$-14

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

Decided on: 24th February, 2015

\+ **MAC.APP. 212/2013**

SUSHILA GUPTA AND ORS ..... Appellants
Through: Mr.Amit Bajaj, Advocate & Mr. Puneet Bajaj, Advocate

versus

SURINDER KUMAR GOEL AND ORS ..... Respondents
Through: Mr. R.B. Shami, Advocate for Respondent no.3 Insurance Company.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. **(ORAL)**

1. The appeal is for enhancement of compensation of Rs.11,57,785/- (rounded off Rs.11,60,000/-) awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Satya Parkash who died in a motor vehicular accident which occurred on 30.10.2006 at about 11:20 p.m.

2. The only ground raised at the time of hearing of the appeal by

the learned counsel for the Appellants is that the deceased was aged 51 years at the time of his accident and the multiplier ought to have been 11 instead of 9 as adopted by the Claims Tribunal. It is contended that although the family members of the deceased spent Rs.76,214/- towards payment to Shri Balaji Action Medical Institute for the treatment given to the deceased before he succumbed to the injuries, yet only a sum of Rs.50,000/- was awarded towards cost of treatment.

3. On the other hand, the learned counsel for Respondent no.3 Insurance Company supports the impugned judgment and states that the compensation awarded is just and reasonable.

4. On appreciation of evidence, the Claims Tribunal found that the deceased was hit due to rash and negligent driving of the Wagon R bearing no.DL-8CK-7163. At the same time, it was held that the deceased contributed to the accident and therefore, deduction to the extent of 10% was made from the compensation granted towards the same.

5. I have the Trial Court record before me. The learned counsel for the parties have referred to various documents wherein the age of the deceased on the date of the accident comes to between 50-56 years. Since the multiplier changes post age of 55 years, this Court has to determine the exact age of the deceased.

6. The learned counsel for Respondent Insurance Company has

referred to Income Tax Return (ITR) for the Assessment Year (A.Y.) 2005-06 wherein the date of birth of the deceased has been mentioned as 25.10.1950. In some of the documents prepared by Shri Balaji Action Medical Institute, the age has been mentioned as 50 years and in others, 56 years. There is another ITR for the A.Y. 2004-05 which mentions the date of birth as 25.10.1955. There is PAN Card issued by the Income Tax Department and an Identity Card issued by SHRILALMAHAL GROUP where the date of birth has been mentioned as 25.10.1955. Age in discharge summary and other medical record prepared by Shri Balaji Action Medical Institute must have been mentioned as per the statement made by some or the other relations or friends of the deceased. In the two ITRs as stated above, there is contradiction which stands clarified from the PAN Card issued by the Income Tax Department. Therefore, I tend to accept the date of birth as 25.10.1955 and will ignore the ITR for the A.Y. 2005-06. The appropriate multiplier therefore, will be 11 as against 9 adopted by the Claims Tribunal. The loss of dependency thus, comes to Rs.14,98,200/- (Rs.16,400/- - Rs.1,100/- (Conveyance) x 12 – Rs.2,000/-(Income Tax) x 3/4 x 11).

7. The original bill dated 04.11.2006 reveals that an advance of Rs.15,240/- was paid initially and further a sum of Rs.60,974/- was paid at the time of discharge to the hospital. Thus, a total sum of Rs.76,214/- was paid towards the treatment of the

deceased before he succumbed to the injuries.

8. The Claims Tribunal has awarded a lumpsum compensation of Rs.50,000/- towards medical treatment, transportation and attendant charges. Thus, in addition to the sum of Rs.76,214/- towards treatment, the Appellants would be further entitled to a sum of Rs.25,000/- towards conveyance, special diet and attendant charges.

9. In view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* I further award a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate. Compensation for pain and suffering is not permissible in cases of death.

10. The overall compensation is hence, recomputed as under:

Sl. No.	**Compensation under various Heads**	**Awarded by the Claims Tribunal (in Rs.)**	**Awarded by this Court (in Rs.)**
1.	Medical, Transportation and Attendant Charges (being loss to estate after death)	50,000/-	1,01,214/-
2.	Loss of Income	10,62,785/-	14,98,200/-
3.	Loss of Love and Affection	25,000/-	1,00,000/-
4.	Funeral Expenses	10,000/-	25,000/-

5.	Pain & Suffering	10,000/-	Nil.
6.	Loss of Consortium	-	1,00,000/-
7.	Loss to Estate	-	10,000/-
	TOTAL	**11,57,785/ (rounded off 11,60,000/-)**	**18,34,414/- (rounded off to 18,35,000/-)**

11. The compensation computed is deducted by 10% as contributory negligence of the deceased was not challenged at the time of hearing. The net enhanced compensation of Rs.6,07,500/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its payment.

12. Respondent no.3 New India Assurance Company Ltd. is directed to deposit the enhanced compensation with the Claims Tribunal within six weeks, failing with the Appellants shall be entitled to interest @ 12% per annum from the date of this judgment.

13. The entire enhanced compensation shall enure for the benefit of Appellant no.1, who is widow of the deceased.

14. 75% of the enhanced compensation shall be held in Fixed Deposit for two, four and six years respectively in equal proportion; rest shall be released on deposit.

15. The appeal is allowed in above terms.

16. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 24, 2015
pst