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

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Judgment delivered on: 19th February, 2014

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MAC.APP. No.505/2008

BABLI

..... Appellant

Represented by: Mr.Sunil Kumar Verma, Advocate.

Versus

ROOP LAL & ANR.

..... Respondents

Represented by: Mr.A.K.Soni, Advocate for
Respondent No.2/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 17.05.2008, whereby the learned Tribunal has granted compensation for an amount of Rs.5,78,000/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition till realization of the amount.
2. Vide the present appeal, the appellants are seeking enhancement of the compensation amount as noted above.
3. Learned counsel appearing on behalf of the appellants has argued that the claimants have examined PW4 Shri Vinod Kumar from the employer of the deceased before the learned Tribunal, who stated that deceased Kamal Chopra was working as a Salesman with A Lamode and was earning

Rs.4,700/- plus commission to the tune of approximately Rs.1,000/- to Rs.1,500/- depending upon the sales. He further stated that salary of deceased Kamal Chopra would have increased in the next year by a sum of Rs.500/-. He proved the salary certificate of the deceased as Ex.PW4/1. Despite the above noted facts, the learned Tribunal has erred in assessing the monthly income of the deceased as per the Minimum Wages Act, 1948 applicable to a matriculate.

4. Learned counsel further argued that on the date of the accident, the age of the deceased was 26 years. Despite that, the learned Tribunal has not added any income towards future prospects as per the settled law.

5. To strengthen his arguments, the learned counsel has relied upon the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563***, wherein the Full Bench of the Apex Court has observed 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.

6. Learned counsel further submitted that the compensation granted by the learned Tribunal on account of non-pecuniary damages was Rs.30,000/- for loss of love and affection/loss of consortium and Rs.5,000/- for funeral expenses is also on a very lower side.

7. On the other hand, learned counsel appearing on behalf of respondent No.2/ Insurance Company has submitted that the appellants/claimants have failed to establish that the deceased was in a permanent job, therefore, the learned Tribunal has rightly not added anything towards future prospects.

8. Learned counsel further submitted that the accident had taken place on 26.02.2004, therefore, keeping in view the rate of inflation, the compensation granted by the learned Tribunal towards non-pecuniary benefits is just and proper.

9. On perusal of the evidence, it is established that the salary certificate Ex.PW4/1 did not mention the month during which Rs.4,700/- were paid to the deceased as a salary and it also did not reflect the commission being paid to him. In cross-examination, he specifically admitted that neither any salary register nor attendance register nor even books of accounts were being maintained in their office. He also failed to produce any document to show that the deceased was working with them.

10. Since the claimants failed to prove the employment with the establishment mentioned above, therefore, while calculating the compensation towards loss of dependency, the learned Tribunal has assessed the monthly income of the deceased as Rs.3,320/- applicable to a matriculate at the relevant time as per the Minimum Wages Act, 1948. Thus, I am of the considered opinion that the learned Tribunal has rightly not considered the salary as claimed by the appellants/claimants.

11. So far as the issue of future prospects is concerned, similar issue has been dealt with by this Court in the case bearing MACA 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 & Ors. (supra)*.

12. Therefore, keeping in view the settled position of law and the age of deceased, i.e., 26 years at the time of the accident, I grant 50% of the actual income of the deceased towards future prospects.

13. In the present case, at the time of the accident, the deceased was 26 years of age. He left behind young widow, two minor children and aged parents. However, respondent No.5, Shri Hansraj Chopra, i.e., father of the deceased died during the pendency of the appeal. But on the date of the accident there were five dependants. Due to the sudden demise of the deceased in a road accident, the widow of the deceased has lost all enjoyment of life, his company and the minor children have lost the guidance, love, affection and care of their father. It has also affected their socio-economic status as he was the only bread earner in the family and their future hopes have been jeopardised.

14. Therefore, keeping into mind all the facts and circumstances of the case and following the dictum of ***Rajesh & Ors.*** (*supra*), I enhance the compensation on account of loss of love and affection to Rs.1,00,000/-, for loss of consortium to Rs.1,00,000/- and for funeral expenses to Rs.25,000/-

15. Accordingly, the compensation amount comes as under:

Sl. No.	Heads of Compensation	Compensation granted by ld. Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.5,38,000/-	Rs.8,06,780/-
2.	Loss of love and affection/ loss of Consortium	Rs. 30,000/-	Rs.2,00,000/- (Rs.1,00,000/- + Rs.1,00,000/-)
3.	For funeral expenses	Rs. 5,000/-	Rs. 25,000/-
4.	Loss to estate	Rs. 5,000/-	Rs. 5,000/-
	TOTAL	Rs.5,78,000/-	Rs.10,36,760/-

Thus, the compensation is assessed as Rs.10,36,760/-.

16. Resultantly, the enhanced compensation amount comes to Rs.4,58,760/-(Rs.10,36,760 – Rs.5,78,000).

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

18. Accordingly, the respondent No.2/Insurance Company is directed to deposit the enhanced compensation amount with upto date interest accrued thereon 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.

19. On deposit, the Registrar General is directed to release the amount in favour of the appellants/claimants proportionately in terms of the award dated 17.05.2008 passed by the learned Tribunal on taking necessary steps by them.

20. Accordingly, the appeal is allowed.

SURESH KAIT, J.

FEBRUARY 19, 2014

sb/jg