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

% *Judgment Pronounced on: 26.05.2015.*

\+ MAC.APP. 24/2013

ICICI LOMBARD GENERAL
INSURANCE CO. LTD. ..... Appellant

Through Ms.Suman Bagga and Mr. Pankaj Gupta, Advocates.

versus

RAJPAL & ORS. ..... Respondents

Through Mr.B.R.Sharma, Adv. for R-1 & R-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the compensation awarded by the Tribunal in Award dated 10.10.2012.

2. The brief facts of the case are that on 28.05.2010 at about 5.00 am, while the deceased was driving his motorcycle near Rajdhani Park, Rohtak Road, Delhi, the offending vehicle which was being driven by Respondent no.3 in a rash and negligent manner hit the deceased from behind. The deceased fell down and succumbed to his injuries.

3. The Tribunal based on the evidence held that the accident was caused due to the rash and negligent driving of respondent No.3.

4. On compensation, the Tribunal awarded the following amount:

i) Loss of dependency	Rs.11,66,400/-
ii) Love and affection	Rs. 1,00,000/-

iii)Funeral charges	Rs. 10,000/-
iv)Loss of estate	Rs. 10,000/-

TOTAL	Rs.12,86,400/-

5. As the deceased was 16 years old and a student of a reputed school, the Tribunal took the potential income of the deceased to be Rs.10,800/- per month. The Tribunal deducted 50% of the income of the deceased towards personal expenses as the deceased was a bachelor. Further, based on the age of the deceased i.e. 16 years, the Tribunal applied the multiplier of 18 for the purpose of calculating loss of dependency. The Tribunal thus calculated the loss of dependency as Rs.11,66,400/-.

6. The Tribunal had relied upon the judgment of this High Court in the case of ***United Indian Insurance Co. vs. Kanwar Lal & Ors.*** in MAC APP.385/2007 dated 27.04.2012 to assess the income of the deceased at Rs.10,800/- per month.

7. Learned counsel appearing for the appellant has impugned the award. She firstly submits that the Tribunal has wrongly relied upon the judgment of the ***United Indian Insurance Co. vs. Kanwar Lal & Ors. (supra)*** inasmuch as in the said judgment the deceased was 18 years old whereas in the present case the deceased is less than 16 years old. It is urged that the appropriate judgment to follow would be ***R.K.Malik and Anr. vs. Kiran Pal & Ors., AIR 2009 SC 2506*** where the Supreme Court had fixed the notional income of the minor based on the second Sehedule to the M.V.Act. i.e. Rs.15,000/- per annum. It is secondly submitted that there was no evidence to show that the deceased was earning any amount. Hence, the notional income of Rs.10,800/- per month has erroneously been taken. It is further contended that the multiplier of 18 has wrongly been taken by the Tribunal while assessing the loss of dependency. Learned counsel submits that this

should have been 15.

8. In my opinion, there is no merit in the submission of the learned counsel for the appellant. Her entire submissions are squarely dealt with by a latest judgment of the Supreme Court in the case of ***V.Mekala vs. M.Malathi and Anr., 2014 ACJ 1441***. In the said case of ***V.Mekala vs. M.Malathi and Anr., (supra)*** the injured student was studying in Class XI and was aged 16 years. The Supreme Court took the notional income of Rs.10,000/- per month.

9. Reference may also be had to the judgment of the Supreme Court in the case of ***Ashwinibhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr., 2014 (11) SCALE 427*** which was a case of a medical student aged 19 years. The Supreme Court took the notional income of Rs.25,000/- per annum.

10. In the present case as per the evidence of PW-1, Mr.Rajpal, the father of the deceased, his son/the deceased had passed the matriculation examination and he was an intelligent and hard working person who was having a bright future. The Secondary School Certificate is marked as PW-1/2. There is no cross-examination on this aspect of PW-1. There are no reasons to modify the findings of the Tribunal assessing the income of the deceased at Rs.10,800/- per month.

11. As far as the multiplier is concerned, the Tribunal has taken the multiplier based on the age of the deceased. In the case of a bachelor, multiplier has been taken based on the age of the deceased and not based on the age of the claimant. In this regard, reference may be had to the judgment of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. MANU/DE/0715/2014; 2014 (142) DRJ 303.*** This Court held that the multiplier has to be based on the age of the deceased. That was a case where

the age of the deceased was 39 years.

12. This Court in the said case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)*** relied on the judgments of the Supreme Court in case of ***M. Mansoor vs. United India Insurance Co. Ltd., MANU/SC/1042*** and the judgment of the Supreme Court in the case ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. MANU/SC/0537/2012***. In ***Amrit Bhanu Shali (supra)*** the Supreme Court held as follows:-

> "15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation."

13. ***M. Mansoor vs. United India Insurance Co. Ltd (supra)*** was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. (supra)*** the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17.

14. I may further note that in MAC.App.761/2012 titled ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.*** where the deceased was 24 years, the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased, as he was a bachelor. This court relying upon the earlier judgments of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)*** applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

15. In view of the above, I do not find any error in the multiplier of 18 being used by the Tribunal for the calculation of loss of dependency.

16. In view of the above, there is no merit in the appeal and the same is dismissed.

17. If any award amount is still lying deposited with the UCO Bank, Delhi High Court Branch, the same with up to date accumulated interest shall be released to the claimants in the proportion as stipulated in the award dated 10.10.2012.

18. Statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant/insurance company.

19. Interim orders stand vacated.

JAYANT NATH
(JUDGE)

MAY 26, 2015
Sh/rb