

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

+ **MAC.APP. 885/2014**

Date of decision: October 14, 2014

UNITED INDIA INSURANCE CO.LTD Appellant
Through Mr.L.K.Tyagi, Advocate.

versus

MALTI MISHRA & ORS Respondents
Through Mr.Peeush Sharma, Advocate for R-2
& 3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J(Oral):

MAC.APP. 885/2014 and CM No.16366/2014(stay)

1. The present appeal is filed by the appellant Insurance Company seeking to impugn the Award dated 30.07.2014.
2. The brief facts are that on 11.08.2013 the deceased Sudhir Mishra was travelling in a TSR. At the red light of Mehr Chand Market, Lodhi Colony, New Delhi, the TSR was hit by a DTC bus said to be driven rashly and negligently by its driver. As a result of the accident the deceased Sudhir Mishra died and the driver of the TSR Sh.Pratap Singh suffered injuries.
3. Based on the evidence on record the Tribunal awarded the following compensation:-

Head of compensation	Amount (in Rs.)
Loss of Dependency	27,81,749.00
Loss of Consortium	1,00,000.00

Loss of love and affection	1,00,000.00
Funeral Expenses	25,000.00
Loss of Estate	50,000.00
Total	<u>30,56,749/-</u>

4. Leaned counsel appearing for the appellant has sought to challenge the quantum of compensation on various grounds. He firstly submits that the deceased was 55 years old and working as a UDC in South Delhi Municipal Corporation. He relies upon the salary certificate issued by the said Municipal Corporation which states that out of the gross salary of Rs.33,596/- per month the deceased was receiving TA (Transport Allowance) of Rs.2,880/-. Learned counsel submits that this amount of TA was an expenditure that the deceased used to make on himself and hence, the same has to be deducted from the gross salary for purposes of computing loss of dependency. He secondly submits that while computing loss of dependency, the Tribunal has not deducted any amount whatsoever on account of income tax. This, he submits, is clearly erroneous. Thirdly he submits that the future prospects have been awarded @ 15% which is contrary to the judgment of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54***. It is fourthly urged that the Tribunal has awarded excessive amount for loss of estate of Rs.50,000/- and for love and affection of Rs.1,00,000/-. It is lastly urged that the pendente lite interest @ 9% has been awarded on the award amount which is extremely high and the same should have been 7.5% per annum.

5. The Tribunal noted that the deceased was working as a UDC in South Delhi Municipal Corporation and receiving a gross salary of Rs.33,596/- per month exclusive of deduction. The salary certificate was proved by PW-2

Sh. Girish Mohan as Ex.PW-2/1. The deceased was on the date of the accident 55 years old. The Tribunal also noted that the retirement age of the deceased was 60 years. The Tribunal enhanced the income by 15% towards future prospects. The Tribunal also noted that the deceased has left three legal heirs, namely, the son, widow and his mother. Hence the Tribunal deducted 1/3rd for personal and living expenses and calculated loss of dependency at Rs.27,81,749/-.

6. As far as travelling allowance is concerned, the Supreme Court in the case of *National Insurance Company Ltd vs Indira Srivastava & Ors*, (2008) 2 SCC 763 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.”

7. In view of the above legal position, it is obvious that the deceased was working as a UDC. There is nothing on record to show that he had a field job. Accordingly, the TA received by the deceased as Rs.2,880/- per month can be termed as income of the deceased inasmuch as the money received was beneficial for the members of the entire family. Hence, there is no merit in the first submission of the learned counsel for the appellant pertaining to the clubbing of the TA as part of the salary.

8. On the second submission regarding non-reduction of income tax, learned counsel appearing for the respondent concedes that this reduction

ought to have been made from the income of the deceased while computing loss of dependency. Accordingly, in my opinion, keeping into account the fact that the income tax would be roughly 10% of the income over and above of certain limit, a sum of Rs.30,000/- be deducted from the annual gross salary of the deceased for the purpose of calculation of the income tax.

9. On the issue of future prospects, the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)*** had observed that in case of a person self-employed or on fixed wages where there is normally no age of superannuation, it would be just and equitable to provide 15% increase in case the victim is between the age of 50 to 60 years. However, a perusal of the judgment of the ***Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)*** shows that the basic premise of awarding compensation should be just, equitable, fair and reasonable. In the facts of the present case, the deceased had still five years left in the Municipal Corporation. One can take judicial note of the fact that over the time the pay packets of Government employees have an upward trend on account of inflation keeping into account that the DA (Dearness Allowance) is repeatedly increased over a period of time. It also cannot be forgotten that 7th Pay Commission Report is expected in the year 2016 onwards.

10. We may also take note of the fact that the dearness allowance in March 2006 was only 1% whereas in March 2013 it was 85%.

11. Accordingly, in my opinion the compensation awarded by the Tribunal in the facts and circumstances of this case is just, fair and reasonable. There are no grounds to reduce the compensation on the ground of award of 15% on account of future prospects.

12. Coming to the forth submission of the learned counsel for the

appellant on loss of estate, the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)*** has awarded Rs.10,000/- for loss of estate. This court in several judgments followed the same principle. In these facts and circumstances of this case, there appears to be no facts to justify Award of any larger amount. The loss of estate shall hence be Rs.10,000/-.

13. Coming to the last submission of the learned counsel for the appellant pertaining to pendente lite interest @ 9% p.a., this is discretionary relief granted by the Tribunal. There are no grounds to interfere with the same.

14. Accordingly, loss of dependency would now come to Rs.25,74,749/- and the total compensation would now work as follows:-

<u>Head of compensation</u>	<u>Amount (in Rs.)</u>
Loss of Dependency	25,74,749.00
Loss of Consortium	1,00,000.00
Loss of love and affection	1,00,000.00
Funeral Expenses	25,000.00
Loss of Estate	10,000.00
Total	<u>28,09,749.00</u>

15. Let the appellant comply with the above order within six weeks from today and the interest @ 9% p.a. from the date of the filing of the Detailed Accident Report till the date of deposit as directed by the Tribunal shall apply.

16. Statutory amount, if any, deposited by the appellant at the time of filing of the appeal, may be refunded to the appellant.

17. The appeal stands disposed of.

CM No.No.16905/2014

As per this application, respondent No.1/the mother of the deceased expired on 26.08.2014 after passing of the Award. Copy of the death

certificate has been annexed. The application prays that the share of the deceased respondent No.1 be directed to be released in the name of respondents No.2 and 3.

There is no opposition to this application. In view of the above, the application is allowed. The share of respondent No.1 shall be released proportionately to respondents No.2 and 3 as per the directions in the Award.

The application is disposed of.

JAYANT NATH, J

OCTOBER 14, 2014
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