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

Decided on: 24th February, 2015

+ **MAC.APP. 617/2012**

DAROGA MAL SAINI & ANR.

..... Appellants

Through: Mr.Mohit Kumar Gupta,
Advocate

versus

MOHD FIYAZ KHAN & ORS

..... Respondents

Through: Ms. Rakhi Dubey, 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.8,52,448/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Tarun Saini who died in a motor vehicular accident which occurred on 23.10.2010.
2. During inquiry before the Claims Tribunal, it was claimed that deceased Tarun Saini was a self employed person running a

shop and dealing in items like CD, DVD *etc.* at Khijrabad, New Delhi. It was claimed that the deceased was having an income of Rs.30,000/- per month and he was maintaining Savings Bank Account no.2007101013471 in Canara Bank. He was also pursuing Bachelor of Arts through Correspondence from Delhi University, South Campus.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus no.DL-1PB-0654. In the absence of any documentary evidence with regard to the deceased's income, the Claims Tribunal took minimum wages of a matriculate at Rs.6,448/- per month, added 50% towards future prospects, deducted 1/2 towards personal and living expenses and applied the multiplier of 14 to compute the loss of dependency at Rs.8,12,448/-. The Claims Tribunal further awarded certain sums towards non-pecuniary damages to compute the overall compensation of Rs.8,52,448/-.
4. It is urged by the learned counsel for the Appellants that the compensation awarded is too meagre and unjust considering the claim of the Appellants that the deceased was earning Rs.30,000/- per month. The learned counsel for the Appellants refers to the Passbook (mark 'B') in respect of Savings Bank Account being maintained by the deceased which reveals that there were a number of transactions going on since the year 2007.

5. On the other hand, the learned counsel for Respondent no.3 urges that the compensation awarded is already on the higher side and in the absence of any evidence with regard to income, the Claims Tribunal rightly took the minimum wages of a matriculate to compute the loss of dependency. It is stated that no addition towards future prospects was permissible in the absence of any evidence with regard to the same.
6. I have the Trial Court record before me. Smt. Veena Saini, mother of the deceased filed her Affidavit by way of evidence. She testified that the deceased was running a shop of musical items like CD, DVD *etc.* at Khijrabad, New Delhi and was earning Rs.30,000/- per month. In her cross-examination, she could not give the particulars of the shop which was being run by the deceased. She showed her ignorance when asked, if her son was being assessed to Income Tax. Admittedly, no Income Tax Return (ITR) was placed on record. Therefore, it is difficult to say that the deceased was having an income of Rs.30,000/- per month. All the more, even particulars of the shop were not given. But, at the same time, evidence in the shape of Savings Bank Account Passbook (mark 'B') placed on record definitely reveals that the deceased was a self employed person. There were a number of transactions since 31.01.2007 when the Account was opened. In such circumstances, it becomes very difficult to make correct assessment of the income of the deceased. I would make a guess work and assess

the income of the deceased to be Rs.10,000/- per month as against the income of Rs.6,448/- per month for a matriculate as taken by the Claims Tribunal.

7. In view of the decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 and the judgment of this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.* MAC APP No. 189/ 2014 decided on 12.01.2015, it is well settled that in the absence of any evidence with regard to future prospects, addition in the income of deceased or injured towards the same is not permissible. The loss of dependency therefore, comes to Rs.8,40,000/- (Rs.10,000/- x 1/2 x 12 x 14).
8. 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 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.
9. The overall compensation thus, comes to Rs.9,75,000/-
10. The compensation is enhanced by Rs.1,22,552/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
11. Respondent no.3 National Insurance Company Ltd. proved that there was willful and conscious breach of the terms and

conditions of the insurance policy by the insured and therefore, making the Insurance Company initially liable to pay the compensation, it was granted recovery rights.

12. The proposition is well settled that even in case of willful breach of the terms and conditions of the insurance policy, the insurer will satisfy the third party claim and then may recover the same from the insured. A reference may be made to the judgment of this Court in *Oriental Insurance Company Limited v. Rakesh Kumar and Others*, 2012 ACJ 1268 and other appeals decided by a common judgment dated 29.02.2012, where this question was dealt in great detail.
13. The finding on liability has not been challenged by Respondent no.2, who is the owner of the vehicle and was made liable to reimburse the compensation to the Insurance Company. I therefore, affirm the said finding of the Claims Tribunal and hold that although the Insurance Company will be initially liable to pay the enhanced compensation, but it shall be entitled to later recover the same from the owner (Respondent no.2 herein) in execution of this very judgment without having recourse to independent recovery proceedings.
14. The enhanced compensation shall be deposited by Respondent no.3 Insurance Company with the Claims Tribunal within six weeks.
15. 50% of the enhanced compensation shall be held in Fixed

Deposit for a period of two and four years respectively in equal proportion. Rest of the amount shall be released on deposit.

16. The appeal is allowed in above terms.
17. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 24, 2015
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