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

Date of Decision: 19.09.2014

+ MAC.APP.1098/2011

MUKUL & ORS

Through

..... Appellant

Mr. S. N. Parashar, Advocate

versus

KAMRUDDIN & ORS

Through

..... Respondent

Mr.R.C.Mahajan, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present Appeal is filed by the appellants seeking enhancement of the compensation awarded by the Tribunal.
2. The claim petition was filed under section 166 and 140 of the M.V.Act. The brief facts of the case are that on 17.10.07 the deceased Smt.Pinki alongwith her daughter was sitting on the back seat of the scooter driven by her husband and they were coming from Faridabad to Delhi. At Sarai Check, Faridabad, they were hit by a Tata truck said to be driven in a very high speed, rashly and negligently. The deceased fell down along with her daughter and husband and she died in the accident.
3. The Tribunal noted that the deceased was 31 years. Relying on various judgments holding that the value of services rendered by a house wife will be taken as Rs.3,000/- per month, the Tribunal assessed the loss of dependency based on the said figure. A multiplier of 16 was adopted and the Tribunal awarded the following compensation:-

Loss of valuable services	Rs.5,76,000/-
Loss of consortium	Rs. 10,000/-
Loss of Love and affection	Rs. 30,000/-
Funeral expenses	Rs. 5,000/-
Medical expenses	Rs. 1,691/-
Total	Rs. 6,22,691/-

4. Learned counsel appearing for the appellant submits that the tribunal has wrongly taken the income as Rs.3,000/- per month which is contrary to the judgment of this Court in the case of ***Royal Sundaram Alliance Insurance Co.Ltd. vs. Master Manmeet Singh & Ors., ILR (2012) IV DELHI 547***. He submits that the compensation payable for the death of the deceased has to be calculated based on the principles laid down by this Court. He further submits that amount of compensation on account of loss of consortium and under the head of loss of love and affection is on the lower side.

5. Learned counsel appearing for the respondent, however, states that the age of the deceased has wrongly been mentioned by the Tribunal as 31 years. He submits that apart from the daughter who was sitting with the mother at the time of the accident, the deceased had a son who was 18 years old and hence it cannot be said that the deceased was 31 years old but would be 36 years.

6. This Court in the case of ***Royal Sundaram Alliance Insurance Co.Ltd. vs. Master Manmeet Singh & Ors. (supra)*** in para 34 held as follows:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.
- (ii) Minimum salary of a Matriculate where she is a Matriculate.
- (iii) Minimum salary of a non-Matriculate in other cases.
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.
- (v).....
- (vi).....
- (vii) There shall not be any deduction towards the personal and living expenses.
- (viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ` 25,000/- (on present scale of the money value) towards loss of love and affection and ` 10,000/- towards loss of consortium, if the husband is alive, may be awarded.
- (ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.”

7. Keeping in view the case of ***Royal Sundaram Alliance Insurance Co.Ltd. vs. Master Manmeet Singh & Ors. (supra)***, the income of the deceased for the purpose of calculating loss of valuable services is to be taken as the minimum wages of a non-matriculate, which at the time of the accident were Rs. 3,709/-. Further, in view of the above judgment, an increase of 25% on account of future prospects in the assumed income shall also be made.

8. On the issue of the age of the deceased, keeping in view the facts and circumstances of the case, the contention of the learned counsel for the respondent is accepted. The age of the deceased cannot be taken as 31 years as she had a son who was 18 years of age. The deceased should have been atleast 36 years of age. Taking the age of deceased as 36 years, according to the judgment of *Smt. Sarla Verma & Ors. vs. DTC & Anr. (2009) 6 SCC 121*, a multiplier of 15 should be applied.

9. In view of the above, the compensation under the head of loss of valuable services comes to Rs.8,34,525/- $[(3,709+25\%) \times 12 \times 15]$.

10. Coming to loss of consortium, the Tribunal awarded a sum of Rs.10,000/- towards loss of consortium. The Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54* regarding the non-pecuniary heads of damages noted as follows:-

“That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the

view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

11. In view of the above, the amount under the head of loss of consortium is enhanced from Rs. 10,000/- to Rs. 1,00,000/-.

12. Now coming to the compensation awarded under the head of loss of love and affection. The Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** awarded a sum of Rs.1,00,000/- on account of love and affection for the children. This has been reiterated by the Supreme Court in the recent judgment of ***Yerramma vs. G. Krishnamurthy, 2014(10) SCALE 213***. Accordingly, in my opinion the compensation awarded by the Tribunal under the head of love and affection of Rs.30,000/- is inadequate and the same is enhanced to Rs.1,00,000/-.

13. Hence, the total compensation payable is as follows:

Loss of valuable services	Rs. 8,34,525/-
Loss of consortium	Rs. 1,00,000/-
Loss of Love and affection	Rs. 1,00,000/-
Funeral expenses	Rs. 5,000/-
Medical expenses	Rs. 1,691/-
Total	Rs. 10,41,216/-

14. The claimant shall also be entitled to pendente lite interest @6% per annum from the date of filing of the petition till realisation.

15. The enhanced amount shall be deposited by respondent no.3 within four weeks from today. On deposit of the said amount, same shall be

released in favour of the claimants proportionately as per the directions in the award of the tribunal.

16. The appeal stands disposed off.

JAYANT NATH, J

SEPTEMBER 17, 2014

n/sh