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

Judgment pronounced on :26.05.2015

+ **MAC.APP. 585/2013**

THE NEW INDIA ASSURANCE CO. LTD Appellant
Through Mr.J.P.N.Shahi, Adv.

versus

SMT AFSANA KHATOON & ORS Respondent
Through Mr.Ai Murtaza and Ms.Tarannum
Rani, Advs. for R-1 to R-4
Mr.Sanjeev Behl, Adv. for R-6
/Vikram Chopra

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present appeal the appellant seeks to impugn the Award dated 27.04.2013.
2. The brief facts which led to the filing of the present claim petition are that on 26.06.2012 Sh.Muzzaffar Ali, the deceased was travelling in an auto rickshaw. When he reached in front of GATTA factory, the auto rickshaw in which he was travelling was hit by a Tata 407 truck said to be driven rashly and negligently at a high speed. Sh. Muzzaffar suffered injuries and died on the way to the hospital.
3. Based on the evidence on record, the Tribunal concluded that the accident took place due to rash and negligent driving of the truck driver, namely, respondent No. 5.

4. On compensation, the Tribunal awarded Rs.12,18,128/-. The Tribunal took the minimum wages of an unskilled workman which were at the relevant time were Rs.7020/- per month, added 30% for future prospects, deducted 1/3rd for personal expenses and used a multiplier of 16 keeping into account that the age of the deceased was 32 years at time of the accident. Loss of dependency was hence calculated at Rs.11,68,128/-.

5. Learned counsel appearing for the appellant has submitted that a perusal of the Award shows that it was a clear case of contributory negligence of the three wheeler in which the deceased was travelling. He submits that it was a head on collision and a head on collision implies that it is a case of contributory negligence. He relies on the judgment of the Karnataka High Court in the case of *The Divisional Railway Manager, Southern Railway vs. KSRTC & Ors., 1998 ACJ 973*. Hence, he submits that at best the liability would be joint liability of the appellant and the insurance company of the TSR. He secondly submits that the Tribunal has wrongly granted 30% increase in income for future prospects while computing loss of dependency

6. As far as the issue of contributory negligence is concerned, the Tribunal has relied upon the evidence of PW-1 Mohd. Maruf who deposed that on the said date he was coming from Hapur on his motor cycle and when he reached in front of GATTA factory, he saw the Tata truck being driven at a high speed rashly and negligently and it hit the auto. He has confirmed that there was a head on collision. The Tribunal based on the FIR, site plan, post-mortem report and said testimony of PW-1 held that the injuries were sustained on account of a road accident which occurred due to rash and negligent driving of respondent No.5.

7. The appellant have led no evidence before the Tribunal. They have also not bothered to summon the driver of the auto rickshaw or the IO. No attempt was made to prove that the TSR driver also guilty of having caused the accident. In the absence of any proof to show the negligence of the TSR driver, there is no merit in the submission of the leaned counsel for the appellant.

8. As far as the judgment in the case *The Divisional Railway Manager, Southern Railway vs. KSRTC & Ors. (supra)* is concerned, that was a judgment where a bus driving rashly and negligently drove through the railway crossing and the railway engine ran over the bus. The Court noted that there was unimpeachable and voluminous evidence that the passengers in the bus after seeing the railway engine coming, screamed and shouted at the driver to stop the bus. Therefore, the rashness of the bus driver was writ large. The Court apportioned 50:50 liability as the railways failed to provide a gateman on the crossing. The facts of the present case are entirely different from that of *The Divisional Railway Manager, Southern Railway vs. KSRTC & Ors.(supra)*. The said judgment has no application to this case in as much the appellant failed to show any evidence to hold the TSR driver guilty for having caused the accident.

9. Coming to the issue of future prospects. I can take judicial note of the fact that minimum wages for a matriculate in 2002 were Rs.3115.40/- P.M. and in 2012 were Rs.8528/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

10. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54* the Supreme Court held that in the case of self employed or those on fixed

wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

11. In the case of *Smt.Savita vs. Bindar Singh & Ors.*, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of *V.Mekala vs. M.Malathi & Anr.*, 2014 ACJ 1441, the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

12. Further, this court in the case of *ICICI Lombard General Insurance Company vs. Angrej Singh & Ors.* in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of *Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.* (2009) 6 SCC 121, *Reshma Kumari & Ors. vs. Madan Mohan & Anr.* 2013 ACJ 1253 and other judgments and concluded that the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (*supra*) has held that the future prospects should be given to persons who are self-employed or on fixed wages. I may further note that this court in MAC APP.761/2012 *Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.* vide judgment dated 02.04.2014 had in a case where the deceased was 24 years old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*(*supra*). Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

13. Hence, as the deceased was 32 years old, he should be awarded 50% increase in income towards future prospect. The Tribunal has awarded an increase of only 30% towards the same.

14. The Hon'ble Supreme Court in the case of ***Ranjana Prakash & Ors. vs. Divisional Manager & Anr. 2011 ACJ 2418***, where the Supreme Court in para 6 held as follows:-

“6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs. 23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the Appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.”

15. Hence, as there is no cross-appeal, I am not interfering in the award

amount.

16. There is no merit in the appeal and the same is dismissed.

17. The interim order stands vacated. The Statutory amount, if any, paid by the appellant, be refunded.

(JAYANT NATH)
JUDGE

MAY 26, 2015

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