$-10

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

Decided on: 27th January, 2015

\+ **MAC.APP. 1183/2012**

IFFCO TOKIO GEN. INS. CO. LTD. ..... Appellant

Through: Ms. Shantha Devi Raman, Advocate with Mr. Garud M.V., Advocate

versus

SHEELA & ORS. ..... Respondents

Through: Mr. Akhilesh Arora, Advocate for Respondents no.1 to 6.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. There is twin challenge to the judgment dated 30.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.43,75,500/- was awarded for the death of Jai Bhagwan, who died in a motor vehicular accident which occurred on 14.05.2007 at 10:45 a.m.

2. It is stated that the income tax on the income ought to have been deducted before computing the loss of dependency and that there should have been deduction of 1/5th towards personal and living expenses in view of the authoritative pronouncement in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*.

3. On the other hand, the learned counsel for the Respondents support the impugned judgment and urges that the Claims Tribunal relied upon *Santosh Devi v. National Insurance Company Ltd. & Ors., (2012) 6 SCC 421* to deduct 1/10th towards personal and living expenses. It is urged that compensation awarded towards loss of love and affection was on the lower side and no compensation was awarded towards loss of consortium.

4. *Sarla Verma(supra*) had examined in detail the question of deduction towards personal and living expenses of the deceased while computing the loss of dependency. The observations of the Supreme Court in *Santosh Devi* shall be confined to the facts of that case only and *Sarla Verma(supra*) shall be taken as a binding precedent in view of the Constitutional Bench judgment of the Supreme Court in *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673* as well as in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94* and *Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589*. Therefore, the deduction of personal and living expenses

ought to have been 1/5th.

5. The learned counsel for the Respondents(claimants) concedes that there should have been deduction of Income Tax on the gross income of the deceased for the purpose of computation of the multiplicand.

6. In view of this, the loss of dependency comes to Rs.34,22,014/- (Rs.2,13,096/- (annual income) – Rs.10,310/- (Income Tax) + 50% x 3/4 x 15). At the same time, the Respondents (claimants) were entitled to a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, while the compensation towards loss to estate of Rs.10,000/- and funeral expenses of Rs.25,000/- are maintained.

7. The compensation is hence, reduced by Rs.7,18,487/-. The overall compensation thus, comes to Rs.36,57,014/-.

8. The Appellant was directed to deposit 70% of the award amount by an order dated 09.11.2012 of this Court. The balance amount along with the proportionate interest shall be deposited by the Appellant Insurance Company within four weeks with the Claims Tribunal and shall be held in Fixed Deposit/released in terms of the orders passed by the Claims Tribunal.

9. The appeal is disposed of in above terms.

10. Pending applications also stand disposed of.

11. Statutory amount of Rs.25,000/-, if any, shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 27, 2015
pst