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

Decided on: 9th February, 2015

\+ **MAC.APP. 1109/2013**

SMT. KAMINI & ORS. …. Appellants
Through: Mr. S. N. Parashar, Advocate

versus

NEW INDIA ASS. CO. LTD & ORS. ..... Respondents
Through: Mr. Manish Kaushik Adv. for Mr. K.L. Nandwani, Adv. for R-1.

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

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

1. The appeal is for enhancement of compensation of Rs.5,82,556/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Shiv Kumar, who died in a motor vehicular accident which occurred on 07.12.2006 at 7.45 a.m. near Mandi Govind Garh, Punjab.

2. MAC Appeal 269/2011 preferred by New India Assurance Company Limited was dismissed by an order of this Court on 20.11.2013.

3. The only ground raised by the learned counsel for the Appellants is that the testimony of Smt. Kamini, widow of the deceased that the deceased was a car driver was not challenged in cross-examination. Hence, the Claims Tribunal ought to have taken the salary of Rs.5,000/- per month as claimed by the Appellants to compute the loss of dependency.

4. It is true that the Appellants were unable to furnish any documentary evidence with regard to the salary of the deceased. At the same time, it may be noted that the accident in question took place while deceased Shiv Kumar was driving car no.HR-01-R-9325. The learned counsel for the Appellants has also produced a copy of the driving licence whereby deceased Shiv Kumar had a valid driving license to drive a car/jeep.

5. In view of this, the Claims Tribunal ought to have held the profession of deceased Shiv Kumar to be a car driver as pleaded and claimed. The minimum wages of an skilled worker on the date of death of accident *i.e.* 07.12.2006 was Rs.3,736/- per month. I will thus, assess the income from the profession of a car driver to be Rs.4,000/- per month. Taking the number of

dependents as 5 *i.e.* Appellants No.1 to 5, the deduction will be $1/4^{th}$ towards personal and living expenses. Further, at the time of accident, the deceased was aged 40 years and 3 months, hence appropriate multiplier will be 15.

6. The loss of dependency, therefore, comes to Rs.5,40,000/- (4,000 x 3/4 x 12 x 15). In addition to this, I further award 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.

7. The overall compensation thus, comes to Rs.7,75,000/- which shall carry interest @ 8% per annum as granted by the Claims Tribunal.

8. The compensation is hence, enhanced by Rs.1,92,444/- which shall be deposited by the Appellant Insurance Company along with proportionate interest within a period of four weeks.

9. 15% of the enhanced compensation shall be payable to Appellants no.2 to 5 each. Rest 40% along with proportionate interest shall be for the benefit of Appellant no.1.

10. Compensation payable to Appellants no.2 to 4 shall be held in a fixed deposit till they attain the age of 21 years. However, Appellant no.1 shall be entitled to premature release, if any amount is needed for the higher education of Appellants no.2 to 4.

11. 50% of the enhanced compensation awarded to Appellants no. 2 to 5 shall be held in fixed deposit for two years and rest 50% shall be released on deposit. Similarly 50% of the enhanced compensation awarded to Appellant no.1 shall be held in a fixed deposit for a period of one year. Rest 50% shall be released on deposit.

12. The appeal is allowed in above terms.

13. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2015
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