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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th January, 2015

+ **MAC.APP. 897/2012**

ASHA DEVI & ORS

..... Appellants

Through: Mr. I.C. Mishra with Mr. Phool
Singh, Advocates.

versus

ORIENTAL INSURANCE CO. LTD.

..... Respondent

Through: Mr. A.K. Soni, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal arises out of judgment dated 29.6.2011 passed by the Motor Accidents Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.40,76,760/- was awarded in favour of the Appellants for the death of Vikas Singh who died in a motor vehicular accident which occurred on 11.2.2008.
2. The Claims Tribunal took the salary of deceased Vikas Singh as Rs.25,000/-, added 50% towards future prospects and deducted 30% towards income tax to compute the loss of dependency.
3. It is urged by the learned counsel for the Appellants that liability towards income tax on a salary of Rs.25,000/- to the extent of 30% was not justified.
4. On the other hand, learned counsel for the Respondent Insurance Company urges that as per the salary certificate, deceased

Vikas Singh was getting a salary of Rs.25,000/- per month which included a sum of Rs.3500/- towards conveyance allowance which ought to have been deducted while computing the loss of dependency.

5. Deceased Vikas Singh was employed with M/s Chariot Infotech Pvt. Ltd.. As per the salary certificate dated 1.4.2005, in the total salary of Rs.15,000/-, he was being paid conveyance allowance of Rs.3000/-. His salary was revised from 1.4.2007. Again in the salary of Rs.20,000/-, a sum of Rs.3000/- was paid towards conveyance allowance. On further revision of salary with effect from 1.8.2007, deceased Vikas Singh was getting a sum of Rs.3500/- towards conveyance allowance. This was an expenditure incidental to employment, which to my mind ought to have been deducted. At the same time, deduction towards income tax to the extent of 30% was not justified because in the assessment year 2008-09, income up to Rs.1,60,000/- was exempted from tax and income from Rs.1,60,000/- to Rs. 3 lakhs was subject to only 10% tax. Thus, while deducting a sum of Rs.3500/- from the gross salary, the net salary for the purposes of computing the loss of dependency comes to Rs.21,500/-. In other words, the annual salary would be Rs.2,58,000/-. There would be liability of income tax to the extent of Rs.10,000/-. Adding 50% towards future prospects, deducting 1/4th towards personal and living expenses and applying multiplier of 17, the loss of dependency would come to Rs.47,43,000/-.

6. In terms of judgment of Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, I would further add a sum of Rs.1 lakh 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. The overall compensation, thus, comes to Rs.49,78,000/-. Hence, the compensation is enhanced by Rs.9,01,240/- which shall carry interest @ 7.5% per annum. Out of the enhanced compensation, 15% shall be payable to each of Appellants no. 2 to 4. Rest 55% shall be payable to Appellant no.1 along with proportionate interest. The amount payable to Appellants no. 2 and 3 shall be held in fixed deposit till they attain the age of 18 years, whereas 75% of the enhanced compensation payable to Appellant no.1 shall be held in fixed deposit for a period of 2, 4 and 6 years in equal proportions. Rest shall be released to the Appellant no.1 on deposit. 50% of the enhanced compensation awarded to Appellant no.4 shall be held in fixed deposit for a period of one year. Rest shall be released to her on deposit. The enhanced compensation shall be deposited with the Claims Tribunal within four weeks. The Appellants shall be entitled to apply for pre-mature release of the compensation to the Claims Tribunal for the educational need of Appellants no. 2 and 3.

7. The appeal is disposed of in above terms.

8. Pending application, if any, stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 29th, 2015
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