

\$-9

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

Decided on: 15th April, 2015

+ **MAC.APP. 620/2012**

NATIONAL INSURANCE CO LTD. Appellant

Through: Ms. Shantha Devi Raman, Adv. with
Mr. Garud M.V., Adv. &
Mr. Tushar Raj, Adv.

versus

GEETA DEVI & ORS. Respondents

Through: Mr. Ghanshyam Thakur, Adv. with
Mr. R.K. Jha, Adv.

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 reduction of compensation of ₹42,02,060/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 6 for the death of Lakhan Yadav, who suffered fatal injuries in a motor vehicular accident which occurred on 05.03.2011.
2. At the time of hearing the appeal, following contentions are raised by the learned counsel for the Appellant:-

(i) The Income Tax Return (ITR) for the Assessment Year 2008-

2009 was proved as Ex.PW-1/6 but the ITR for the Assessment Year 2009-2010 was not proved and thus, the same ought not to have been taken into consideration;

(ii) Deceased Lakhan Yadav was a Transporter. On his death he left four commercial vehicles which could have been run by his widow and children. Consequently, the loss of dependency should not have been awarded on the entire income of the deceased; and

(iii) There was liability of income tax on the income of ₹1,80,000/-.

However, no deduction towards income tax was made.

3. On the other hand, learned counsel for the Respondents supports the impugned judgment.
4. I have before me the Trial Court Record.
5. ITRs for the Assessment Year 2008-2009 and 2009-2010 duly received in the Income Tax Department were proved by the widow of the deceased. Thus, the learned counsel for the Appellant is not right in her submission that the ITR for the Assessment Year 2009-2010 was not duly received.
6. Once these ITRs were proved and if the Appellant was not satisfied

about its genuineness, it could have engaged an investigator to make an investigation and report about the same. However, this was not done. Thus, I do not see any reason to disbelieve the ITRs placed on record. The same were rightly considered by the Claims Tribunal.

7. With regard to the plea that the deceased had left four commercial vehicles and the same could have been used by the Respondents, I may say that the deceased Lakhan Yadav was survived by his aged mother, a young widow aged 29 years and children aged between 1-7 years and none of them were in a position to attend the business after his death. All the more, if the widow of the deceased would have earned something by dint of putting her labour, that income even if earned could not have been deducted to compute the loss of dependency. There was liability of income tax of about ₹4,000/- per annum on an income of ₹2,25,670/-. Thus, the fact that the deceased owned four commercial vehicles which were inherited by the Respondents will not affect the computation of loss of dependency.
8. Since the income of the deceased was gradually increasing and he was in settled business of transport, the Claims Tribunal was justified in making addition of 50% towards future prospects.
9. The loss of dependency therefore, would come to ₹39,90,060/-

(2,25,670/- - 4,000/- + 50% x 3/4 x 16).

10. In addition, in view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, Respondents are further entitled to a sum of ₹ 1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.
11. The overall compensation thus, comes to ₹ 42,25,060/-.
12. Hence, the award of compensation of ₹42,02,060/- cannot be said to be excessive or exorbitant.
13. The appeal therefore, has to fail; the same is accordingly dismissed with costs.
14. Pending applications also stand disposed of.
15. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company after deposit of costs.

(G.P. MITTAL)
JUDGE

APRIL 15, 2015

vk