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

Date of decision: 15th January, 2015

\+ **MAC.APP. 297/2013**

NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. J.P.N. Shahi, Adv.

versus

HARMEET KAUR & ORS. ..... Respondents
Through: Mr. N.K. Jha, Adv. for R-1 to R-3.
Mr. Sunil Mittal, Adv. For R-4 to R-6.

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

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

1. The Appellant New India Assurance Company Limited impugned the judgment dated 30.01.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.20,91,300/- was awarded for the death of Amarjeet Singh Chadha, who died in a motor vehicular accident which occurred on 21.06.2012 at 11:15 a.m.

2. The only ground of challenge raised at the time of hearing of the appeal is that the deceased's income from business for the Assessment Years 2010-2011, 2011-2012 and 2012-2013 was Rs.1,25,623.87/-, 3,21,314.27/- and Rs.3,77,102,79/- respectively. The Claims Tribunal took the average of the income for the last two years since the deceased was in business and the last Income Tax Return (ITR) was filed only after the demise of late Shri Amarjeet Singh Chadha. However, average of his income for the past three years ought to have

been taken into consideration for computing the loss of dependency.

3. It is true that ITR for the Assessment Year 2012-2013 was filed after the death of the deceased. The accident took place on 21.06.2012 and the ITR was filed within the due date. There was about 15% increase in the business income from the previous year whereas there was increase of about 150% in the income in the immediate previous year to the death.

4. In view of this, there was nothing to suspect that the income reflected in the ITR for the assessment year 2012-2013 was inflated or exaggerated.

5. The Claims Tribunal took precaution and granted loss of dependency on the basis of average income only for the last two years. The view taken by the Claims Tribunal was most reasonable. As per the law, income of the deceased for computing the loss of dependency as on the date of death has to be considered, which was slightly more than the income which was taken by the Claims Tribunal. (See: *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121).*

6. The liability of tax on the income of Rs.3,49,208/- comes to Rs.14,921/- as against Rs.9,000/- taken by the Claims Tribunal. Thus, the loss of dependency comes to Rs.20,05,722/- (3,49,208/- - 14,921/- (income tax) x 2/3 x 9).

7. The Claims Tribunal awarded a sum of Rs.25,000/- only towards loss of love and affection. In view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* the compensation awarded

towards loss of love and affection is liable to be increased to Rs.1,00,000/-.

8. The overall compensation thus, comes to Rs.21,30,722/- (20,05,722/- + 1,25,000/-).

9. Hence, the compensation awarded by the Claims Tribunal was reasonable and justified; the same does not call for any interference.

10. The appeal is devoid of any merit; the same is accordingly dismissed.

11. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.

12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2015
vk