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

Decided on: 26th February, 2015

\+ **MAC.APP. 618/2006**

NIRMALA VERMA ..... Appellant

Through: Mr.R.K. Dhawan, Advocate with Ms. Richa Dhawan, Advocate & Ms. Sheweta Joshi, Advocate

versus

BALJINDER SINGH & ORS ..... Respondents

Through: Mr. S.L. Gupta, Advocate with Mr. Ram Ashray, 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.5,65,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for the death of her son Raj Adhyaksh Verma who died in a motor vehicular accident which occurred on 09.04.1998 at about 1:15 p.m.

2. In the absence of any appeal by Respondent no.3 Insurance Company, the finding with regard to negligence has attained finality.

3. It is urged by the learned counsel for the Appellant that the compensation awarded is too small and inadequate. It is urged that deceased Raj Adhyaksh Verma was a highly qualified person. He did his B.Com. from Delhi University (Ex.PW2/12) and went on to obtain Post-Graduate Diploma in International Business from Foundation for Organisational Research and Education (Ex.PW2/13). Because of his high qualifications, he was issued an appointment letter (Ex.PW2/11) by Euro India Biotech Limited where he was expected to join by 15.04.1998. It is urged that the compensation awarded towards the non-pecuniary damages is also on the lower side.

4. On the other hand, the learned counsel for Respondent Insurance Company supports the impugned judgment and says that the compensation awarded is just and reasonable.

5. I have the Trial Court record before me. The qualifications of

the deceased with regard to his graduation in Commerce and Post-Graduation Diploma in International Business were not disputed. The deceased had initially joined as a Sales Executive in Sterling Holiday Resorts(I) Ltd. and was getting a salary of Rs.4,130/- per month. Later, a few months before his death, he was offered a fresh job with Euro India Biotech Limited. It is therefore, established that the deceased was 24 years of age at the time of his unfortunate death and was a highly qualified person and was just on the threshold of his career.

6. It is urged by the learned counsel for Respondent Insurance Company that it is well settled that income of the deceased only at the time of death has to be taken into consideration. Since on the basis of appointment letter, the deceased had not joined the job as yet, his salary as reflected in the appointment letter cannot be taken into consideration.

7. It is well settled that in appropriate cases, the Court can take into consideration the potential income of a victim of an accident.

8. In the case of *Haji Zainullah Khan (Dead) by LRs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667,* in case of death of a student aged 20 years, a student of B.Sc Ist year (Biology), potential income was taken into consideration by the Court while awarding compensation.

9. Similarly, in *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008,* decided by this Court on 23.11.2009, potential income of a student who was to be awarded the MBBS degree in a short time was taken into consideration to award the compensation.

10. From the record, it is borne out that although the deceased had obtained his decree in Commerce in 1996 and had Post-Graduate Diploma in the year 1997, he was immediately offered a job in Sterling Holiday Resorts(I) Ltd. where he continued to work till his death. Within a short span of six months of his joining Sterling Holiday Resorts(I) Ltd., he was given an offer to join as a Project Executive on a salary of Rs.11,500/- by Euro India biotech Limited which was more than double of the salary of his first appointment. The deceased had appeared for

interview on 20.03.1998. He was issued the appointment letter on 27.03.1998. He was offered to join Euro India Biotech Limited as a Project Assistant from 15.04.1998. Before that could happen, he met with the unfortunate accident. Taking into consideration the deceased's qualification, his first appointment and the second offer of appointment on a salary of Rs.11,500/- per month, I am inclined to hold that in the peculiar facts and circumstances of the case, since there was ample evidence of deceased's future prospects, addition of 50% towards future prospects should be made.

11. The deceased left behind his parents as his dependants. It is well settled that in case of a death of a bachelor, deduction towards personal and living expenses will be 1/2 of the income of the deceased and multiplier will be as per the age of his mother. (A reference can be made to *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 DEL 447).* The age of the mother as per the PAN Card at the time of the accident was 46 years, her date of birth being 30.09.1952. The appropriate multiplier to be adopted in the case therefore, will

be 13.

12. As per the appointment letter (Ex.PW2/11) issued by Euro India Biotech Limited, the deceased was entitled to a basic salary of Rs.9,500/-, House Rent Allowance of Rs.2,000/- and Conveyance Allowance of Rs.1,500/-(extendable upto 2,500/-) if the deceased maintain his own car. In addition, he was entitled to Medical Allowance of Rs.1,500/- and Education Allowance of Rs.750/- per annum respectively. He was further entitled to reimbursement for telephone expenses and entertainment expenses including membership of a Club @ 2,000/- per month. I will take the allowance of Rs.1,500/- per month as incidental to employment. The loss of dependency thus, comes to Rs.14,35,200/- (Rs.1,64,250/- - Rs.17,050/- (Income Tax) + 50% ÷ 2 x 13).

13. In addition, 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/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.

14. The overall compensation therefore, comes to Rs.15,70,200/-.

15. The compensation is thus, enhanced by Rs.10,05,200/- which shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its payment.

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

17. 50% of the enhanced compensation shall be held in Fixed Deposit for two and four years respectively in equal proportion; rest shall be released on deposit.

18. The appeal is allowed in above terms.

19. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 26, 2015
pst