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

Date of decision: 4th February, 2015

\+ **MAC.APP. 694/2013**

ROSHNI DEVI & ORS ..... Appellants

Through: Mr. Manu Shahalia, Adv.

versus

TAKDEER SINGH & ORS. ..... Respondents

Through: Ms. Suman Bagga, Adv. with Mr. Pankaj Gupta, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. *(ORAL)*

1. The appeal is for enhancement of compensation of Rs.5,65,682/- awarded for the death of Mahabir Singh, who died in a motor vehicular accident which occurred on 11.08.2010.

2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal), it was claimed that deceased Mahabir Singh was a retired Naib Subedar from Army. He was getting a pension of Rs.13,845/- per month and was carrying on business under the name and style of 'Dalal Khad Beej Bhandar' dealing in seeds and building material. It was also claimed that the deceased was a matriculate.

3. There were seven Petitioners including three married daughters. The Claims Tribunal took minimum wages of a Matriculate, deducted 1/5th towards personal and living expenses and applied the multiplier of 9 (as per the age of the deceased as 57 years) to compute the loss of dependency as Rs.5,10,681/-.

4. It is urged by the learned counsel for the Appellants that no compensation was awarded towards deduction in pension in as much as the pension was reduced from Rs.13,845/- to Rs.8,412/-. It is stated that the compensation awarded towards non-pecuniary damages is also on the lower side. The potential income was also assessed on the lower side.

5. It was admitted by PW-3 Anil Kumar son of the deceased Mahabir Singh that the deceased was not assessed to income tax. Therefore, the Claims Tribunal rightly took the minimum wages of the Matriculate, *i.e.* Rs.6448/- per month to compute the loss of dependency because any income beyond Rs.1,80,000/- at the relevant time was subject to income tax. It is established from the certificate Ex.PW-3/10 issued by the Punjab National Bank that during his lifetime, the deceased was getting a pension of Rs.13,845/- per month and after his death, the family pension got reduced to Rs.8,412/-. This

was the real loss to the widow and the dependants. Therefore, the compensation towards loss of dependency ought to have been awarded for loss of pension of Rs.5433/- per month as well.

6. At the same time, the three daughters, Appellants no.5 to 7 being married, they were not dependent upon the deceased Mahabir Singh. Further, although, Appellants no.2 and 3 were major, but even major sons remain dependent upon the parents till they settle in their life. Thus, deduction towards personal and living expenses ought to have been $1/4^{th}$ instead of $1/5^{th}$ as made by the Claims Tribunal.

7. The loss of dependency thus, comes to Rs.9,62,361/- (6448/- + 5433/- x 12 x 3/4 x 9).

8. In addition, the Appellants are entitled to a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium; Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.

9. The compensation awarded is re-computed as under:-

Sl. No.	**Compensation under various heads**	**Awarded by this Court**
1.	Loss of Dependency	9,62,361/-
2.	Loss of Love and Affection	1,00,000/-

3.	Loss of Consortium	1,00,000/-
4.	Funeral Expenses	25,000/-
5.	Loss to Estate	10,000/-
	Total	**Rs.11,97,361/-**

10. The enhanced compensation of Rs.6,31,679/- shall carry interest at the rate of 7.5% per annum.

11. 15% of the awarded compensation along with proportionate interest shall enure for the benefit of Appellants no.2 and 3 and 20% along with proportionate interest for the benefit of Appellant no.4. Rest 50% shall go to Appellant no.1.

12. 60% of the enhanced compensation awarded to each of the four Appellants shall be held in Fixed Deposit for a period of two years. Rest shall be released on deposit.

13. The enhanced compensation along with proportionate interest shall be deposited with the Claims Tribunal within a period of six weeks from today, failing which the Appellants shall be entitled to interest @ 12% per annum from the date of this judgment.

14. The appeal is allowed in above terms.

15. Pending application also stands disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 04, 2015
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