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

Pronounced on: 28th April, 2015

+ **MAC.APP. 339/2012**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms. Shantha Devi Raman, Advocate
with Mr. Garud M.V., Advocate

versus

NITASHA RANI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate

+ **MAC.APP. 865/2012**

NITASHA RANI & ORS

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

MANOJ KUMAR & ORS.

..... Respondents

Through: Ms. Shantha Devi Raman, Advocate
with Mr. Garud M.V., Advocate for
Respondent insurance company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of judgment dated 22.12.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹38,06,000/- was awarded in favour of the legal representatives of deceased Praveen Kumar, who suffered fatal

injuries in a motor vehicular accident which occurred on 09.07.2006.

2. MAC APP.339/2012 is preferred by the National Insurance Company Limited, insurer of the offending vehicle bearing registration no.DL-1PB-6078 involved in the accident for reduction of compensation, whereas MAC APP.865/2012 has been preferred by the legal representatives of deceased Praveen Kumar for enhancement of compensation.
3. The finding on negligence has not been challenged by the Insurance Company.
4. For the sake of convenience, the Appellant in MAC.APP.339/2012 shall be referred to as the Insurance Company whereas the Appellants in MAC APP.865/2012 shall be referred to as the Claimants.
5. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a Manager with M/s. AIR Grip Footwear Pvt. Ltd. and was getting a salary of Rs.11,500/- per month. In addition, he was also running a partnership firm M/s. Sai International along with another partner and was getting a salary of Rs.10,000/- per month.
6. The Claims Tribunal on being satisfied clubbed both the incomes, added 50% towards future prospects in respect of salary earned from M/s. AIR Grip Footwear Pvt. Ltd. on the assumption that there was

sufficient evidence of future prospects, deducted 1/3 towards personal and living expenses and applied a multiplier of 17 to compute the loss of dependency as Rs.37,06,000/-.

7. The Claims Tribunal further awarded certain sums towards non-pecuniary damages to award the overall compensation of Rs.38,06,000/-.

8. The following contentions are raised on behalf of the Insurance Company:-

(i) One person cannot receive two salaries. The Claims Tribunal ought not to have taken into consideration the salary received from M/s. Sai International, which was deceased own partnership firm;

(ii) The Claims Tribunal erred in granting future prospects. The deceased had joined M/s. AIR Grip Footwear Pvt. Ltd. just three months prior to his death in the accident. In view of this, addition towards future prospects was not justified;

(iii) Income tax ought to have been deducted before awarding loss of dependency. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121; and

(iv) Non-pecuniary damages awarded are on the higher side.

9. On the other hand, the learned counsel for the Claimants has urged that the Claims Tribunal was fully justified in taking into consideration the salary from the employment with M/s. AIR Grip Footwear Pvt. Ltd. as well as salary earned as a working partner with M/s. Sai International. It is urged that in fact any addition to the salary, share of profits of the deceased *etc.* for a period of three months when the partnership was in existence was Rs.20,855/-. Therefore, deceased Praveen Kumar had an additional income of Rs.6,950/- per month on account of distribution of profits. This income ought to have been also added to grant loss of dependency.
10. It is further contended that since the number of dependents were 4 including deceased's father, who expired during the pendency of the Claim Petition, deduction towards personal and living expenses ought to have been 1/4 instead of 1/3.
11. It is also urged that the compensation awarded towards non-pecuniary damages is on the lower side.
12. The Claims Tribunal had the occasion to deal with the aspect of deceased's salary from M/s. AIR Grip Footwear Pvt. Ltd. and the salary as a working partner of M/s. Sai International in paras 49 and 50 of the impugned judgment which are extracted hereunder:-

“49. The petition has also examined PW4 Subhash Chand, Director of AIR Grip Footwear Pvt. Ltd. was

examined by the petitioner who has deposed that deceased Parveen Kumar was working in their company as a Manager and has photocopy of the attendance register for the month of June and July, 2006 showing attendance of deceased at serial no.1 which is Ex.PW4/2. He has further placed on record salary register of the employees of the company for the month of June and July, 2006 and the salary of deceased is shown at Serial no.20 of salary register as Rs.11,500/- per month. The photocopy of the salary register for the month of June is Ex.PE4/3. It is further deposed that deceased joined their company on 01.4.2006 at a monthly salary of Rs.11,500/- per month and his salary would be increased 10% every year. He has also proved the salary certificate which is Ex.PW1/5. In his cross examination by Ld. counsel for respondent no.5, he has stated that they have been showing salary paid to the workers in their income tax returns and copy of the income tax return for the year 2007-2008 is proved as Ex.PW3/R1.

In reply to the question whether the job of deceased was casual, temporary or permanent?

This witness has replied that the job of the deceased was a permanent job.

50. The petitioner has further examined PW5 Nishant Jagga, partner of M/s. Sai International and in his affidavit he has deposed that deceased Parveen Kumar was also partner of the said partnership firm along with him commenced on 28.12.2005 and was doing the business of manufacturing and trading of footwear and allied goods at plot no.114, MIE Part I, Bahadurgah, Haryana and at the time of death of Parveen Kumar and he, both were drawing salary of Rs.10,000/- each per month in cash as a working partners in the above said partnership firm. Besides the salary, deceased Parveen Kumar was also entitled to get 50% profit from the profit of the firm/business. The copy of the partnership deed dated 28.12.2005 showing Parveen Kumar as partner in Ex.PW5/1. The copies of salary sheets of partners for the month of April, 2006 to June, 2006 are Ex.PW5/3 to

Ex.PW5/5. The salary certificate dated 12.2.2007 was issued in the name of deceased Parveen Kumar which is Ex.PW1/6. He has further deposed that salary drawn by the deceased Parveen Kumar was also shown in the income tax books of the firm. In his cross examination by Ld. Counsel for insurance company, he has stated that the partnership was constituted on 28.12.2005 and the same was not registered with the registrar of the firms and they have shown the salary paid to the partners in the balance sheet and also on the profit and loss account. He further deposed that after the death of Parveen Kumar, his cousin brother has joined the partnership firm.”

13. Deceased Parveen Kumar's salary from M/s. AIR Grip Footwear Pvt. Ltd. is not disputed. PW-4, witness from M/s. AIR Grip Footwear Pvt. Ltd. also testified that the deceased's salary would have increased 10% every year. It may be noted that the deceased had worked for just three months and his work was yet to be evaluated. It cannot be said that the deceased had bright future prospects, thus, addition of 50% of the salary towards future prospects was therefore not justified.
14. As far as salary of Rs.10,000/- per month as a working partner is concerned, copies of the salary sheets of the partners for the months of April to June, 2006 were duly proved as Ex.PW-5/3 to PW-5/5. Salary certificate Ex.PW-1/6 was also proved. In view of this, the Claims Tribunal was justified in adding the salary being earned by the deceased as a partner of M/s. Sai International while awarding loss of dependency.

15. As far as income from the share of profits is concerned, profit and loss account of the firm from April, 2006 to June, 2006 was proved as Ex.PW-5/11. Obviously, these documents were prepared only after the death of the deceased. The business of M/s. Sai International had just started. In fact, PW-5 had admitted in cross-examination that the machinery in the firm (M/s. Sai International) was installed in February, 2006 and the production had not yet started. Since the balance sheet came into existence only after the accident, it will be very difficult to rely on the balance sheet to form an opinion that the deceased had a share of profit to the extent of Rs.6,950/- per month. Thus, the Claimants were entitled to loss of dependency only on the basis of both the salaries.
16. There were four Claimants including the deceased's father. The father had died during the pendency of the Claim Petition. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, it was laid down that usually the father should not be treated as a dependant. No evidence was also brought on record that father of the deceased was financially dependent on him. In view of this, deduction of 1/4 towards personal and living expenses was in consonance with *Sarla Verma (Smt.)*.
17. On the amount of Rs.2,58,000/- which was the aggregate salary from

the two sources (Rs.11,500/- + 10,000/- x 12), there was liability of about Rs.24,000/- towards income tax in the assessment year 2007-2008.

18. The loss of dependency therefore, would come to Rs.26,52,000/- (2,58,000/- - 24,000 (income tax) x 2/3 x 17).
19. 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, the Claimants 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.
20. The overall compensation thus, comes to ₹28,87,000/-.
21. The compensation is accordingly reduced from Rs.38,06,000/- to Rs.28,87,000/-.
22. By an order dated 20.04.02012, execution of the award was stayed on deposit of a sum of Rs. 37 lacs along with proportionate interest.
23. Compensation of Rs.28,87,000/- along with proportionate interest shall be disbursed (held in fixed deposit/paid in cash) in terms of the order passed by the Claims Tribunal.
24. Excess amount along with residue interest shall be refunded to the Appellant Insurance Company.

25. Both the appeals are disposed of in the above terms.
26. Pending applications also stand disposed of.
27. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 28, 2015

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