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

% *Judgment delivered on: 1st April, 2014*

+ **MAC.APP. 1227/2012**

NEW INDIA ASSURANCE CO LTD. Appellant
Represented by: Mr.Pankaj Seth, Advocate.

Versus

MS.SHAMIM FATIMA & ORS Respondents
Represented by: Mr.Satya Narayan,
Advocate for Respondent Nos.
1 to 3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 1227/2012

1. The present appeal is preferred against the impugned award dated 18.09.2012, whereby the learned Tribunal has granted compensation for an amount of Rs.8,60,016/- with interest at the rate of 9% *per annum* from the date of filing of the petition till realization of the amount.
2. Learned counsel appearing on behalf of the appellant/Insurance Company submits that on the date of the accident the deceased was 20 years of age, he was bachelor and left behind his parents. Therefore, the learned Tribunal ought to have deducted one-half of the income of the deceased towards personal expenses instead of one-third.

3. He further submits that keeping in mind the age of the deceased, i.e., 20 years, and the fact that the parents were only dependent upon him as he was unmarried, the learned Tribunal ought to have applied the multiplier as per the age of the parents, whereas it has applied the multiplier of 18 as per the age of the deceased.

4. Admittedly, the parents are dependants upon the deceased. Respondent No.1, i.e., unmarried sister, who also received injuries in the same accident, is also one of the dependants because if the parents are dependent upon the deceased, obviously, the unmarried sister will automatically become dependent upon the deceased. Thus, I do not find any discrepancy in the order of the learned Tribunal qua deduction of one-third of the income of the deceased towards personal expenses.

5. So far as the issue of multiplier is concerned, the same has been dealt with by this Court in the case of **Mohd. Hasnain & Ors. Vs. Jagram Meena & Ors.** bearing **MAC. APP. No. 152/2014**, decided on 24.03.2014, wherein held as under:-

“21. The maximum value of the multiplier is fixed at ‘18’, which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

*22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in **Trilok Chandra**, introduced a structural change by increasing the numerical value of multiplier from ‘16’ to ‘18’, whereas it had been fixed at ‘16’ as per **Susamma Thomas**. Specifically, there was no variation in respect of fundamental premise of ‘multiplier method’*

*as held in **Susamma Thomas**. In **Trilok Chandra**, the apex court has taken the second schedule as a guiding factor.*

23. *Significantly, the Apex Court in the case of **Reshma Kumari** and **M. Nag Pal** has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to '15' the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above '15' years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never considered as a factor. Finally, in the assessment of dependency, the courts / tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier."*

6. Therefore, keeping in view the facts and circumstances of the case and the view taken by this Court in the aforementioned case, I do not find any substance in the submission of the learned counsel for the appellant/Insurance Company pertains to the issue of multiplier.

7. On the other hand, learned counsel appearing on behalf of the respondent Nos. 1 to 3/claimants submits that the Appellate Court has to see whether the compensation granted is just and fair. In the present case, the age of the deceased was 20 years and the learned Tribunal has added 30% in the actual income of the deceased towards future prospects.

8. To this effect, he 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 held 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.*

9. As regards the issue of future prospects is concerned, the same 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 the Apex Court in **Rajesh & Ors.** (supra). Therefore, keeping in view the settled position of law and the age of the deceased, i.e., 20 years at the time of the accident, the respondents/claimants are entitled for addition of 50% of the income of the deceased towards future prospects.

10. It is ordered accordingly.

11. Accordingly, the compensation amount comes as under:

Sl. No.	Heads of Compensation	Compensation granted by Id. Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.7,40,016/-	Rs.8,53,848/-
2.	Loss of love and affection	Rs.1,00,000/-	Rs.1,00,000/-
3.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
4.	For funeral charges	Rs. 10,000/-	Rs. 10,000/-
	TOTAL	Rs.8,60,016/-	Rs.9,73,848/-

12. Resultantly, the total compensation is assessed as Rs.9,73,848/-.

13. Accordingly, an amount of Rs.1,13,832/- is enhanced (Rs.9,73,848/- Rs.8,60,016/-).

14. The enhanced compensation shall carry interest at the rate of 9% *per annum* from the date of filing of the claim petition till its realization.

15. I note, vide order dated 30.11.2012, execution of the impugned award was stayed, subject to appellant's/Insurance Company's depositing 50% of the award amount alongwith up-to-date interest with the Claims Tribunal.

16. Since this Court has enhanced the compensation as noted above, therefore, the appellant/Insurance Company is directed to deposit the balance compensation plus enhanced compensation mentioned above alongwith up-to-date interest with the learned Tribunal within a period of five weeks from today, failing which, respondents/claimants shall be entitled

for penal interest at the rate of 12% *per annum* on account of delayed payment.

17. On deposit, the learned Tribunal is directed to release the amount in favour of the respondents/claimants in terms of the award dated 18.09.2012 on taking necessary steps by them.

18. The statutory amount shall be released in favour of the appellant/Insurance Company thereafter.

19. In view of the above, the appeal is disposed of.

CM. No. 19993/2012 (for stay)

With the dismissal of the appeal itself, the instant application has become *infructuous*. The same is accordingly dismissed.

SURESH KAIT, J.

APRIL 01, 2014

Sb/jg