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

Date of decision: 22nd April, 2015

+ **MAC.APP. 1038/2012**

HDFC ERGO GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

BABLU SAHNI & ORS.

..... Respondents

Through: Mr. B.P. Saxena, Advocate for
Respondents no.1 and 2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant HDFC ERGO General Insurance Company Ltd. impugns the judgment dated 31.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.17,35,000/- was awarded in favour of Respondents no.1 and 2 for the death of a minor child Deeapak Sahni who suffered fatal injuries in

a motor vehicular accident which occurred on 03.06.2011.

2. The learned counsel for the Appellant has referred to the judgment in *Kaushlya Devi v. Karan Arora & Ors.*, (2007) 11 SCC 120 wherein compensation of Rs.1,00,000/- was awarded in case of death of a child of tender age. It is urged by the learned counsel for the Appellant that the compensation awarded in the present case is exorbitant and excessive.
3. In *Kaushlya Devi(supra)*, the accident took place in the year 1997. But in the instant case, the accident occurred on 03.06.2011. Now the trend is to award an overall compensation of Rs.3,75,000/- in case of death of a small child.
4. This case is covered by the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763, where a number of judgments of the Supreme Court were considered.

I extract para 4 to 8 of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/- ”

5. The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on

the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of

the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

5. In the instant case, there is also no special circumstance which may make the Court believe that the deceased had any extraordinary potential. In view of this, following *Farzana & Ors.(supra)*, I award compensation of Rs.3,75,000/- i.e. Rs. 2,25,000/- on account of loss of dependency, Rs.75,000/- towards future prospects and Rs.75,000/- towards non pecuniary damages.
6. It is stated by the learned counsel for the Appellant that interest has been awarded @ 12% per annum. During the year 2011 and till decision of the claim petition in 2012, long term deposits were earning

interest between 8% to 9% per annum. In view of this, award of interest @ 12% per annum is on the higher side. The same is reduced from 12% per annum to 9% per annum.

7. As far as award of counsel's fee of Rs.70,000/- and award of Rs.5,000/- towards out of pocket expenses are concerned, this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors.*, MAC APP No. 645/2012 decided on 30.07.2012 had gone into the question of granting counsel's fee and concluded in Para 32 as under:

"32. To sum up, it is directed:-

- (i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.*
- (ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.*
- (iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.*
- (iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.*

(v) *The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.*”

8. It was thus, concluded that instead of awarding counsel's fee, the claim petition ought to be allowed with costs and counsel's fee be paid only in accordance with Rules 1, 1A and 9 of Chapter 16 Vol. I of the Delhi High Court Rules and Orders.
9. In view of this, the Claims Tribunal was not entitled to award a sum of Rs.70,000/- towards counsel's fee and Rs.5,000/- towards out of pocket expenses.
10. By an order dated 17.09.2015, operation of the impugned judgment was stayed subject to deposit of Rs.3,75,000/- along with interest @ 9% per annum. The earlier said amount shall be payable in equal proportion to Respondents no.1 and 2. The amount payable to Respondent no.2 shall be held in Fixed Deposit till she attains the age of 21 years. The amount payable to Respondent no.1 shall be released immediately.
11. The appeal is allowed in above terms.

12. Pending applications also stand disposed of.
13. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 22, 2015
pst