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

% *Judgment delivered on: 10th February 2014*

+ **MAC.APP. 5/2013**

UNITED INDIA INSURANCE CO. LTD. Appellant

Represented by: Ms.Suman Bagga,
Ms.Shruti Shukla and
Mr.Dewashish Maharishi,
Advocates.

Versus

KAJAL & ORS. Respondents

Represented by: Mr.Vinod Sharma,
Advocate for Respondent
Nos. 1 to 4.
Mr.Shobhit Mittal,
Advocate for Respondent
No.5.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is preferred against the impugned award dated 07.09.2012, whereby the learned Tribunal has granted compensation for a sum of Rs.12,24,744/- with interest at the rate of 9% *per annum* from the date of filing the claim petition till realization of the amount.

2. Brief facts of the case are that on 03.07.2009 at about 6.45 AM, a Bus bearing No. HP 68 0946 was going from Uttar Kashi towards Gangotari in which deceased Ajay Kumar alongwith his friends and several other passengers were travelling. All of a sudden, the bus fell down in the Bhagirathi River while passing through Gehrang at

Bhatwadi Gangotari State Highway. In the said bus, there were 63 passengers. Out of which 31 persons were killed, 13 persons were injured and 19 persons were missing. Name of deceased Ajay was also in the list of missing persons.

3. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that though there was no funeral ceremony, but the learned Tribunal has granted a sum of Rs.25,000/- as funeral expenses.

4. However, the deceased remained missing but in such eventuality, legal heirs of the deceased might have borne some expenses towards 'chautha' and 'terahanvi' ceremonies etc. Since there is no such evidence on record, therefore, learned counsel appearing on behalf of the respondents/claimants has conceded that claimants have no objection if Rs.25,000/- granted on account of funeral expenses be reduced from the compensation amount.

5. I order accordingly.

6. The second ground argued by learned counsel for the appellant/Insurance Company is that at the time of the accident, the deceased was aged 23 years. The respondents/claimants have failed to prove that deceased was in permanent employment, therefore, the learned Tribunal has considered his monthly income as Rs.3,934/- per month as per the minimum wages applicable to an unskilled person. Despite that, the learned Tribunal has wrongly added 50% towards future prospects.

7. Learned counsel further submitted that keeping in mind the dictum of *Santosh Devi Vs. National Insurance Co. Ltd. & Ors. 2012 6 SCC 421* , as was prevailing at that time, the learned Tribunal ought to have

added 30% of the income of the deceased towards future prospects instead of 50%.

8. On the issue of future prospects, the Full Bench of the Apex Court in the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563***, has 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. This Court has followed the dictum of ***Rajesh & Ors.*** (supra) in the case bearing MAC. APP. No.846/2011 titled as ***‘ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.’***, decided on 30.09.2013.

10. Therefore, keeping in view the settled position of law and that the deceased was aged 23 years at the time of the accident, I find no discrepancy in the impugned award dated 07.09.2012, whereby the learned Tribunal has granted 50% of the actual income of the deceased towards future prospects. Therefore, I confirm the same.

11. Learned counsel further submitted that the learned Tribunal has granted compensation of Rs.2,00,000/- towards loss of love and affection etc., which is on higher side. She submitted that even in the case of **Rajesh & Ors.** (*supra*), the Apex Court has awarded Rs.1,00,000/- on account of loss of love and affection.

12. Learned counsel also argued that the compensation of Rs.1,00,000/- granted towards loss of estate and Rs.50,000/- on account of loss of consortium is also on higher side.

13. Though there is no straight jacket formula to assess the compensation towards non-pecuniary benefits as it depends upon the facts and circumstances of each case.

14. In view of the aforesaid discussion, I am of the considered opinion that compensation of Rs.2,00,000/- granted by the learned Tribunal for loss of love and affection is on higher side, therefore, the same is reduced to Rs.1,00,000/-.

15. So far as the compensation on account of loss of estate and loss of consortium is concerned, the learned Tribunal has granted Rs.1,00,000/- on account of loss of estate whereas compensation of Rs.50,000/- granted for loss of consortium is on lower side. Therefore, I am of the considered opinion that if the compensation granted on account of both

the aforementioned heads be reversed, then there may not be any discrepancy in the impugned order passed by the learned Tribunal.

16. Hence, I do not find any substance in the submission of learned counsel for the appellant/Insurance Company. The same is accordingly dismissed.

17. Thus, an amount of Rs.1,25,000/- is reduced from the compensation amount.

18. Consequently, the Registry of this Court is directed to release the statutory amount and the excess amount of Rs.1,25,000/- with proportionate interest in favour of the appellant/Insurance Company. Further directed to release the balance compensation amount with upto date interest accrued thereon in favour of the respondents/claimants in terms of the award dated 07.09.2012.

19. Learned counsel appearing on behalf of the appellant/Insurance Company has informed this Court that respondent No.3, Shri Prem Singh had died before filing the instant appeal, therefore, his name be deleted from the array of parties and his share shall be given to respondent No.4, Smt.Vimla.

20. In view of the above, name of respondent No.3 is deleted from the array of parties and the Registry is directed to release his share in favour of respondent No.4, Smt. Vimla, i.e., wife of deceased respondent No.3.

21. In view of the above discussion, the instant appeal is partially allowed.

SURESH KAIT, J.

FEBRUARY 10, 2014
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