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

Judgment Reserved on: November 17, 2015

% *Judgment Delivered on: November 26, 2015*

\+ **MAC.APP. 613/2012**

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Ms.Neerja Sachdeva, Advocate.

versus

SMT NEELAM & ORS ..... Respondents

Through: Mr.Navneet Goyal, Advocate for R-1 to R-6.

PRATIBHA RANI, J.

MAC.APP. No.613/2012

1. The appellant United Insurance Company Ltd. has impugned the award dated 21.04.2012 whereby a total compensation of ₹49,04,085/- has been awarded by the learned Tribunal in respect of the death of Shri Bhagwan who was Head Constable in Delhi Police and succumbed to the injuries suffered by him in the accident which has taken place on 01.11.2010

2. In brief, the facts are that HC Shri Bhagwan was going on his motorcycle bearing registration No.HR-13-C-1886 on 01.11.2010. At about 11.30 pm when he reached in front of Tikri Hospital Bus Stand, Main Rohtak Road, Nangloi, Delhi, his motorcycle was hit by Alto Car bearing registration No.HR-13-B-9911, as a result of which he fell down and suffered fatal injuries and expired on 08.11.2010.

3. Claimants are widow, three minor children and parents of the deceased who have been impleaded as respondents No.1 to 6 in this appeal. Respondents No.7 and 8 are driver and owner of the offending vehicle

respectively.

4. Smt.Neelam, widow of the deceased HC Shri Bhagwan has examined herself as PW-1. ASI Vijender Kaushik was examined as PW-2 to prove the service record of the deceased HC Shri Bhagwan.

5. No evidence was led by the driver/owner of the offending vehicle as well by the insurance company.

6. After considering the evidence adduced, the learned Tribunal awarded a total compensation of ₹49,04,085/- under the following heads:-

Under the head	***Compensation granted by Tribunal***
Loss of dependency	₹ 47,39,085/-
Loss of love and affection	₹ 1,00,000/-
Loss of estate	₹ 5,000/-
Funeral charges	₹ 50,000/-
Loss of consortium	₹ 10,000/-
TOTAL	**₹ 49,04,085/-**

7. The appellant/insurance company impugned the said award on the following grounds:-

(i) The learned Tribunal wrongly computed the compensation by accepting the salary certificate without deducting income tax.

(ii) The learned Tribunal also committed an error in accepting the annual income on the basis of salary for 13 months instead of 12 months.

(iii) At the time of his death, HC Shri Bhagwan was more than 40 years old. The learned Tribunal has committed an error in applying the multiplier of '15' instead of '14'.

(iv) Under non-pecuniary head also, the compensation of ₹50,000/-

towards funeral charges and ₹1 lacs towards loss of love and affection is also on higher side.

8. Ms.Neerja Sachdeva, Advocate for the appellant/insurance company has urged before this Court that the learned Tribunal should have considered the income of the deceased HC Shri Bhagwan after considering deduction of income tax which has not been done in this case. Further it has been urged that in computing the compensation, loss of dependency has to be calculated taking into account the annual income of the deceased for 12 months only whereas the learned Tribunal has considered the annual income for 13 months, which is illegal. Ms.Neerja Sachdeva, Advocate for the appellant/insurance company has further submitted that the deceased was a Head Constable in Delhi Police and at the time of his death, he was above 40 years of age, hence multiplier of '15' could not have been applied in this case. Rather as per decision of Apex Court in *Sarla Verma vs. Delhi Transport Corporation* 2009 (6) Scale 129 the correct multiplier should have been '14'. Learned counsel for the appellant/insurance company has further submitted that the learned Tribunal has awarded a sum of ₹50,000/- towards funeral charges and ₹1 lacs towards love and affection, which are on higher side, hence the impugned award is liable to be modified to above extent.

9. Mr.Navneet Goel, Advocate for the claimants/respondents No.1 to 6 has submitted that the deceased was a police official and was getting 13 months' salary every year. Further he was yet to complete 41 years when he succumbed to the injuries in this fatal accident, hence multiplier of '15' only could have been applied by the learned Tribunal. Learned counsel for the claimants has further submitted that the income of the deceased was not taxable at that time. Thus, there was no question of deducting the income

tax.

10. I have considered the rival contentions and carefully gone through the record.

11. I shall be dealing with all the contentions raised before this Court after referring to the decision of the Apex Court in <u>*Sarla Verma's case*</u> (Supra) on which both the parties rely.

12. The Hon'ble Supreme Court in <u>*Sarla Verma's case*</u> (Supra) 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 said report has 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.	-	1/3rd (33.33%)

Deceased – married

(i)	2 to 3 dependent family members	-	1/3rd
(ii)	4 to 6 dependent family members	-	1/4th
(iii)	More than 6 family members	-	1/5th
(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**

III. <u>FUTURE PROSPECTS:</u>

(i) Permanent job Below 40 years of age	:	Actual salary – tax + 50% towards future prospects.
(ii) Permanent job Between 40-50 years	:	Actual salary – tax + 30% towards future prospects.
(iii) More than 50 years with permanent job.	:	Actual salary only. No addition for future prospects.
(iv) Deceased employed at a fixed salary (without provision for taken annual increments)”	:	Only actual income to be No addition.

13. PW-2 ASI Vijender Kaushik who has been examined by the claimants to produce the service record of deceased HC Shri Bhagwan has not been materially cross examined by the insurance company. Just a suggestion has been given to PW-2 to the effect that the record is forged and fabricated, which PW-2 has denied.

14. There is not an iota of evidence led by the insurance company to suspect the authenticity of service record of the deceased HC Shri Bhagwan maintained by Delhi Police and produced by the official witness from the

official custody.

15. The factum of death of HC Shri Bhagwan due to the injuries suffered by him in the accident caused by the offending vehicle is not in dispute.

16. 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.

17. PW-2 ASI Vijender Kaushik has proved the following facts:-

(i) In the service book, copy of which is Ex.PW2/1, date of birth of deceased Shri Bhagwan has been recorded as 30.01.1970. As per the salary certificate for the month of October, 2010 Ex.PW2/2, at the time of death, he was getting the salary of ₹24,926/- per month.

(ii) Deceased Shri Bhagwan was a permanent employee in Delhi Police.

(iii) As per Form-16 Ex.PW2/3, no income tax was deducted from his salary for the financial year 2009-2010.

(iv) Under the Government Notification Ex.PW2/4, all Delhi Police officials except Gazetted Officers, get annual salary of 13 months instead of 12 months.

18. The learned Tribunal while awarding the compensation has taken note of all the above facts. Since the salary of deceased Shri Bhagwan was not taxable, no income tax could have been deducted by the Tribunal while computing the compensation. There being Government Notification which entitles the Non-Gazetted Officers of Delhi Police to earn 13 months' salary in a year for the reasons noted in the notification Ex.PW2/4, the learned Tribunal has rightly considered loss of dependency taking into account the salary of the deceased HC Shri Bhagwan which he was actually recieving at the time of his death in this fatal accident.

19. Now comes the issue of applicability of multiplier. In the case *New*

India Assurance Co. Ltd. vs. Charlie and Anr. AIR 2005 SC 2157, it was held as under :-

> *'12. Much of the calculation necessarily remains in the realm of hypothesis, "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.*

20. As per the service book, the date of birth of the deceased HC Shri Bhagwan is 30.01.1970. He suffered injuries on 01.11.2010 and succumbed to those injuries on 08.11.2010. Thus, at the time of his death, he had not completed 41 years. The deceased HC Shri Bhagwan has left behind six dependents and as per Sarla Verma's case (Supra), deduction for personal and living expenses could be $1/4^{th}$, which has been done by the Tribunal and the multiplier to be applied, if the age of the deceased is between 36 to 40 years is '15'. If the age of the deceased is between 41 to 45 years, the multiplier applicable will be '14'. Here in this case, the deceased had not attained the age of 41 years at the time of his death, hence the learned Tribunal has rightly applied the multiplier of '15'.

21. The next contention raised before this Court by the appellant/insurance company that the compensation awarded to the claimants under non-pecuniary heads are on higher side, is liable to be rejected in view of the decision of the Supreme Court in Rajesh & Ors. v. Rajbir Singh & Ors. (2013) 9 SCC 54. Rather, in view of the decision of the Supreme Court in Rajesh & Ors. vs. Rajbir Singh & Ors. (Supra) the claimants are entitled to further enhancement of compensation of ₹ 90,000/- towards loss of consortium and award of compensation of ₹1,00,000/- towards loss of care and guidance for minor children as the deceased HC

Shri Bhagwan has left behind three minor children.

22. Thus, the overall compensation to the which the claimants/respondents No.1 to 6 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	₹ 47,39,085/-	-	₹ 47,39,085/-
Loss of love and affection	₹ 1,00,000/-	-	₹ 1,00,000/-
Loss of estate	₹ 5,000/-	-	₹ 5,000/-
Funeral charges	₹ 50,000/-	-	₹ 50,000/-
Loss of consortium	₹ 10,000/-	₹90,000/-	₹ 1,00,000/-
Loss of care and guidance for minor children	-	₹ 1,00,000/-	₹ 1,00,000/-
TOTAL	**₹49,04,085/-**	**₹ 1,90,000/-**	**₹50,94,085/-**

23. The appellant/Insurance Company is directed to deposit the enhanced compensation of ₹ 1,90,000/- along with interest @ 7.5% per annum from the date of filing the claim petition with the Tribunal concerned within six weeks from the date of this order. In case of any delay in depositing the enhanced compensation, the appellant/insurance company shall be liable to pay interest @ 9% p.a. for the delayed period.

24. The enhanced compensation of ₹90,000/- awarded towards loss of consortium be released in favour of the respondent No.1 Smt.Neelam – widow of HC Shri Bhagwan.

25. So far as enhanced compensation of ₹1,00,000/- awarded towards loss of care and guidance for minor children is concerned, the same be kept in

the form of FDR in the name of three minor children i.e. respondents No.2 to 4 in equal share (1/3rd share each) till they attain the age of majority. The respondents no.2 to 4, who are minor, can withdraw the interest quarterly through their mother i.e. petitioner No.1.

26. Appeal stands disposed of in above terms.

27. Statutory amount of ₹25,000/- deposited by the appellant/insurance company at the time of filing of this appeal, be released to the appellant.

28. LCR be sent back alongwith copy of this order.

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

<u>CM No.10034/2012</u>

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 26, 2015
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