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

Date of decision 01.12.2014

+ **MAC.APP. 750/2012**

UNITED INDIA INSURANCE CO LTD Appellant

Through Mr.S.K.Ray, Adv.

versus

SUMAN JAIN AND ORS Respondent

Through Mr.Dalip Singh, Advocate

+ **MAC.APP. 886/2013**

SMT SUMAN JAIN & ANR Appellant

Through Mr.Dalip Singh, Advocate

versus

ALKA RASTOGI & ORS Respondent

Through Mr.S.K.Ray, Adv. for the Insurance
Company

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. These are two appeals arising out of the same Award dated 11.4.2012. MAC.APP.No.750/2012 is an appeal filed by the Appellant/insurance company seeking to impugn the Award. MAC.APP.No.886/2013 is filed by the claimants seeking enhancement of compensation awarded.

2. The brief facts which led to the filing of the claim petition are that on 20.8.2006 the deceased Shri Ashish Jain was riding his motorcycle. When the motorcycle reached Outer Ring Road near Kangara, NEKT, Vikas Puri, New Delhi he was hit by a Qualis stated to be driven in a rash and negligent manner. The deceased fell down and died on the spot.

3. Based on the evidence on record the Tribunal awarded a total
MAC.APP.750/2012 & 886/2013

compensation of Rs.44,91,029/-. Loss of dependency was assessed at Rs.43,36,029/-. Rs.50,000/- was given towards funeral charges, Rs.1 lac towards loss of love and affection and Rs.5,000/- towards loss of estate.

4. The Tribunal noted that the deceased was working for Schneider Electric India Pvt. Ltd. He was a bachelor in engineering having a post graduate diploma in management. He was aged 30 years. PW-4 Sh.Faizur Rehman bought the records from the office where the deceased was working and deposed that he had a salary of Rs.5,08,461/- per annum apart from bonus of Rs.84,710/-. He also placed on record Form-16 showing the income of the deceased from 01.04.2006 to 21.08.2006 i.e. till the date of the death of the deceased. The Tribunal assessed the income of the deceased at Rs.49,273/- per month by taking per month average of the net salary shown after deductions in Form No.-16 for the Financial Year 2006-07. The Tribunal thereafter based on the age of the mother of the deceased used the multiplier of 11. The Tribunal deducted 1/3rd on account personal expenses of the deceased on the ground that the deceased is survived by three sisters and the father has passed away. The sisters were unmarried. The total loss of dependency was calculated at Rs.44,91,029/-.

5.

6. I will first dispose of the appeal of the appellant/insurance company MAC.APP.750/2012.

7. Learned counsel appearing for the appellant/insurance company submits that the Tribunal has wrongly assessed the income of the deceased at Rs.49,273/-. He relies upon the salary slip to contend that there are certain components of the salary which are only perks and which have been wrongly

added to the salary and had to be deducted. He next submits that the Tribunal has wrongly deducted 1/3rd towards personal expenses of the deceased instead of 50% inasmuch as the father of the deceased was said to have passed away and sister is stated to be a dependent on the deceased. He submits that the father of the deceased is a claimant and has not passed away and the deceased being a bachelor a deduction of 50% had to be made on account of personal expenses. He lastly submits that award of Rs.50,000/- for funeral expenses is on the higher side.

8. Coming to the first submissions of the appellant, a perusal of the salary certificate of the deceased shows the break-up. Relevant portion of the same which reads as follows:-

Basic	1,92,000/-
HRA	96000/-
Education allowance	24000/-
Special Allowance	62,400/-
Conveyance allowance	9,600/-
Vehicle Allowance	36,000/-
Sub-total	4,20,000/-

9. The learned counsel for the appellant submits that conveyance allowance has been wrongly added including other allowances. Reference in this context may be made to the judgment of the Supreme Court in the case of ***National Insurance Company Ltd. vs. Indira Srivastava and Ors., AIR 2008 SC 845 (MANU/SC/8201/2007)*** where in paragraph 8 the Supreme Court held as follows:-

“8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.”

10. It was for the appellant to have elaborated as to which of the perks cannot be said to be income beneficial to the family of the deceased. Merely to make a general averment that some of the perks have to be excluded is not enough. As far as conveyance is concerned there is nothing on record to show that the deceased had a field job for which he had to commute regularly for office work. There is nothing on record to persuade me to deduct any of the perks from the salary. There is no merit in the said contention of learned counsel for the appellant.

11. Coming to the deduction of personal expenses it is true that the deceased was a bachelor. Keeping into account the judgment of the Supreme Court in *Sarla Verma vs. DTC & Anr.,(2009) 6 SCC 121* deduction for personal expenses had to be 50%. Accordingly the award is modified and instead of deduction of 1/3rd it will be 50% for the purpose of calculation of loss of dependency.

12. On the issue of funeral expense the tribunal has awarded Rs.50,000/-. Though there is no evidence on record, it is orally mentioned that the parents of the deceased are based in Gwalior, that the cremation was done in Gwalior and that the body was transported from Delhi to Gwalior. The fact that the parents are based in Gwalior is evident from the Memo of Parties. I see no

reason to interfere with the funeral expenses of Rs.50,000/- awarded by the Tribunal.

13. With the above directions the present appeal stands disposed of.

MAC.APP.No.886/2013

14. I will now deal with MAC.APP.No.886/2013.

15. At the outset I may point out that learned counsel appearing for the insurance company has strongly objected to consideration of this appeal. He submits that there is a delay of 427 days in filing the appeal. He submits that on the first day of hearing itself no copy of the cross-appeal was given to him and based on a statement that there is a delay of only 42 days he did not object to the application for condonation of delay and CM No.15471/2013 was allowed on 30.09.2013. He submits that, however, on perusal of the application for condonation of delay it is implicit that the delay is not of 42 days but it is of 427 days.

16. A perusal of the application shows that in the heading the application states that it is for condonation of delay of 42 days. However, in the prayer clause it is stated that the delay of 427 days is to be condoned. Even the word '7' in 427 has been written by hand and no initial is made in front of the same.

17. However, it was for the insurance company to have moved a proper application for recall of the earlier order. As they have not done so I am not inclined in any way to modify or reverse the order dated 30.9.2013 condoning the delay in filing of the appeal. I may also note that as per the application for condonation of delay it is urged that the appellant is an old lady suffering from various ailments and is a permanent resident of Gwalior. Hence there is a delay. I may also note that the family has lost a young son. In these circumstances, I

do not wish to interfere in the said order dated 30.9.2013.

18. Learned counsel appearing for the claimant seeks enhancement of compensation on three different grounds. He firstly submits that the Tribunal has wrongly used the multiplier of 11 for the purpose of calculating loss of dependency inasmuch as the deceased was aged 30 years and the appropriate multiplier would be 17 based on the age of the deceased and not the age of the mother of the deceased. He also submits that after having assessed the income of the deceased at Rs.49,273/- per annum the Tribunal has not granted future prospects. It is lastly submitted that the pendente lite interest has been awarded at 7.5% which is on the lower side.

19. Reference may be had to the judgment of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** MANU/DE/0715/2014; 2014 (142) DRJ 303. This Court held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

20. This Court in the said case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** (*supra*) relied on the judgments of the Supreme Court in case of ***M. Mansoor vs. United India Insurance Co. Ltd.***, MANU/SC/1042 and in the case ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*** MANU/SC/0537/2012. In ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.***(*supra*) the Supreme Court held as follows:-

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation.”

21. ***M. Mansoor vs. United India Insurance Co. Ltd*** (*supra*) was a case

where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. (supra)*** the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17. In view of the said judgment passed by this Court, following the judgments of the Supreme Court, the Tribunal erred in not taking the age of the deceased to consider the appropriate multiplier.

22. I may further note that in MAC APP.761/2012 ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.*** vide judgment dated 02.04.2014 where the deceased was 24 years the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased, as he was a bachelor. This court relying upon the judgments of the Supreme Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)*** applied a multiplier of 18 based on the age of the deceased. 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.

23. Keeping in view the age of the deceased as 30 years the multiplier of 17 will be the appropriate multiplier.

24. Regarding future prospects this court has been relying upon the judgment of the Supreme Court in ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** which held that future prospects in similar facts and circumstances of this case would be added. Accordingly, the income of the deceased had to be increased for the purpose of computing the loss of dependency based on future prospects.

25. 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.

26. In the case of ***Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC 505***, 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.

27. In the case of ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the Supreme Court in the case of injury of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

28. 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.(supra)***, ***Reshma Kumari & Ors. vs. Madan Mohan & Anr.(supra)*** and other judgments and concluded that the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** has held that the future prospects should be given to persons who are self-employed or on fixed wages.

29. I may further note that this court in ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.(supra)*** 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. As stated above, the said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014. Hence, award of future prospects is in order.

30. Accordingly loss of dependency now comes to Rs.75,38,820/- $[(49273 + 50\% - 1/2) \times 17 \times 12]$.

31. Total compensation would now read as under:-

Loss of dependency	75,38,820/-
Funeral charges	50,000/-
Loss of love and affection	1,00,000/-
Loss of estate	5,000/-
Total	76,93,820/-

32. As per interim order dated 20.7.2012, 60% of the award amount has been deposited with UCO Bank, Delhi High Court. The appellant may deposit the additional award amount as per this order alongwith interest @7.5% per annum from the date of filing the appeal till deposit in court. Same may be released to the claimants proportionately in the same manner as directed in the Award.

33. On the issue of pendente lite interest, the same being discretionary, I see no reason to interfere in the interest granted by the Tribunal. The insurance company shall deposit the additional compensation amount with the Registrar General of this Court within six weeks. 50% of the additional compensation amount along with proportionate interest shall be released to the claimants in the same proportion as directed in the award. The balance shall be kept in a fixed deposit for a period of three years. The claimants shall be entitled to receive quarterly interest on the said amount.

34. Statutory amount deposited by the appellant at the time of filing the appeal may be refunded to the appellant/insurance company.
35. Appeal stands disposed of.

JAYANT NATH, J

DECEMBER 01, 2014
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