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

Decided on: 6th April, 2015

\+ **MAC.APP. 24/2012**

KANCHAN ..... Appellant

Through: Mr. O.N.Sharma, Adv.

versus

FEROZ KHAN GHAZI & ANR. ..... Respondents

Through: Mr. Manish Kaushik, Adv. for R-2.

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 enhancement of compensation of ₹15,71,240/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for the death of Pankaj Yadav, who suffered fatal injuries in a motor vehicular accident which occurred on 26.07.2010.

2. It is urged by the learned counsel for the Appellant that although the deceased salary certificate claiming his salary as ₹15,100/- was proved before the Claims Tribunal as Ex.PW-1/A, the said certificate, however, was not relied upon by the Claims Tribunal on the ground that the employer had not been produced in order to prove the same.

It is also urged that the award towards non-pecuniary damages is on the lower side.

3. The appeal must succeed on both the grounds.

4. During pendency of the appeal, the Appellant was permitted to lead additional evidence. The Appellant examined Shashikant Sharma as PW-3 who testified that as per the record deceased Pankaj Yadav was employed as a Site In-charge with M/s. Vibhu Traders at the time of his accident. PW-3 proved the salary certificate of the deceased Pankaj Yadav as Ex.PW-3/4. The salary certificate is a consolidated salary sheet which consists names of 13 employees and the name of the deceased Pankaj Yadav appears at page 2 of the same. During cross-examination a question was put to the said witness that he had not produced any evidence to show that the salary sheet was being regularly sent to any Govt. department. At the same time, there is no ground to doubt the veracity of the salary sheet Ex.PW-3/4. No evidence was produced to rebut the salary sheet Ex.PW3/4. Thus, salary of the deceased Pankaj Yadav was established as ₹15,100/- per month. In the absence of any evidence with regard to good future prospects, no addition was permissible in respect of the same as claimed. 1/4 deduction is made towards personal and living expenses as the number of dependents being 5 and on applying the multiplier of

17 (deceased being 29 years), the loss of dependency comes to ₹23,10,300/- (15,100/- x 12 x 3/4x 17).

5. In addition to the same, in view of three Judge Bench decision of the Supreme Court judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* the Appellants are entitled to a sum of ₹ 1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.

6. The overall compensation thus, comes to ₹25,45,300/-

7. The compensation is enhanced by ₹9,74,060/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

8. Respondent no.2 Insurance Company is directed to deposit the enhanced compensation along with interest within eight weeks.

9. 10% of the enhanced compensation shall be payable along with proportionate interest to Appellants no.2 to 6. Rest 50% shall be enure for the benefit of Appellant no.1.

10. The compensation awarded to Appellants no.2,3 and 4 shall be held in Fixed Deposit till they attain the age of 21 years. They can, however,

seek premature withdrawal if the same is needed for their educational needs.

11. It is earlier stated that only 10% of the compensation awarded was released to Appellant no.1. It is, therefore, directed that 50% of the enhanced compensation along with proportionate interest shall be released to Appellant no.1 immediately. Rest 50% along with proportionate interest shall be held in Fixed Deposit for a period of 2 years, 4 years, 6 years and 8 years respectively in equal proportion.

12. 50% of the enhanced compensation awarded to Appellants no.5 and 6 shall be held in Fixed Deposit for a period of one year. Rest shall be released to them on deposit.

13. The Appellant shall be entitled to approach the Claims Tribunal for premature withdrawal of any deposited amount on proving genuine necessity for the same.

14. The appeal is allowed in above terms.

15. Pending applications, if any, stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL, 06, 2015
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