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

Date of decision: 3rd March, 2015

\+ **MAC.APP. 1036/2012**

HDFC ERGO GEN. INSURANCE CO. LTD. ..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

BABLU SAHANI & ORS. ..... Respondents

Through: Mr. O.P. Mannie, Adv. for R-1 & R-2.

\+ **MAC.APP. 1174/2012**

BABLU SAHANI & ANR. ..... Appellants

Through: Mr. O.P. Mannie, Advocate

versus

NAND KISHORE & ORS. ..... Respondents

Through: Ms. Neerja Sachdeva, Advocate for R-3.

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

G. P. MITTAL, J. *(ORAL)*

1. These two appeals arise out of the judgment dated 31.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹14,95,680/- was awarded for the death of Smt. Phoola Devi, who suffered fatal injuries in a motor vehicular accident which occurred on 03.06.2011.

2. The Claims Tribunal awarded the compensation presuming that deceased Smt. Phoola Devi was a housewife. But, at the same time, it made deduction of 1/3rd towards personal and living expenses.

3. MAC APP.1036/2012 is for reduction of the compensation filed by the Insurance Company whereas MAC APP.1174/2012 is for enhancement of the compensation filed by the husband and daughter of the deceased.

4. For the sake of convenience, the Appellant in MAC APP.1036/2012 shall be referred to as the Insurance Company and Appellants in MAC APP.1174/2012 shall be referred to as the Claimants.

5. The following contentions are raised by the learned counsel for the Insurance Company:-

(i) The deceased claimed herself to be working as a casual labourer earning ₹7,500/- per month. The compensation ought to have been awarded as per the minimum wages of an unskilled worker instead of a housewife;

(ii) The compensation awarded towards non-pecuniary damages is on the higher side; and

(iii) The counsel's fee and out of pocket expenses awarded are not in accordance with High Court Rules and Orders.

6. On the other hand, learned counsel for the claimants urges that the compensation awarded is on the lower side. Deceased Smt. Phoola Devi was also carrying out household work along with her work as a labourer and therefore, compensation ought to have been awarded to her towards service rendered by her to the family as a homemaker.

7. As per the claim made by the claimants, the deceased was working under the govt. scheme MGNREGA for the days she was given work under the scheme and there apart she was doing private work on daily wages. The details of her work carried out under MGNREGA and the work carried out beyond the scheme has not been given.

8. Obviously, in addition of doing the work as a labourer whenever it was available, the deceased Smt. Phoola Devi was also working as a home maker and rendering gratuitous services to her minor daughter and her husband. At the same time, it will be difficult to exactly measure the amount of gratuitous services rendered by her and her work as a casual labourer in the absence of any specific evidence with regard to same. The award of compensation under both the heads will

amount to duplication of the award. In view of this, I tend to award compensation taking deceased Smt. Phoola Devi only as a home maker.

9. It may be noticed that although the Claims Tribunal awarded compensation in view of the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors., 2012 ACJ 721,* but it proceeded to deduct 1/3rd towards personal and living expenses which is not in consonance with *Master Manmeet Singh.* The relevant observation with regard to award of compensation for loss of gratuitous services by a home maker in paras 23 to 34 of *Master Manmeet (supra)* are extracted hereunder:-

> *"23. Thus, the value of services rendered by a home maker should be taken as the minimum salary of a non-matriculate, matriculate or a Graduate, (in the absence of any evidence to the contrary). In case of a young mother and a wife there should be an addition of 25% of the minimum salary/ wages as per the educational qualification i.e. Graduate, matriculate or non-matriculate. There should be addition of 15% in the case of a middle aged mother and a wife and 'NIL' in case of a wife and a mother beyond the age of 50 years as the children become independent by that time. The value of gratuitous services rendered should be gradually reduced after the age of 55 years, even though mothers take*

care of their children (irrespective of their ages) and even when they (the children) are married.

24. The next question that falls for consideration is whether there should be any deduction towards the personal living expenses of the deceased (Home maker). While awarding damages there is balancing of the loss to the Claimants of the pecuniary benefits with the gain of the pecuniary advantages which comes to them by reason of death. In Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC 1, it was observed as under:-

".... The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."

25. In A. Rajam v. M. Manikya Reddy & Anr., MANU/AP/0303/1988, the Hon'ble Mr. Justice M.J. Rao (as he then was) referred to a number of English decisions.

26. In Morris v. Rigby (1966) 110 Sol Jo 834, the husband who was a medical officer, earning £ 2,820 a year, claimed damages for the death of his wife. He had five children aged two to fifteen years. He got his wife's sister to come and take care of them and do the domestic duties, paying her a gross wage of £ 20 a week. The judge awarded £ 8,000 and the award was confirmed.

27. The Learned Judge further referred to Regan v. Williamson 1977 ACJ 331 (QBD England) where the housekeeper employed was a relative. There, the wife was 37 years when she died and she left behind her husband and *four sons aged 13, 10, 7 and 2 years respectively. A relative came daily (except weekends) to provide meals and to look after the boys. She was paid £ 16 per week and it cost the Plaintiff further £ 6.50 per week for her food, journeys to and from her home and for national insurance stamp. The Plaintiff estimated that his wife's loss had cost him £ 10 per week to cloth and feed his children and himself. Watkins, J. held that though, according to precedents, £22.50 (£ 16+6.50) per week minus £ 10 per week, would be sufficient as justice required that the term 'services' should be widely construed. Watkins, J. observed:-*

"I am, with due respect to the other Judges to whom I have been referred, of the view that the word 'services' has been too narrowly construed. It should, at least, include an acknowledgement that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is a fact, at work. During some of those hours she may well give the children instructions on essential matters to do with their upbringing and, possibly, with such things as their home work. This sort of attention seems to be as much a service, and probably more valuable to them, than the other kinds of service conventionally so regarded."

.. and hastened to add:- "am aware that there are good mothers and bad mothers. It so happens that I am concerned in the present case with a woman who was a good wife and mother". On the basis, the figure for dependency was raised from £ 12.50 (£ 22.50 -10.0) per week to £ 20 per week and a further sum of £ 1.50 was added for the deceased's financial contribution to the home, had she eventually gone out to work again. A multiplier of 11 was applied as the Plaintiff was 43 years. The award under the Fatal Accidents Act, was £ 1238.

28. Learned Judge further referred to Mehmet v. Perry 1978 ACJ 112 (QBD, England), wherein the husband had to look after five children aged 14, 11, 7, 6 and 3 years respectively. The two youngest children suffered from a serious hereditary blood disease requiring medication and frequent visits to the hospital. Consequently, the husband had to give up his employment after his wife's death and devoted his full time to care for the family. Between September, 1973 when his wife was killed and the trial that was conducted in October, 1976, his net average loss of earnings were £ 1,500 a year. His future net loss would be at the rate of £ 2,000 a year. It was held by Brain Neill, QC (sitting as a deputy Judge) that, in view of the medical evidence concerning the health of the children his giving up of his job was proper and that damages should be assessed not at the cost of employing a housekeeper but by reference to the Plaintiff's loss of wages, since the loss of wages represented the cost of providing the services of a full time housekeeper in substitution for his wife. In addition, the children were entitled, on the basis of Regan v. Williamson 1977 ACJ 331 (QBD, England), to get £ 1,500 as part of their damages, a sum of £ 1,000 for the loss of 'personal attention' to them by a 'mother' which is distinct from her services as a housekeeper but, that sum must be kept within modest limits as the Plaintiff was at home all the time. The Plaintiff as a husband was also held to be entitled to some damages for his loss of the 'personal care and attention of the wife' but that sum should be quite small to avoid any overlap with the damages awarded for housekeeping services. The last two children require to support for 12 years, as per medical advice. A multiplier of 8 was adopted for the family as a unit and 12 for the Plaintiff and a sum of £ 19,000 was arrived at.

29. While awarding compensation for loss of gratuitous services rendered by a homemaker the Claims Tribunals or the Court simply value the services. It goes without saying that the husband looks after the wife and some amount is definitely spent on her maintenance. But, whether that amount is liable to be deducted from the value of the gratuitous services rendered by her?

30. As held in Gobald Motor Service Ltd. and Helen C. Rebello that while estimating damages, the pecuniary loss has to be arrived at by balancing on the one hand the loss to the Claimants of the future pecuniary benefits that would have accrued to him with the gain of the pecuniary advantages which comes to him from whatever sources by reason of the death.

31. In, Regan v. Williamson, the learned Judge found that the expenditure on the deceased housewife was £10 per week. While the value of gratuitous services rendered by her was £ 22.50 per week. The figure on dependency of £ 12.50 (£ 22.50 - £ 10.0) was taken as £21.50 per week. Thus, the amount spent on personal living expenditure was not really deducted in Regan v. Williamson.

32. Even on the basis of Gobald Motor Service Ltd. and Helen C. Rebello, the pecuniary advantages which the Claimant gets on account of accidental death is only liable to be deducted. The amount of money paid on account of death by the Life Insurance Corporation was held to be not deductable in Helen C. Rebello.

33. Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become *receivable only on account of accidental death, in my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted.*

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 Rs.25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 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."

10. As per the voter identity card issued by the Election Commission of India, the deceased's year of birth is mentioned as 1976. Thus, the deceased was aged 35 years on the date of the accident.

11. The loss of dependency, following *Master Manmeet Singh (supra)* will come to ₹17,03,520/- (7098/- + 25% x 12 x 16).

12. In addition, the Claimants will be entitled to a sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses in view of three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54.*

13. The overall compensation thus, comes to ₹19,28,520/-.

14. As far as question of award of counsel's fee and out of pocket expenses is concerned, this question was gone into by this Court at great length in MAC Appeal No. 645/2012 titled *ICICI Lombard General Insurance Co. Ltd. vs. Kanti Devi & Ors.,* decided on 30th July, 2012 and it was held that the counsel's fee is permissible only in accordance with the High Court Rules and Orders. Paras 8 to 20 of the judgment are as under:-

> *"8. It is true that Section 172 of the Act empowers a Claims Tribunal to award compensatory costs only in the eventualities as mentioned in Clause (a) and (b) of Section 172 sub-Section (1). Section 35 (A) of the Code contains similar provisions regarding award of compensatory costs in respect of false or vexatious claims or defences.*
>
> *9. A Claim Petition filed under Section 166 of the Act has to be inquired into and compensation must be awarded as provided under Section 168 of the Act. Section 169 (2) of the Act also lays down the procedure and powers of the Claims Tribunal. It is extracted hereunder:-*
>
> ***"169. Procedure and powers of Claims Tribunals.***
>
> *(1) x x x x*
>
> *(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195*

and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

x x x x x"

10. A bare reading of Section 169 (2) of the Act would show that the powers of Civil Courts have been conferred on a Claims Tribunal only for specific purposes as mentioned therein which certainly does not include the power to impose costs. However, Section 176 of the Act empowers the State Govt. to frame Rules for the purpose of carrying into effect the provisions given in Sections 165 to 174 of the Act and, in particular, as regard to the procedure to be followed by the Claims Tribunal and also with regard to the powers which are vested in a Civil Court which may be exercised by a Claims Tribunal.

11. Govt. of NCT of Delhi in exercise of its power under Section 176 and under other Sections of the Act framed Delhi Motor Vehicle Rules, 1993. Chapter IX of the Delhi Motor Vehicle Rules deals with the provisions in relation to the Claims Tribunal. Rule 118 of the Delhi Motor Vehicle Rules lays down the procedure to be adopted by the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules further makes applicable certain other provisions of the First Schedule of the Code to the proceedings before the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules reads as under:-

***"119.Power vested in the Civil Court which may be exercised by Claims Tribunal**.- The following provisions of the first schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunal, namely:-*

(a) Order V, (Issue and Service of Summons) Rules 9 to 13 and 15 to 39;

(b) Order IX (Appearance of Parties and Consequence of Non-appearance);

(c) Order XIII (Production, Impounding and Return of Documents),Rules 3 to 10;

(d) Order XVI (Summoning and Attendance of Witnesses), Rules 2 to 21;

(e) Order XVII (Adjournments) and;

(f) Order XXIII (Withdrawal and Adjustment of Suits), Rules 1 to 3."

12. Rule 119, therefore, also does not confer any power upon the Claims Tribunal with respect to the imposition of costs. The Govt. of NCT of Delhi framed another set of Rules, namely, the Delhi Motor Accident Claims Tribunal Rules, 2008 (the Claims Tribunal Rules, 2008) in exercise of its power under Section 176 of the Act. The said Rules, however, superseded the provisions of the Delhi Motor Vehicle Rules, 1993 insofar as the provisions relating to the Claims Tribunal in Chapter IX are concerned.

13. The preamble to the Claims Tribunal Rules, 2008 reads as under:-

"In exercise of the powers conferred by section 176 read with clause (41) of section 2 and sub-section (1) of section 212 of Motor Vehicles Act, 1988 (59 of 1988), and in partial supersession of Chapter IX of the Delhi Motor Vehicles Rules, 1993 relating to Claims Tribunals, made vide this Government's Notification No. F 2(1)/93-Law dated the 21st June, 1993, the Lieutenant Governor of the National Capital Territory of Delhi is pleased to make the following rules, namely…"

14. Rule 32 of the Claims Tribunal Rules, 2008 vests the Claims Tribunal with all the powers of a Civil Court in discharging its function as laid down in the Code. The same is extracted hereunder:-

*"32. **Vesting of powers of Civil Court in the Claims Tribunal** – Without prejudice to the provisions of Section*

169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

15. Thus, by virtue of Rule 32 of the Claims Tribunal Rules, 2008, the Claims Tribunal can exercise all the powers of a Civil Court and in doing so it has to follow the procedure laid down in the Code. It can be seen that the scope of power exercisable by the Claims Tribunal has thus been completely widened by virtue of the Claims Tribunal Rules, 2008, which means that the Claims Tribunal can exercise the powers of a Civil Court as laid down in the Code. Therefore, it would not be correct to say that the Claims Tribunal is empowered only to order payment of compensatory costs in cases of vexatious claims and defences and not otherwise. In other words, the Claims Tribunal would be competent to award costs like any other Civil Court under Section 35 read with Order XXA of the Code and subject to the Rules framed by the Delhi High Court in this regard.

QUESTION No.2:-

16. Coming to the second question; it is urged by the learned counsels for the Appellant Insurance Companies that the Delhi High Court has framed Rules with regard to the payment of costs including the Counsel’s fee. Part B of Chapter 16 Volume 1 of the Delhi High Court Rules (the Rules) governs the payment of the Counsel’s fee in addition to the costs incurred by a Claimant in pursuing the proceedings before a Civil Court.

17. Section 35 & Order XXA of the Code which deal with the payment of costs and Rule 1; Rule 1A; Rule 2; Rule 8; Rule 9; Rule 12 and Rule 16 of Chapter 16 Volume 1 Part B of the Delhi High Court Rules (for short the Rules), which deals with the Counsel’s fee are extracted hereunder:-

“35. Costs.

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing."

"ORDER XXA. COSTS

Rule 1. *Provisions relating to certain items:-*

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of -

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court, and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal."

***2. Costs to be awarded in accordance with the rules made by High** Court**-** The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.*

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***"Rule 1**. **Suit for recovery of property, breach of contract or damages**—In suits for the recovery of money or of specific property or a share of specific property, whether immoveable or moveable, or for the breach of any contract or for damages:—*

(a) If the amount or value of property, debt or damages decreed shall not exceed Rs. 25,000/- at 10 per cent on the amount or value decreed.

(b) If the amount of value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/-, on Rs. 25,000/- at 10 per cent and on the remainder at 8 per cent.

(c) If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs. 50,000/- as above and on the remainder at 4 per cent.

(d) If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 per cent.

(e) If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one per

cent subject, however, that in no case the amount of fee shall exceed Rs. 20,000/-."

***"Rule 1A.** In the case of:*

(i) Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or instalment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(viii) Any formal party to a suit or appeal, e.g., a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs.

(ix) A suit or appeal which has abated.

(x) A Plaint returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (l) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/-"

***Rule 2. Others Suits—**In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court under Section 9 of the Suits Valuation Act, 1887 for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall not exceed Rs. 5,000/-.*

***Rule 8. Miscellaneous proceedings**—In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall not exceed:*

(i) rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs. 1,000.

Rule 9. Undefended suits*—If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.*

x x x x x x x x x x

Rule 12. Appeals*—In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly as may be.*

x x x x x x x x x x

Rule 16. Certificate as to fees to be filled by counsel in the Court of District Judges*—Not withstanding anything contained in the rules and not withstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared."*

18. A perusal of Section 35 read with Order XXA of the Code would show that normally the costs shall follow the event and in case the Court directs otherwise, it is required to state reasons in writing. It is further revealed that expenditure in serving any notice required by law or

even otherwise; expenditure incurred on typing, writing and printing of pleadings; charges paid by party for inspection of the Court's record; expenditure incurred by a party for producing witnesses; and in case of Appeal the charges incurred by a party for obtaining copy of the judgment and decree; are broadly payable without limiting the scope of the costs.

19. It is urged on behalf of the Appellant Insurance Companies that the proceedings in a Petition under Section 166 of the Act or for that matter under Section 163-A of the Act are miscellaneous proceedings covered under Rule 8 of the Rules and the Counsel's fee shall be payable on the scale as mentioned in Rule 8. Rule 8 extracted earlier apply to misc. proceedings or for any matter other than that of appearing, pleading etc. in a suit prior to the decree.

20. On the other hand, Rule 1 of Chapter 16 Volume 1 Part B of the Rules is very widely worded and also includes Suit for damages. A Claim Petition under Section 166/163-A is in respect of damages for the injuries caused to the Claimant payable by the driver, the owner and the Insurer. Thus, in my view Rule 1 is the appropriate Rule which would apply to the Claim Petition under the Act. In the circumstances, apart from the award of costs under other heads, as mentioned under Order XXA, the Counsel's fee shall be payable on the scale as given in Rule 1."

15. The Claims Tribunal therefore, could have allowed the Claim Petition only with costs which would have included the counsel's fee.

16. The compensation is accordingly enhanced from ₹14,95,680/- to ₹19,28,520/-.

17. The compensation is thus, enhanced by ₹4,32,840/- which shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition till its payment.

18. By an order dated 17.09.2012, a sum of ₹11,80,000/- and interest @ 9% per annum was ordered to be deposited. The balance compensation as awarded by the Claims Tribunal along with interest @ 9% per annum as awarded by the Claims Tribunal shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi within six weeks.

19. Similarly, the enhanced compensation of ₹4,32,840/- along with interest @ 7.5% per annum from the date of filing the Claim Petition till its payment shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi within six weeks, failing which the Claimants will be entitled to interest on the entire balance amount @ 12% per annum.

20. 50% of the deposited amount shall be released in favour of the Claimants. It may be noted that Claimant no.2 Baby Khushbu was aged just three years at the time of the accident and therefore, the entire balance amount shall be held in fixed deposit in the name of

Babu Khushbu till she attains the age of 18 years. The Claimants will be entitled to quarterly interest on this amount.

21. No premature withdrawal shall be allowed except for the educational and medical needs of the child, that is, claimant no.2.

22. Both the appeals are accordingly disposed of.

23. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company on deposit of the balance compensation.

24. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 03, 2015
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