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

% *Judgment delivered on: 6th February, 2014*

+ **MAC.APP. 455/2013**

NATIONAL INSURANCE CO LTD. Appellant
Represented by: Mr. L.K. Tyagi, Advocate.

Versus

PUSHPA DEVI & ORS. Respondents
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is directed against the impugned award dated 21.01.2013, whereby the learned Tribunal has granted compensation for a sum of Rs.40,49,895/- with interest at the rate of 9% *per annum* from the date of filing of the claim petition till realization of the amount.

2. Learned counsel appearing on behalf of the appellant/Insurance Company submits that the present appeal is filed mainly on the ground that while awarding the compensation, the learned Tribunal has assessed the monthly salary of the deceased as Rs.24,380/- inclusive of the allowances applicable. However, erred in adding the transport allowance of Rs.2,320/- for computing the salary of the deceased, which was to be deducted from the salary as the same was being paid to the deceased for coming to the office.

3. In the case of **Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121**, the Apex Court has held that the starting point of assessment of compensation is to determine the income of the deceased / injured as the case may be. It is relevant to note in the case of **Sarla Verma (Supra)** it is held as under:

“10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In Susamma Thomas, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses. The decision in Susamma Thomas was followed in Sarla Dixit v. Balwant Yadav: (1993) IILLJ 664 SC, where the deceased was getting a gross salary of Rs. 1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2200/- per month. In Abati Bezbaruah v. Dy. Director General, Geological Survey of India: [2003] 1 SCR 1229, as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this Court assumed the income as Rs. 45,000/- per

annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

4. In view of above, the travelling allowance that had been granted to the deceased as part of the salary need to be deducted for ascertaining the actual salary. Thus, an amount of Rs.2,320/- is deducted from the salary of the deceased.

5. Accordingly, the compensation on account of loss of dependency comes to Rs.36,13,428/-.

6. Resultantly, an amount of Rs.3,79,932/- is reduced; and compensation amount comes to Rs.36,69,963/- (Rs.40,49,895 – Rs.3,79,932).

7. In view of the above, the appeal is allowed and the Registry of this Court is directed to release the statutory amount along with excess amount with proportionate interest accrued thereon in favour of the appellant/Insurance Company.

8. Remaining compensation amount, if any, be released in favour of the claimants.

SURESH KAIT, J.

FEBRUARY 06, 2014

Sb/jg