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

% *Date of Decision : 8th September,2015*

\+ **MAC.APP. 1188/2012**

SARBARI & ANR ..... Appellants
Through: Mr.F.A.Bansirael, Advocate

versus

NEW INDIA ASSURANCE CO LTD ..... Respondent
Through: Mr.Pankaj Seth, Advocate

PRATIBHA RANI, J. (Oral)

1. The present appeal under Section 173 of Motor Vehicle Act has been filed by the appellants namely Smt.Sarbari and Sh.Shafiq Ahmad – parent of the deceased Tazeem Hasan @ Guddu, impugning the award dated 4th April, 2011 passed in Claim Petition bearing MACT No.321/2010 whereby a compensation of ₹ 4,29,670/- has been awarded by the learned Tribunal.

2. The brief facts of the case are that on 6th April, 2009, appellant No.1 Smt.Sarbari was going on a scooter driven by her son Tazeem Hasan. When they reached in front of ITS Hospital, Muradnagar, Ghaziabad, U.P., they were hit by a dumper bearing No.HR-38-H-7401. In the said accident appellant No.1 Sarbari suffered serious injuries while her son Tazeem Hasan succumbed to the injuries sustained by him in the accident.

3. Based on the evidence adduced by the parties, the learned Tribunal awarded a total compensation of ₹4,29,670/- (inclusive interim compensation) under the following heads:-

Loss of dependency	₹ 3,96,000/-
Loss of love and affection	₹ 10,000/-

Loss of estate	₹ 10,000/-
Funeral charges	₹ 5000/-
Medical charges	₹ 8670/-
TOTAL	**₹ 4,29,670/-**

4. The challenge to the award is mainly on the ground that the compensation awarded by the Tribunal is too low and cannot be said to be just compensation as envisaged under Section 168 of the Motor Vehicle Act, 1988. The deduction from income of the deceased to the extent of 50% towards personal expenses as well the correctness of the multiplier applied by the Tribunal have also been impugned.

5. I have heard learned counsel for the parties and carefully gone through the record.

6. It is admitted case of the parties that Tazeem Hasan, son of the appellants/claimants died due to the injuries suffered by him in the accident occurred on 6th April, 2009.

7. No appeal has been filed by the owner and driver of the offending vehicle and finding by the Tribunal on the point of negligence has attained finality.

8. The award is impugned mainly on two grounds:-

(i) The deceased was supporting his parents as well siblings thus instead of 50% deduction towards personal expenses, it should have been 1/3rd from the income of the deceased;

(ii) As per the election identity card exhibit PW-1/2 the age of appellant No.1 Smt.Sarbari as on 1st January, 2008 was 47 years. The date of accident is 6th April, 2009. Thus the appellant No.1 was above 48 years of age on that date but the Tribunal has applied the multiplier of '11' referring to the age of the appellant No.1 as 54 years which is contrary to the record.

9. The Hon'ble Supreme Court reviewed the law with regard to the selection of multiplier and deduction towards personal and living expenses and held that uniformity has to be achieved in payment of the compensation. The Supreme Court in the case of *Sarla Verma vs. Delhi Transport Corporation, 2009 (6) Scale 129* laid down the following principles for grant of compensation in death cases:-

I. <u>DEDUCTION FOR PERSONAL AND LIVING EXPENSES:</u>

Deceased – unmarried

(i)	Deduction towards persons expenses	-	1/2 (50%)
(ii)	Deduction where the family of the bachelor is large and dependent on the income of the deceased.	-	$1/3^{rd}$ (33.33%)

Deceased – married

(i)	2 to 3 dependent family members	-	$1/3^{rd}$
(ii)	4 to 6 dependent family members	-	$1/4^{th}$
(iii)	More than 6 family members	-	$1/5^{th}$
(iv)	Subject to the evidence to the contrary	-	Father, brother and sisters will not be considered as dependents.

II. <u>MULTIPLIER</u>

Age of the deceased (in years)	Multiplier
15-20	18
21-25	18
26-30	17
31-35	16
36-40	15

41-45	**14**
46-50	**13**
51-55	**11**
56-60	**09**
61-65	**07**
Above 65	**05**

10. During the course of hearing learned counsel for the appellants fairly conceded that there is no evidence to prove that the deceased Tazeem Hasan was the only bread earner of his family and his parents & siblings were financially dependent on him. The deceased Tazeem Hasan was aged about 24 years and also bachelor at the time of his death in the fatal accident. Hence, in view of the settled legal position as laid down in *Sarla Verma's case* (Supra), the learned Tribunal, while computing the compensation, has rightly deducted 50% of the income towards personal expenses and no interference is warranted by this Court on this count.

11. Next contention raised before this Court is regarding the correctness of the multiplier applied in this case. It may be necessary to mention here that the deceased was bachelor and the multiplier to be selected for the purposes of awarding compensation has to be as per the age of the claimants. As per election identity card exhibit PW-1/2 the appellant No.1, who is mother of deceased Tazeem Hasan, was just about 48 years at the time of death of her son.

12. In view of the decision of the Hon'ble Supreme Court in *Sarla Verma's case* (supra), the correct multiplier has to be '13' as against the multiplier of '11' applied by the Tribunal.

13. The Three Judge Bench decision in *U.P. SRTC v. Trilok Chandara* (1996) 4 SCC 362 shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimant. Thus,

following Sarla Verma's case (supra) which was followed in the case reported as *Reshma Kumari & Ors. v. Madan Mohan & Anr* (2013) 9 SCC 65, the loss of dependency comes to ₹4,68,000/- [₹6,000/- X 12 = ₹ 72,000/- (annual income of the deceased) – ½ of annual income (towards personal expenses = ₹ 36,000/- X 13 (multiplier) = ₹ 4,68,000/-].

14. In view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.* (2013) 9 SCC 54, the appellants are entitled to further enhancement and awarded compensation of ₹ 90,000/- towards loss of love and affection and ₹ 20,000/- towards funeral expenses.

15. Thus, the overall compensation to the which the appellants are now entitled is as under-

Under the head	***Compensation granted by Tribunal***	***Compensation enhanced by this Court***	***Compensation to which appellants now entitled***
Loss of dependency	₹ 3,96,000/-	₹ 72,000/-	₹ 4,68,000/-
Loss of love and affection	₹10,000/-	₹ 90,000/-	₹ 1,00,000/-
Loss of estate	₹10,000/-	-	₹ 10,000/-
Funeral charges	₹5000/-	₹ 20,000/-	₹ 25,000/-
Medical charges	₹ 8670/-	-	₹ 8670/-
TOTAL	**₹ 4,29,670/-**	**₹ 1,82,000/-**	**₹ 6,11,670/-**

16. The respondent, Insurance Company is directed to deposit the enhanced compensation of ₹ 1,82,000/- along with interest @ 7.5% per annum from the date of filing the claim petition with the Tribunal concerned within four weeks from the date of this order.

17. As per the award passed in MACT No.321/2010, the apportionment

of compensation amount done by the learned Tribunal is that the appellant No.1 will get ₹ 3,86,703/- and the appellant No.2 will get ₹42,967/-. However, it is directed that on deposit of the enhanced compensation of ₹1,82,000/- awarded by this Court, the same shall be equally released in favour of both the appellants.

18. Appeal stands disposed of in above terms.

As prayed, copy of the order be given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

SEPTEMBER 08, 2015
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