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

Date of decision: 15th April, 2015

+ **MAC.APP. 1154/2012**

SAPNA & ORS.

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

YOGENDER & ORS.

..... Respondents

Through: Mr. Shoumik Mazumdar, Advocate
for Respondent no.3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of Rs.8,95,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Rajesh who suffered fatal injuries in a motor vehicular accident which occurred on 16.11.2010.
2. It is urged by the learned counsel for the Appellants that the Appellants duly proved the deceased's income. It is stated that the Income Tax Returns for the Assessment Year (A.Y.) 2009-10 and 2010-11 were duly proved, but in spite of this, the loss of dependency was awarded on the basis of minimum wages. It is also urged that the

compensation awarded towards non-pecuniary damages is on the lower side.

3. *Per contra*, the learned counsel for Respondent no.3 Insurance Company supports the impugned judgment.

INCOME:

4. I have the Trial Court record before me. The Income Tax Returns for the A.Y. 2009-10 and 2010-11 for Rs.1,49,800/- and Rs.1,59,800/- were initially produced by Smt. Guddi (PW-1), widow of deceased Rajesh. Narender Juyal, Inspector of Income Tax also appeared as PW-3. The witness had also brought the original record from the Income Tax Department. A perusal of the claim petition reveals that the Appellants had claimed that the deceased was working as a Supervisor with M/s. S.V. Enterprises Pvt. Ltd. and was earning a monthly income of Rs.10,000/-. The record of the deceased's employment was not produced. At the same time, the Income Tax Returns for the A.Y. 2009-10 which was filed on 31.03.2010 and for the A.Y. 2010-11 which was filed on 28.10.2010 were duly proved. Nothing could be elicited in cross-examination of PW-3 which could show that the Income Tax Returns were not genuine. Once the

Income Tax Returns were produced, the onus had shifted on the Respondent to prove as to why the Income Tax Returns should not be relied upon. Although the Appellants had stated the income of the deceased to be Rs.10,000/- per month, I find no reason to disbelieve the Income Tax Returns Ex.PW1/2 for the A.Y. 2009-10 and Ex.PW1/1 for the A.Y. 2010-11. Since the deceased's profession was not duly proved, the Appellants would not be entitled to any addition towards future prospects. There were five dependents on the deceased. On making a deduction of $\frac{1}{4}$ th towards personal and living expenses and applying a multiplier of 16 (deceased's age being 30 years and 10 months), the loss of dependency will come to Rs.19,17,600/-(Rs.1,59,800/- - $\frac{1}{4}$ x 16).

5. In view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the Appellants 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.
6. The overall compensation therefore, comes to Rs.21,52,600/-.
7. The compensation is hence, enhanced by Rs.12,57,600/- which shall

carry interest @ 9% per annum from the date of filing of the claim petition till its payment.

8. 10% of the enhanced compensation along with proportionate interest shall be payable to Appellants no.2 to 6 each. Rest 50% shall enure for Appellant no.1. The compensation awarded to Appellants no.2 to 4 shall be held in Fixed Deposit for a period till they attain the age of 18 years. The compensation awarded to Appellants no.5 to 6 shall be released on deposit.
9. 75% of the enhanced compensation awarded to Appellant no.1 shall be held in Fixed Deposit for a period of two, four, six and eight years in equal proportion. Rest shall be released on deposit.
10. The enhanced compensation shall be deposited by Respondent no.3 Insurance Company with the Claims Tribunal within six weeks.
11. The appeal is allowed in above terms.
12. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 15, 2015
pst