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

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Date of Decision: 24.09.2014.

+ **MAC.APP. 648/2011**

SRI RAM GENERAL INS CO LTD Appellant

Through Mr.K.L.Nandwani, Adv.

versus

RAKHI GUPTA & ORS Respondent

Through Mr.Diwan Singh Chauhan, Adv. for R-1,2,6 and 7

Mr.Rajat Sharma, Adv. for R-3 to 5

+ **MAC.APP. 815/2011**

RAKHI GUPTA & ANR Appellant

Through Mr.Diwan Singh Chauhan, Adv.

versus

TILLE SINGH @ TILLE & ORS Respondent

Through Mr.Rajat Sharma, Adv. for R-1 to R-3

Mr.K.L.Nandwani, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. These are two appeals arise out of the same Award dated 19.4.2011. MAC.App.648/2011 is filed by the appellant insurance company seeking to impugn the compensation awarded. Mac.App.815/2011 is filed by the claimants seeking enhancement of compensation.

2. The brief facts which led to filing of the claim petition under section 166 of the M.V.Act are that the deceased Shri Vishal Gupta on 27.1.2010 left his office alongwith one colleague Rohit Jain. Both of them were travelling in separate vehicles. When they reached at Gazipur, the motorcycle of the
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deceased was hit by a tractor. The deceased fell down and died on the spot.

3. The issue revolves around the compensation awarded to the dependents of the deceased and the validity of the driving license of the driver of the offending vehicle.

4. The Tribunal based on the evidence on record awarded a total compensation of Rs.1,19,77,216/- as follows:-

1.Loss of dependency	:	Rs.1,19,37,216/-
2.Loss of consortium, loss of love and affection loss of estate and funeral expenses	:	Rs. 40,000/-
Total	:	Rs.1,19,77,216/-

5. A perusal of the Award shows that the Tribunal noted that the deceased was working with IBM India Private Limited. Based on his salary slips the Tribunal assessed the income at Rs.62,173/- per month. Taking into account the age of the deceased as 32 years the Tribunal awarded future prospects @50% on the assessed income. 1/3rd was deducted on account of personal expenses. Multiplier of 16 was used and loss of dependency was calculated at Rs.1,19,37,216/-.

6. I will first deal with Mac.App.648/2011 filed by the Insurance Company.

7. Learned counsel appearing for the appellant/insurance company submits that the compensation awarded is on the higher side. The only submission made in this regard is that the Tribunal has wrongly after having assessed the income of the deceased at Rs.62,173/- enhanced the same by 50% on account of future prospects. He submits that there is no proof placed on record to show any likely increase of salary. It is urged that the deceased had been working in MAC.APP.648/2011 & 815/2011

the present employment for the last four months and there was no reason to enhance the salary by 50%.

8. On the issue of driving license learned counsel for the appellant submits that the driver of the offending vehicle was not having a valid driving license and hence the appellant/insurance company does not have any liability.

9. As far as the issue of future prospects is concerned, as per evidence of PW-1, namely, the widow of the deceased Smt.Rakhi Gupta she has pointed out that the deceased was a brilliant student and has completed his Masters Degree in Computer Applications and got Ist Division with Distinction from Chhatrapati Shahuji Maharaj University, Kanpur (UP). She further on the career prospects of the deceased states as follows:-

“ On the said date, the petitioner (deceased) was working with M/s.IBM India Pvt. Ltd. as a permanent employee and he was employed in the said company on 27.12.2007. Initially he was getting package of Rs.7,74,991/- w.e.f. 27.12.2007 to 31.1.2009 as Band 6D and thereafter he was promoted to Band 6, Band 6B and Band 7A and his salary was increased to Rs.8,19,320.64 per annum.”

10. Coming to the issue of future prospects. I can take judicial note of the fact that minimum wages for a graduate in 2002 were Rs.3439.7 P.M. and in 2012 were Rs.9282/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

11. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*(2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

12. In the case of *Smt.Savita vs. Bindar Singh & Ors.,* (2014) 4 SCC 505, MAC.APP.648/2011 & 815/2011

the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of *V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441*, the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

13. Further, this court in the case of *ICICI Lombard General Insurance Company vs. Angrej Singh & Ors.* in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of *Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, *Reshma Kumari & Ors. vs. Madan Mohan & Anr. 2013 ACJ 1253* and other judgments and concluded that the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors., (supra)* has held that the future prospects should be given to persons who are self-employed or on fixed wages.

14. I may further note that this court in MAC APP.761/2012 *Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.* vide judgment dated 02.04.2014 had in a case where the deceased was 24 years old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)*. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

15. Accordingly, the challenge of learned counsel for the appellant/insurance company on the enhancement of assessed salary for future prospects for the purpose of computing loss of dependency is misplaced.

16. In the facts and circumstances of the case and keeping in view the legal position there are no reasons to disagree with the findings on the said steps taken by the Tribunal.

17. Coming to the issue of driving license of the driver, a perusal of the award shows that the Tribunal had relied upon the evidence of R3W1 which held that the driver of the offending vehicle, namely, respondent No.3 was having a valid driving license. The Tribunal notes that initially the police had submitted a report that the driver was not holding a license. Later the driver produced a license and on verification even the police found it proper. The license is issued from the transport office of Nagaland. The Investigating officer also submitted the necessary report. Hence, the contention of the appellant/insurance company regarding the validity of the driving license was rejected.

18. Learned counsel appearing for the appellant has strenuously argued that respondent No.3 is not a resident of Nagaland and could not have got a driving license issued from Nagaland. He relies upon section 9 of the M.V.Act which states that any applicant may apply for a driving license to the authority where he ordinarily resides or carries on business. Hence, it is urged that the driving license even if issued from the concerned authority of Nagaland was invalid.

19. The contention of learned counsel for the appellant insurance company is without merit. R3W1 the concerned Dealing Assistant from the Transport office Zunhoboto Nagaland in his evidence has confirmed that the driving license was issued from their office. The witness confirms that respondent No.3 is a resident of G.S.Road, Dimapur, Nagaland. There is no cross-examination of this witness.

20. There is no evidence on record to show that on the date when the license was prepared whether the said respondent No.3 was a resident of Dimapur or not. In the absence of any such evidence the correctness of the record of the concerned Transport Office, Nagaland cannot be discarded.

21. Even otherwise, section 9(1)(i) of the M.V.Act reads as follows:-

9. Grant of driving licence.

1. Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area--

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

22. Hence, the twin requirements are that the applicant either has to reside within the jurisdiction of the authority or has to carry on business there. If for some reason a false statement is made to the concerned authority, it would be for the concerned authority to take action against the applicant to whom a driving license has been issued. Till the authority takes action it cannot be said that the license has become invalid or is null and void on a mere averment of the insurance company that the driver/applicant was not a resident of the concerned area. There is clearly no merit in the said contention of the appellant and the same is rejected.

23. Accordingly, there is no merit in the present appeal. The appeal is dismissed.

24. Statutory amount, if any, deposited by the appellant at the time of filing

the appeal be refunded to the appellant.

25. All interim orders including interim order dated 19.7.2011 stands vacated. The award amount deposited vide order dated 19.7.2011 alongwith upto date accumulated interest be released to the claimants proportionately as per the directions in the Award.

MAC.APP.815/2011

26. I will now come to the appeal of the claimants MAC.APP.815/2011. Learned counsel appearing for the claimant submits that the Tribunal has wrongly assessed the income of the deceased at Rs.62,173/- per month. It is urged that as per salary slip, the income should be Rs.98,000/- per month and compensation for loss of dependency would accordingly increase. It is further urged that the compensation for non pecuniary damages has been awarded by the Tribunal on the lower side. It is lastly urged that deduction for personal expenses should be 1/4th as the mother and father are also dependents apart from the minor child and the widow.

27. On the other hand learned counsel appearing for the insurance company points out that the claimants have failed to file any appointment letter of the deceased for the present stated job. Even no employee from the employer of the deceased, namely, IBM came to show that he was an employee of the said company. None have been called to prove the correctness of the salary slip. Further, it is urged that the income tax was deducted @10% from the total salary which is erroneous.

28. Salary slips from August 2009 to January 2010 have been placed on record. The salary slip for August 2009 shows a net salary of Rs.63,609/- whereas the salary slip for January 2010 shows the gross salary of Rs.78,879/-.

The net income keeps varying in different months as follows:-

August 2009	63,609/-
September 2009	51,551/-
October 2009	75596/-
November 2009	63,884/-
December 2009	48,958/-
January 2010	78,879/-

29. This shows average salary of Rs.63,746/-. The salary as stated in the salary slip for the month of January 2010 reads as follows:-

Earnings	Amount
Monthly basic salary	27,115.45
House Rent Allowance	13,557.73
Flat Allowance	21,500
Retro Shift Allow-B	10,500
Retro Standby allow.(weekday)	12,600
Retro Standby allow.(wend/off/p)	11,400
Standby allow.(Wend/off/PH)	1,800
Total	98,473.18

30. The net salary has been shown as Rs.78,789/-.

31. There is no attempt to explain the different allowances that are being received by the deceased. The different allowances are flat allowance, Retro Shift allowance, Retro standby allowance(weekday) and Retro standby allowance (weekend/off/p).

32. PW-1 in her evidence by way of affidavit states as follows:-

“That the age of the deceased was 32 years 6 months only and he was earning about Rs.67,700/- per month, however, the said salary was excluding other perks and total take home pay was Rs.78,879.18 as per the pay slip for the month of Jan.2010 issued by the employer.”

33. The most important evidence in this regard would have come from summoning the various representatives of the employer who could have explained the salary slip in greater details. The various allowances would have been explained to show what is the basis for computing the same. In the absence of any further details being filed or made available on record, and given the huge variation in the income of the deceased for six months prior to his death there are no reasons to disagree with the findings of the Tribunal assessing the income of the deceased at Rs.62,173/-. Hence, there is no merit in the contention of learned counsel for the claimant.

34. On the issue of loss of consortium, loss of love and affection, loss of estate and funeral expenses the tribunal has awarded lump sum of Rs.40,000/-. Keeping in view the judgment of the Supreme Court in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)** the compensation under the above heads is increased as follows:-

Non-pecuniary heads

Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-
Loss of estate	Rs. 10,000/-
<u>Funeral expenses</u>	<u>Rs. 25,000/-</u>
<u>Total</u>	<u>Rs.2,35,000/-</u>

35. On the issue of deduction on account of personal expenses at 1/3rd reference may be had to the evidence of PW-1. She states that the deceased is
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survived by four dependents, namely, wife of the deceased herself, a minor child, mother of the deceased who is a housewife and father who is a government servant.

36. Considering that the father of the deceased respondent No.7 is a government servant, he would certainly not be a dependent upon the deceased. As there are three dependents, namely, the widow, the minor child and the mother a deduction of $\frac{1}{3}^{\text{rd}}$ for personal expenses of the deceased is as per the ratio of the judgment of the Supreme Court in *Sarla Verma vs. DTC (2009) 6 SCC 129*.

37. The total compensation hence now payable to the claimant works out as follows:-

“Loss of dependency	:	Rs.1,19,37,216/-
Loss of consortium	:	Rs. 1,06,000/-
Loss of love and affection	:	Rs. 1,00,000/-
Loss of estate	:	Rs. 10,000/-
Funeral expenses	:	<u>Rs. 25,000/-</u>
Total		<u>Rs.1,21,72,216/-</u>

38. The insurance company shall within six weeks deposit the enhanced compensation amount alongwith accumulated interest @7.5% per annum from the date of filing the claim petition till deposit in Court with the Registrar General of this Court. The Registrar General shall release the enhanced amount to the claimants proportionately in the same manner as directed by the Tribunal.

39. Appeal stands disposed of.

JAYANT NATH, J

SEPTEMBER 24, 2014

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