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

Date of Decision: 20th May, 2016

+ **MAC.APP. 248/2014**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Amit Gaur & Mr. Pradeep Gaur,
Advs.

versus

SHAMSHERA & ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 & 2.

AND

+ **MAC.APP. 44/2015**

SHAMSHERA & ORS Appellants

Through: Mr. Anshuman Bal, Adv.

versus

NATIONAL INSURANCE CO LTD Respondent

Through: Mr. Amit Gaur & Mr. Pradeep Gaur,
Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

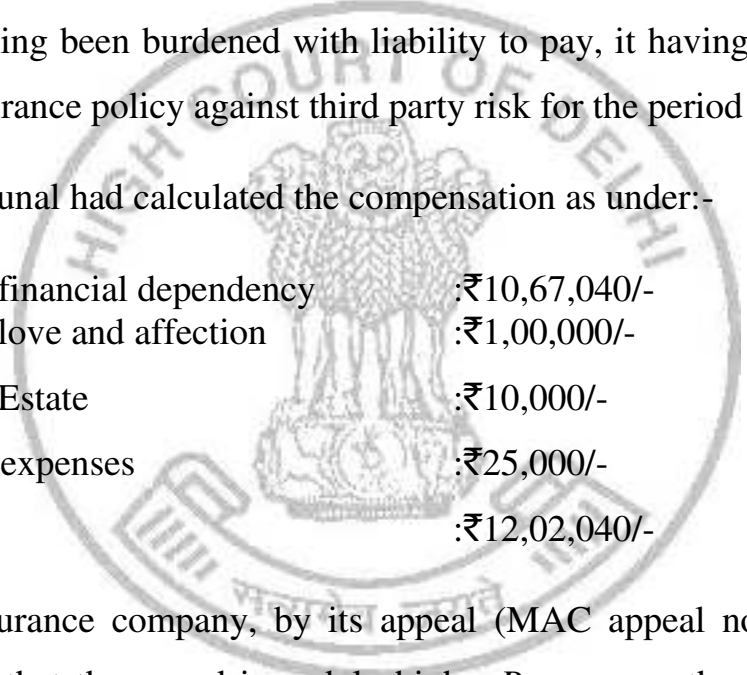
JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.02.2011, Samim, aged 16 and 1/2 years died as a result of injuries suffered in a motor vehicular accident, statedly involving negligent

driving of bus bearing registration no.UP-17D-2910 (the offending vehicle). His parents (appellants in MAC appeal no.44/2015) instituted an accident claim case (suit no.650/2011) on 28.07.2011 seeking compensation. The tribunal held inquiry, and by judgment dated 23.01.2014, upheld the case of death having occurred due to negligent driving of the bus. The compensation in the sum of ₹12,02,040/- was awarded and granted with interest at the rate of 9% per annum from the date of filing petition till realization, National Insurance Co. Ltd. (appellant in MAC appeal no. 248/2014) having been burdened with liability to pay, it having concededly issued the insurance policy against third party risk for the period in question.

2. The tribunal had calculated the compensation as under:-



Loss of financial dependency	: ₹10,67,040/-
Loss of love and affection	: ₹1,00,000/-
Loss of Estate	: ₹10,000/-
Funeral expenses	: ₹25,000/-
Total	: ₹12,02,040/-

3. The insurance company, by its appeal (MAC appeal no.248/2014), has submitted that the award is unduly high. *Per contra*, the claimants in their appeal (MAC Appeal no.44/2015) have argued that the compensation deserves to be enhanced. The learned counsel on both sides fairly agree that this being a claim on account of death of child, the compensation may be awarded in accordance with principles laid down in judgment of this court in MAC appeal no. 554/2010, *Chetan Malhotra vs. Lala Ram* decided on 13.05.2016 which read as under:-

“Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation-corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997-1998 shall be treated as the “base year” and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :-

$$\text{₹15,000/-} \times A \div 331$$

[wherein the figure of ‘₹15,000/-’ represents the notional income specified in the second schedule requiring inflation-correction; ‘A’ represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of ‘331’ represents the CII for the ‘base year’]

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). *The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one-third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as “the multiplicand”).*

(v). *For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).*

(vi). *For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).*

(vii). *For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).*

(viii). *After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary damages taking care of not only the conventional heads but also towards future prospects as awarded in R.K. Malik v. Kiran Pal (2009) 14 SCC 1.*

(ix). *The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.”*

4. Since the death had occurred on 12.02.2011, the CII for financial year 2010-2011 (i.e. 711) would apply. Thus, the inflation corrected income is calculated as $(15,000 \times 711 / 331)$ ₹32,221/- rounded off to ₹33,000/-. Having regard to the fact that the deceased child was 16 and 1/2 years in age, multiplier of 18 is applied and the pecuniary loss to estate is calculated, after deduction of one-third as $(33000 \times 2/3 \times 18)$ ₹3,96,000/-. Adding similar amount towards composite non-pecuniary damages, the total compensation in the case is worked out as $(3,96,000 \times 2)$ ₹7,92,000/-.

5. The computation is reduced to ₹7,92,000/-. It shall carry interest at the rate of 9% per annum as levied by the tribunal. The award is modified accordingly.

6. By order dated 21.03.2014 (in MAC Appeal no.248/2014), the insurance company had been directed to deposit the entire awarded amount with up-to-date interest from which 60% was allowed to be released, the balance kept in fixed deposit. The Registrar General shall now recalculate the amount payable to the claimants and release the same from the balance lying in deposit, refunding the remainder with statutory deposit, if any, to the insurance company.

7. Both the appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 20, 2016
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