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

Decided on: 11th February, 2015

\+ **MAC.APP. 967/2013**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr.L.K. Tyagi, Advocate

versus

CHAND TARA BEGUM AND ORS ..... Respondents

Through: Mr. Gautam Chakravarty, Advocate for Respondents no.1 to 5.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of Rs.58,41,095/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Niyaz Ahmed Khan who died in a motor vehicular accident which occurred on 02.05.2012.

2. The Claims Tribunal awarded an overall compensation of Rs.58,41,095/-, which is tabulated hereunder:

S.No.	Head of Compensation	Granted by the Claims Tribunal
1.	Loss of Dependency	Rs.55,48,095/-
2.	Funeral Expenses	Rs.25,000/-
3.	Medical Expenses	Rs.58,000/-
4.	Loss of Love and Affection	Rs.1,00,000/-
5.	Loss of Consortium	Rs.1,00,000/-
6.	Loss to Estate	Rs.10,000/-
	Total	**Rs.58,41,095/-**

3. Following contentions are raised on behalf of the Appellant:

   (i) The Claims Tribunal did not deduct Transport Allowance(TA) of Rs.2,320/- and Income Tax to compute the loss of dependency; and

   (ii) The Claims Tribunal erred in making addition of 50% towards future prospects. Since the deceased was not in permanent employment, addition of 50% towards future prospects was not permissible.

4. On the other hand, the learned counsel for Respondents no.1 to 5 supports the impugned judgment and urges that the compensation awarded is just and reasonable. It is stated that Respondents no.1 to 5 cannot have any objection regarding

deduction of Income Tax. However, since deduction of 1/4th towards personal and living expenses have been made, further deduction of Rs.2,320/- paid as TA was rightly not made by the Claims Tribunal. With regard to future prospects, referring to the testimony of PW-2, the learned counsel for Respondents no.1 to 5 argues that the deceased was a qualified Engineer and he was not made permanent because of non-availability of regular vacancy. He would have been made permanent as and when a permanent vacancy would have arisen.

5. The deceased was survived by his widow, daughter, son and aged parents. TA is paid to an employee for reaching the office irrespective of his actual expenditure upon reporting for duty. The deceased was working as a Junior Engineer. Since he was a qualified Engineer having a large family to support, deduction of TA in addition to 1/4th deduction towards personal expenses would not be appropriate. It may be mentioned that this entire TA would not have actually been used by the deceased for reaching the work place to carry out the employment.

6. Similarly, the deceased was a qualified Engineer and was employed with Jamia Milia Islamia University which had adopted the scales as per the 6th Pay Commission. It has come on record that the deceased was not made permanent because of non-availability of a permanent vacancy. He would have become permanent in due course. Thus, addition of 50% considering the age of the deceased(38 years) cannot be faulted.

On making a deduction of Rs.12,878/- (Income Tax), the loss of dependency would come to Rs.53,30,779/- (Rs.27,398/- x 12 - Rs.12878/- (Income Tax) + 50% x 3/4 x 15).

7. The compensation is recomputed hereunder:

S.No.	**Head of Compensation**	**Granted by the Claims Tribunal**	**Granted by this Court**
1.	Loss of Dependency	Rs.55,48,095/-	Rs.53,30,779/-
2.	Funeral Expenses	Rs.25,000/-	Rs.25,000/-
3.	Medical Expenses	Rs.58,000/-	Rs.58,000/-
4.	Loss of Love and Affection	Rs.1,00,000/-	Rs.1,00,000/-
5.	Loss of Consortium	Rs.1,00,000/-	Rs.1,00,000/-
6.	Loss to Estate	Rs.10,000/-	Rs.10,000/-
	Total	**Rs.58,41,095/-**	**Rs.56,23,779/-**

8. The compensation is thus, reduced by Rs.2,17,316/-.

9. The compensation held payable shall be released/kept in Fixed Deposit proportionately in terms of the orders passed by the Claims Tribunal.

10. Excess amount of Rs.2,17,316/- along with interest and the interest accrued during the pendency of the appeal therein shall be refunded to the Appellant Insurance Company.

11. The appeal is allowed in above terms.

12. Pending applications also stand disposed of.

13. Statutory amount, if any, deposited shall be released to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 11, 2015
pst