor.*

*23. Significantly, the Apex Court in the case of **Reshma Kumari** and **M. Nag Pal** has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to ‘15’ the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above ‘15’ years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never considered as a factor. Finally, in the assessment of dependency, the courts / tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.”*

18. Keeping in mind the view taken by this Court in the above noted case, I am of the opinion that Ld. Tribunal has wrongly applied the multiplier of 13 instead of 18.

19. It is ordered accordingly.

20. As far as the issue of non-pecuniary damages are concerned, deceased died at the age of 24 years. He was a Graduate (B.Sc.) and MBA from Pune. He left behind parents, who lost the love and affection and support of their son. Accordingly, I award an amount of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses.

21. Consequently, the compensation comes as under:

Sr. No.	Heads	Calculation as per MACT	Calculation as per this Court
i.	Loss of dependency	Rs.15,22,560/-	Rs.31,62,240/-
ii.	For loss of love and affection	Rs.25,000/-	Rs.1,00,000/-
iii.	For loss of estate	Rs.10,000/-	Rs.10,000/-
iv.	Towards funeral expenses	Rs.5,000/-	Rs.25,000/-
	Total	Rs.15,32,560/-	Rs.32,97,240/-

Resultantly, the compensation is assessed at Rs.32,97,240/-

22. Accordingly, the enhanced compensation comes to Rs.17,64,680/- (Rs.32,97,240 – Rs.15,32,560/-).

23. The enhanced amount shall carry interest @ 7.5% *per annum* from the date of filing of the claim petition till realization.

24. Accordingly, the respondent No.3/Insurance Company is directed to deposit the enhanced compensation amount with upto date interest with the Registrar General of this Court within a period of five weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

25. On deposit, the Registrar General is directed to release 50% of the amount in favour of the appellants/claimants proportionately in terms of the order dated 28.04.2012 passed by the learned Tribunal and the remaining 50% shall be invested in FDR with UCO Bank, Delhi High Court Branch, New Delhi, for a period of three years.

26. In view of the above, the appeal is allowed.

SURESH KAIT, J.

APRIL 02, 2014

Jg/sb