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

Decided on: 18th February, 2015

+ **MAC.APP. 1043/2012**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.L.K. Tyagi, Advocate

versus

SUMITRA SOHNI & ORS

..... Respondents

Through: Ms. Saroj Datta Bakshi,
Advocate for Respondents no.1
to 3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM.APPL 237/2014(delay)

1. There is a delay of 308 days in filing the appeal. It is urged by the learned counsel for the Applicant that the Claims Tribunal had not deducted Income Tax from the income of deceased Harish Kumar Sahni while calculating the compensations and that is why, a review application was moved by the Applicant for making deduction towards Income Tax and then compute

the loss of dependency. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*. The review application was however, dismissed by the Claims Tribunal by an order dated 31.05.2012.

2. The application is opposed by the learned counsel for the Respondents.
3. For the reasons stated in the application, delay of 308 days in filing the appeal is condoned.
4. The application is accordingly allowed.

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5. The appeal is for reduction of compensation of Rs.39,34,848/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Harish Kumar Sahni who died in a motor vehicular accident which occurred on 17.10.2010.
6. The only ground of challenge raised by the Appellant is that the Claims Tribunal erred in not deducting Income Tax from the income of the deceased before computing the loss of dependency.
7. On the other hand, the learned counsel for Respondents no.1 to 3 urges that the compensation awarded towards loss of consortium and loss to estate was on the lower side and addition of 15% ought to have been made towards future prospects.

Reliance is placed on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

8. It is well settled that for computing the loss of dependency, Income Tax is required to be deducted because loss of dependency is to be awarded upon income which actually comes to the hands of the deceased and is available to his dependency. The deceased was employed in UCO Bank and was aged 58 years of age at the time of the accident. At the age of 58 years, addition towards future prospects is not permissible. (See *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121). On the other hand, in *Rajesh & Ors.*(*supra*), a three Judge Bench of the Supreme Court held that addition of 15% may be made in case of self-employed persons who are aged between 50 to 60 years. However, since *Sarla Verma*(*supra*) was approved by a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65, the three Judge Bench decision will be the binding precedent as held by this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.* MAC APP No. 189/ 2014 decided on 12.01.2015. In view of this, addition towards future prospects at the age of 58 years is not permissible.
9. The loss of dependency would therefore, come to Rs.32,44,164/- (Rs.5,90,868/- - Rs.50,174/-(Income Tax) x 2/3 x 9).

10. In addition, the Respondents 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. Also, the claimants are entitled to a sum of Rs.2,40,288/- towards medical expenses and Rs.10,000/- towards special diet as awarded by the Claims Tribunal.
11. The overall compensation thus, comes to Rs.37,29,452/-.
12. Excess amount of Rs.2,05,896/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
13. By an order dated 17.09.2012, 80% of the compensation awarded was ordered to be deposited. The balance compensation shall be deposited in UCO Bank, Delhi High Court Branch along with interest @ 7.5% per annum.
14. The awarded amount along with interest shall be released/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.
15. The appeal is allowed in above terms.
16. Pending applications stand disposed of.
17. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company only after deposit of the enhanced compensation and filing of a certificate that the

enhanced compensation has been deposited.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2015/pst