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

% *Judgment delivered on: 11th March, 2014*

+ **MAC.APP. No.1138/2011**

IFFCO TOKIO GENERAL INSURANCE CO LTD. Appellant
Represented by: Ms. Suman Bagga, Adv.

versus

CAPT JAI KUMAR ANAND & ORS Respondents
Represented by: Mr. Suman Doval and Mr. Vineet
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 09.09.2011, whereby Ld. Tribunal has awarded compensation to the tune of Rs.32,51,000/- with interest @ 9% per annum from the date of filing of the Claim Petition till realization of the amount.

2. Ld. Counsel appearing on behalf of the appellant / Insurance Company submits that the deceased was 26 years of age on the date of accident, i.e., 29.12.2007. She was unmarried. PW1 & PW2 stated that at the time of death, the deceased was employed with Reliance Haryana SEZ, Ltd. and was drawing a salary of Rs.3,75,000/- per annum + 15% incentive. Ld. Tribunal has assessed the salary of the deceased as Rs.2,92,000/- after

deducting uniform allowance, medical reimbursement and fuel maintenance expenses.

3. The appellant is aggrieved that the Ld. Tribunal has added 15% incentive in her income while computing the compensation amount. Ld. Counsel further submits that though the deceased was stated to be getting incentive of 15%, however, this could not be the part of the salary as it depends upon the performance of an individual on year to year basis and the trend of profit earned by the company, which is not permanent in nature. Therefore, Ld. Tribunal has erred in adding 15% incentive in her income.

4. Ld. Counsel further submitted that the Ld. Tribunal ought to have deducted income tax from the salary of Rs.2,92,000/- being considered by the Ld. Tribunal, however, the tax was deducted after deducting her saving of Rs.1,00,000/- from her income, i.e., Rs.2,92,000/- and accordingly, less amount towards income tax was deducted.

5. Ld. Counsel has fairly conceded that towards non-pecuniary benefits, Ld. Tribunal has awarded Rs.50,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses, which are on the lower side keeping in view the dictum of the Full Bench of the Apex Court in the case of **Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563.**

6. On the other hand, Ld. Counsel appearing on behalf of the respondents / claimants submits that deceased was a Bachelor and the law has been settled in the case of **Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121** wherein it is held that in regard to bachelor normally 50% is deducted as personal and living expenses because it is assumed that bachelor would tend

to spend more and more. Even otherwise, there was a possibility of the deceased getting married in a short time, therefore the contribution to the parents would cut drastically.

7. Ld. Counsel submits that while calculating the compensation 50% was deducted towards personal and living expenses from the gross salary of the deceased which comes to nearly 72% of the gross income. Thus, there is no point to deduct the income tax from the gross salary of Rs.2,92,000/-. Therefore, Ld. Tribunal has rightly deducted the income tax after presuming the tax savings at Rs.1,00,000/- from Rs.2,92,000/-. As per Form-16, Rs.2,909/- was tax payable and after the benefits given being woman, the net income tax payable is Rs.2,324/-.

8. Ld. Counsel further submits that PW1 and PW2 have placed on record the educational qualification of the deceased and they deposed that she was gold medallist. She was brilliant in studies and had completed her Bachelor of Architect from Sushant School of Art and Architecture under I.P. University. She had also gone to the University Phesslokini, Greece under Indo-Greece Exchange Programme and had a keen interest in landscape architecture. She had worked with renowned architects and landscape architects of Delhi. She completed her masters in July, 2007 and obtained First Class with distinction. She had plenty of offers and got Campus placement from Reliance. The deceased was drawing salary of Rs.3,75,000/- *per annum* + 15% incentive.

9. Ld. Counsel further submits that PW1 and PW2 has also proved that initially the deceased was in the salary of Rs.3,00,000/- *per annum* +

incentive, but the Management was so much impressed by her work and leadership quality that within three months, she got 25% hike in her salary.

10. Ld. Counsel further submits that keeping in view the intelligencia of the deceased and her keen interest in performing her assignment, she would have earned more and more and therefore 15% incentive was nothing when within three months she got 25% hike in her salary.

11. Ld. Counsel fairly conceded that though the incentive was not permanent in nature and it depends upon the establishment and the employee, who performed for the said establishment and the chances may be otherwise, she may have got more than this amount.

12. I have heard ld. Counsels for the parties.

13. While awarding the compensation, the Tribunal or the Court has to see what the deceased or the injured was earning at the time of accident the claimants should be compensated to the loss they received or to the injuries received by the injured.

14. In the present case, admittedly, the deceased was earning an amount of Rs.3,75,000/- *per annum* and after deduction of the allowances, her salary comes to Rs.2,92,000/- *per annum*. The incentive is not permanent in nature. It depends upon the profit trend of the Company and the performance of an individual. It is also not necessary if an individual is successfully performing, he or she will get incentive.

15. In the present case, while calculating the compensation and keeping the age of the deceased as 26 years on the date of accident 50% has already

been added in her actual income towards future prospects. Therefore, I am of the considered opinion that Id. Tribunal has erred in adding 15% incentive while calculating the compensation.

16. As the issue of deduction towards income tax is concerned, Ld. Tribunal deducted the income tax after deducting Rs.1,00,000/- from the salary of the deceased, i.e., Rs.2,92,000/-. There is nothing on record to show as to how much income tax the deceased was liable to pay. Accordingly, Ld. Tribunal has deducted Rs.9,580/- as tax towards the same, apart from Rs.2,324 paid as tax by the deceased. Moreover, the incentive of 15% of the salary of the deceased is excluded from the annual income. Therefore, the taxable income is assessed at Rs.52,000/-. Thus, an amount of Rs.5,200/- is deducted towards the tax, in turn, the annual income of the deceased for the purpose of computing the compensation is assessed at Rs.2,86,800/-.

17. As far as the issue of non-pecuniary damages is concerned, the parents lost their brilliant daughter when she was just 26 years of age and was getting handsome salary, therefore, keeping in view the facts of the case and the dictum of **Rajesh (Supra)**, I enhance Rs.1,00,000/- towards and love and affection and Rs.25,000/- towards funeral expenses.

18. Accordingly, the compensation comes as under:

Sr. No.	Heads	Calculation as per MACT	Calculation as per this Court
i.	Loss of dependency	Rs.31,81,000/-	Rs.27,96,300/-

ii.	Loss of Love and Affection	Rs.50,000/-	Rs.1,00,000/-
iii.	Funeral expenses	Rs.10,000/-	Rs.25,000/-
iv.	Loss of Estate	Rs.10,000	Rs.10,000/-
	Total	Rs.32,51,000/-	Rs.29,31,300/-

Resultantly, the compensation is assessed as Rs.29,31,300/-.

19. Thus an amount of Rs.3,19,700/- is reduced.

20. I note vide order dated 09.05.2012, 80% of the award amount was directed to be released in favour of the respondents / claimants. Therefore, the balance compensation amount, be released in favour of respondents / claimants.

21. The statutory deposit along with excess amount with proportionate interest be released in favour of the appellant.

22. In view of above, the appeal is partially allowed.

SURESH KAIT, J.

MARCH 11, 2014

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