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*IN THE HIGH COURT OF DELHI AT NEW DELHI

<u>Date of Decision: 22.05. 2015</u>

\+ **<u>MAC.APP. 827/2011</u>**

\- FUTURE GENERAL INDIA INS CO LTD ..... Appellant

Through Mrs. Shanta Devi Raman, Advocate

versus

SAROJ & ORS ..... Respondents

Through Mr. S.N. Parashar and Mr. J.S. Dagar, Advocates

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\+ **<u>MAC.APP. 828/2011</u>**

\- FUTURE GENERALI INDIA INSURANCE CO LTD ..... Appellant

Through Mrs. Shanta Devi Raman, Advocate

versus

RATTAN SINGH & ORS ..... Respondents

Through Mr. S.N. Parashar and Mr. J.S. Dagar, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>JAYANT NATH,</u> J.

1. The present two appeals are filed seeking to impugn the Award dated 16.07.2011. Two separate claim petitions were filed on account of the death of Smt.Rajali and Smt.Krishna.

2. Brief facts are that on 04.04.2010, two women Smt. Rajali and Smt. Krishna were travelling in a three wheeler scooter. When they reached Mundi Nangal Bus Stand, the three wheeler turned turtle due to the rash and negligent driving by the driver of the said three wheeler scooter. The two ladies fell on the roadside ditch and received fatal

injuries. Two separate petitions were filed under Section 166 of the Motor Vehicles Act seeking compensation.

3. Based on the evidence on record, the tribunal concluded that the accident took place due to rash and negligent driving of the driver of three wheeler scooter.

4. On compensation, the tribunal noted that Smt. Rajali was 69 years old. Relying on the judgment of the Supreme Court in the case of ***Lata Wadhwa & Ors. vs. State of Bihar & Ors. (2001) 8 SCC 197***, and the prevalent minimum wages at the time of the accident, the tribunal took the notional income as Rs.5000/- per month and awarded annual loss of dependency at Rs.60,000/-. Taking a multiplier of 5, the actual loss of dependency was calculated at Rs.3,00,000/-. A sum of Rs. 75,000/- was awarded for loss of love and affection and a sum of Rs.10,000/- was awarded for funeral expenses – being a total of Rs.3,85,000/-.

5. In the case of Smt. Krishna, the tribunal noted that her age was 61 years. Her notional income was taken as Rs.6000/- per month and loss of dependency of Rs.5,04,000/- was awarded. A sum of Rs.75,000/- was awarded for loss of love and affection; a sum of Rs.10,000/- was awarded for funeral expenses and a sum of Rs.10,000/- was awarded for loss of consortium – being a total of Rs.5,99,000/-.

6. Learned counsel for the appellant has submitted that Smt.Rajali was 69 years old and Smt. Krishna age being 62 years and hence the claimants would not be entitled to any loss of dependency keeping in view the age of the deceased.

7. This Court has already fixed the issue regarding compensation for a house wife in the case of ***Royal Sundaram Alliance Insurance Co. Ltd.***

vs. Master Manmeet Singh & Ors. ILR (2012) IV Delhi 547.

8. This Court after going through the whole gamut of judgments concluded that the loss of dependency would be as follows:

> "34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-
>
> (i) Minimum salary of a Graduate where she is a Graduate.
>
> (ii) Minimum salary of a Matriculate where she is a Matriculate.
>
> (iii) Minimum salary of a non-Matriculate in other cases.
>
> (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.
>
> (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.
>
> (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of

> dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.
>
> (vii) There shall not be any deduction towards the personal and living expenses.
>
> (viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ` 25,000/- (on present scale of the money value) towards loss of love and affection and ` 10,000/- towards loss of consortium, if the husband is alive, may be awarded.
>
> (ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."

Hence, when home makers are above 65 years old, the above judgment holds that there should be no compensation on account of loss of dependency unless there is evidence to the contrary.

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9. In the present case evidence to the contrary has not been proved by the legal representatives of Smt. Rajali. The award of loss of dependency in the present case is Rs.3 lac. The deceased was 69 years old. Hence this award is erroneous and contrary to the dictum laid down by this Court in the case of ***Royal Sundaram Alliance Insurance Co. Ltd. vs. Master Manmeet Singh & Ors***.

10. However, in my opinion, the tribunal awarded Rs.10,000/- for funeral expenses. I enhance funeral expenses to Rs.25,000/-. As in this case no loss of dependency is being awarded I enhance compensation for

loss of love and affection from Rs.75,000/- to Rs.1 lac. Accordingly, total compensation payable in the present case would be Rs.1,25,000/-.

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11. In the present case, the deceased Smt. Krishna is, as per the post mortem report, 61 years old. The tribunal had taken the age at 62 years and assessed compensation accordingly at Rs.5,99,000/-. There are no reason to interfere in the said compensation amount.

12. The appeal is allowed to the above extent. This Court vide order dated 15.09.2011 had directed the appellant to deposit the entire amount which was to be kept in a fixed deposit.

13. On 18.04.2013, this Court directed to release 40% of the deposit amount. In the case of MAC APP.827/2011, the Registrar General may release the amount with proportionate interest in favour of the claimants in case any such amount is still due and payable. The balance along with accumulated proportionate interest be refunded to the appellant company.

14. In MAC APP. 828/2011 the Registrar General may release entire awarded amount proportionately in the manner as directed in the award to the claimant with accumulated interest.

15. The appeals stand disposed of.

(JAYANT NATH)
JUDGE

MAY 22, 2015
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