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

% ***Judgment Reserved on: July 17, 2014***

Pronounced on : 11.12.2014

+ **MAC.APP. 697/2013**

SMT. SHABANA BEGUM & ORS. Appellants

Through : Mr. J.S.Kanwar, Adv.

versus

YOGESH KUMAR & ORS. Respondents

Through : Mr. Sameer Nandwani, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This appeal is filed by the appellants seeking enhancement of compensation as given in award dated 30.10.2012.

2. The brief facts are that the deceased Firoz Khan died in an accident on 06.05.2008. He was going on foot. At main road near Sundar Nagari, Delhi, he was hit by a motorcycle said to be driven in a rash and negligent manner. He died the next day.

3. The controversy revolves around the compensation awarded. The Tribunal awarded a total compensation of Rs.6,51,720/- as follows:-

“1. Towards Loss of Dependency	:	Rs.6,20,720.10
2. Towards loss of estate	:	Rs.8,000.00
3. Towards loss of consortium (for	:	Rs.8,000.00

	petitioner No.1)		
4.	Loss of love and affection (for petitioner No. 2 & 3)	:	Rs. 10,000.00
5.	Compensation for pain & sufferings and hardship (As per Sarla Verma vs. DTC 2009 (6) Scale 129)	:	NIL
6.	Funeral Expenses (without bill)	:	<u>Rs. 5,000.00</u>
	Total	:	<u>Rs.6,51,720.10</u>
			Rounded to Rs. 6,51,720.00/-”

4. A perusal of the award shows that the Tribunal assessed the income of the deceased based on the minimum wages for a matriculate at Rs.4,081/- As the deceased was 46 years old on the date of the accident, 30% was awarded for future prospects. 1/4th was deducted towards expenses for self. The Tribunal did not accept the contention of the appellants that the deceased was running a coaching centre for 10th and 12th class students. The Tribunal also rejected the income tax records placed on record.

5. Learned counsel appearing for the appellant submits that the Tribunal has wrongly assessed the income based on minimum wages and that the necessary income tax returns for relevant period i.e. 2004-05 and 2005-06 had been placed on record. As per the appellants assessment had to be made on the basis of this income and not on minimum wages. It is next submitted that the compensation awarded for loss of consortium and loss of love and affection is on the lower side.

6. As far as the Income Tax returns are concerned, the Tribunal noted that the contention of the appellants was that the deceased was running a coaching centre for 10th/12th class students. The Tribunal noted that he himself was only educated up to 11th Class with very poor marks of 260 out of 650 with failure in

English language. A person of this academic background can hardly be expected to run a teaching institute for the students of 10th/12th class. The Tribunal also did not accept the income tax returns for the assessment years 2004-05 and 2005-06 as there was no attempt made to prove the record or the accompanying balance sheet. Further, the Tribunal also noted that the income tax return for the last year has not been placed on record, namely, 2006-2007.

7. A perusal of the evidence of PW-1 Smt. Shabana Begum shows that she in her affidavit by way of evidence simply states that her husband was running a coaching centre in the name and style of “Sony Coaching Centre” to provide education up to 10th Class student. She filed the ITRs for the assessment years 2004-2005 and 2005-06.

8. In her cross-examination she admits that apart from the income tax records she does not have any other document relating to Sony Coaching Centre or relating to the monthly income of the deceased.

9. A perusal of the mark sheet filed by PW-1, namely, Ex.PW1/2 shows that the deceased got 260 marks out of 650 in his 11th class exam. He had failed in English.

10. The income tax return for the assessment year 2004-05 shows the income of Rs. 65,115/-. The photocopy bears the original stamp from the income tax office dated 29.04.2005. A photocopy of balance sheet is attached.

11. A similar document is placed on record for the assessment year 2005-06 which shows an income of Rs.1,00,196/-.

12. However, in my opinion there is complete mismatch between the educational qualifications of the deceased and his purported occupation. It is difficult to believe on the basis of his marks that he could be running a

coaching centre and earning as claimed by PW-1, Rs.15,000/- per month. There is no other evidence on record to show that the deceased was running a coaching centre.

13. In the light of these documents placed on record relating to the nature of business carried out by the deceased, a doubt is created as on income as stated in the the income tax returns filed by the appellants. There is no attempt to prove these records from the income tax office. There is no attempt to prove the balance sheet from the person who had prepared these balance sheets. I may note that the balance sheet for the year ending 31.03.2005 shows a receipt of tuition fee of Rs.2,70,429/-. Receiving an amount of Rs.2,70,429/- as tuition fee would indicate that the coaching centre would have other teachers to teach and other staff to help. There would be a bank account, receipt books, etc. in a business of this kind. Nothing has been produced and no details are given. In the absence of such important material, there is no reason to differ with the view taken by the Tribunal.

14. Coming to the loss of consortium and loss of love and affection, the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** has awarded Rs.1 lac for loss of consortium and Rs.1 lac for loss of love and affection. Various other judgments of the Supreme Court following this judgment have been passed awarding compensation under this head as per this scale. Reference may be had to the judgment of the Supreme Court in the cases of ***Kala Devi vs. Bhagwan Das Chauhan, 2014(12) Scale 513*** and ***Anjani Singh & Ors. vs. Salauddin & Ors., JT 2014 (7) SC 183***. I hence enhance the compensation for non-pecuniary damages as below:-

Loss of consortium

Rs.1 lac (increased from Rs.8,000/- as awarded by the Tribunal)

Loss of love and affection	Rs.1 lac (increased from Rs.10,000/- as awarded by the Tribunal)
Funeral expenses	Rs.25,000/-(increased from Rs.5,000/- as awarded by the Tribunal)

15. The total compensation would now read as follows:-

“1. Towards Loss of Dependency	:	Rs.6,20,720.10
2. Towards loss of estate	:	Rs.8,000.00
3. Towards loss of consortium (for petitioner No.1)	:	Rs.1,00,000.00
4. Loss of love and affection (for petitioner No. 2 & 3)	:	Rs. 1,00,000.00
5. Compensation for pain & sufferings and hardship	:	NIL
6. Funeral Expenses	:	<u>Rs.2 5,000.00</u>
Total	:	<u>Rs.8,53,720.10P</u>
		(Rounded off to Rs.8,54,000/)"

16. The appeal is accordingly disposed of. Respondent No.3/Insurance Company may deposit additional compensation amount with interest @ 7.5% p.a. from the date of filing of the claim petition till deposit before the Registrar General of this High Court within six weeks from today. On deposit of the same, the same shall be released to the appellants proportionately in the same proportion as directed by the Tribunal.

17. The appeal stands disposed of.

JAYANT NATH, J

DECEMBER 11, 2014

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