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

% *Judgment delivered on: 10th February 2014*

+ **MAC.APP. 675/2013**

SMT.MACHALA & ORS. Appellant
Represented by: Mr.Jatinder Kamra,
Advocate.

Versus

MANOJ KUMAR & ORS. Respondents
Represented by: Ms.Suman Bagga,
Ms.Shruti Shukla and
Mr.Dewashish Maharishi,
Advocate for Respondent
No.3/Insurance Company.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is directed against the impugned award dated 15.12.2012, whereby the learned Tribunal has granted compensation for a sum of Rs.10,66,004/- with interest at the rate of 7.5% *per annum* from the date of filing the claim petition till realization of the amount.
2. Vide the present appeal, the appellants are seeking enhancement of the award amount as noted above.

3. Learned counsel appearing on behalf of the appellants/claimants has argued that PW1 Smt. Machala Devi, wife of the deceased has stated in her evidence by way of affidavit that besides being an earning member of the family, the deceased used to provide services for smooth running of the house, such as bringing day-to-day grocery, paying utility bills, general superintendence, maintaining discipline in the family, guiding and escorting the minor children and dependants from time to time. Such notional services were germane to the family and the claimants are feeling the dearth of those services after the demise of Shri Chanderpall.

4. Learned counsel further submitted that voluntary household and other services provided by the deceased to the appellants/claimants had a notional value. Even on a conservative note, value of such services were not less than Rs.10,000/- per month. While awarding compensation, the learned Tribunal ought to have considered the economic factors and the depreciating value of rupees to make the award just and proper.

5. Learned counsel further submitted that PW1, wife of the deceased has not re-married and is undergoing loss of consortium. The appellants/claimants should be compensated for pecuniary and non-pecuniary damages as per the law such as for loss of estate, loss of love and affection, loss of consortium etc. All the appellants are suffering from loss of love and affection, loss of security etc. as the deceased used to devote valuable time at home for appropriate upbringing of the children.

6. Learned counsel submitted that for the last rites and customs, the appellants/claimants have spent about Rs.25,000/-, however, the learned

Tribunal has granted only Rs.5,000/- towards the same. Compensation granted towards love and affection Rs.25,000/-, and Rs.10,000/- each for loss of estate and loss of consortium is also on a very lower side.

7. On the other hand, learned counsel appearing on behalf of the respondent No.3/Insurance Company has submitted that every head of the family provides services to the family and for the gratuitous services compensation can be granted only when such person is not earning anything but only taking care of the household affairs. He submitted that if a housewife is taking care of the children and maintaining the household affairs, then she is entitled for getting compensation. However, in the present case, the appellants/claimants have been compensated for pecuniary and non-pecuniary damages, therefore, they are not entitled for any additional amount on this ground.

8. Moreover, learned counsel submitted that PW1, Smt.Machala Devi, wife of the deceased has stated in her evidence by way of affidavit only. Neither any witness has been examined nor any material placed on record in support of her testimony.

9. I have heard the learned counsel for the parties and have perused the record.

10. Learned counsel appearing on behalf of the parties have fairly conceded that this issue has never been raised before this Court earlier, therefore, there is no precedent qua this issue.

11. It is true that when head of the family dies on attaining of his good age or due to some disease or prolonged illness, as the case may be, next or some other member of the family takes the command of the house

immediately. In that situation, the family of such person makes up its mind, accordingly.

12. But, in the present case, deceased Chanderpal died in a road traffic accident, which was a sudden demise and the family was not prepared either mentally, emotionally or financially to take up the task which the deceased used to take care of before his death.

13. PW1, wife of the deceased was not cross-examined on this issue, therefore, it cannot be said that the deceased was not providing any services for smooth running of the house such as taking care of day-to-day affairs of the family, superintending and helping discipline in family and guiding and escorting the minor children and dependents from time to time. However, the services which the deceased used to provide to the family cannot be compensated in terms of money, but for awarding just and proper compensation, the Tribunals and the Courts have to see the role played by the deceased before his death.

14. In the present case, the appellants/claimants have claimed that deceased was working as a floweriest and earning Rs.8,000/- per month. However, since the same could not be proved by leading cogent evidence, therefore, the learned Tribunal has taken the monthly income of the deceased as Rs.6656/- as per the minimum wages applicable to an unskilled person.

15. Keeping in mind the evidence on record, the unrebutted testimony of PW1, I grant a sum of Rs.50,000/- for loss of services rendered by the deceased.

16. So far as the issue of non-pecuniary damages is concerned, the compensation of Rs.25,000/- granted by the learned Tribunal on account of love and affection is on a very lower side.

17. Recently, in the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563***, the Full Bench of the Supreme Court has granted a sum of Rs.1,00,000/- for loss of love and affection, Rs.1,00,000/- for loss of consortium and Rs.25,000/- for funeral expenses.

18. Therefore, keeping in view the aforesaid dictum of the Supreme Court and the number of dependants, I enhance the compensation of Rs.1,00,000/- for love and affection, Rs.1,00,000/- on account of loss of consortium and Rs.25,000/- for funeral expenses.

19. Consequently, the compensation amount comes as under:-

Sr. No.	Heads of compensation	Compensation granted by the Id. Tribunal	Compensation granted by this Court.
1.	Loss of dependency	Rs.10,12,401/-	Rs.10,12,401/-
2.	For love and affection	Rs. 25,000/-	Rs. 1,00,000/-
3.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
4.	Loss of consortium	Rs. 10,000/-	Rs. 1,00,000/-
5.	For funeral expenses	Rs. 5,000/-	Rs. 25,000/-
6.	For medical bills	Rs. 3,603/-	Rs. 3,603/-
6.	For loss of services rendered by the deceased	Nil	Rs. 50,000/-

	Total	Rs.10,66,004/-	Rs.13,01,004/-
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Resultantly, this Court enhances the compensation amount to Rs.2,35,000/- (Rs.13,01,004 - Rs.10,66,004)

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

21. 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 six weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

22. On deposit, the Registrar General is directed to release the amount in favour of the appellants/claimants in terms of the impugned award dated 15.12.2012 on taking necessary steps by them.

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

SURESH KAIT, J.

FEBRUARY 10, 2014

Sb/jg