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

Date of Decision: January 10, 2017

\+ **<u>MAC.APP. 105/2015</u>**

THE NEW INDIA ASSURANCE CO. LTD ..... Appellant

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advocates

versus

SUMAN DEVI & ORS. .....Respondents

Through: Mr. D.K. Singh and Mr. Satya Pal, Advocates for respondents No.1 to 4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

% **(ORAL)**

Impugned Award grants compensation of ₹15,16,899/- on account of death of *Ram Bhool Sharma* in a road accident on 30th June, 2011 near National Transport, Village Harish Chand Ka Bagh, P.S. Badalpur, Distt. Gautam Budh Nagar, U.P.. The factual matrix of this case already stands noted in the impugned Award and so needs no reproduction. Total loss of dependency has been assessed by learned Tribunal in the following manner:-

₹7826/- (per month) X 12 (annual) X 14 (Multiplier) = ₹13,14,768/-.

₹13,14,768/- - ₹3,28,692/- (1/4th personal expenses) = ₹9,86,076/- + ₹2,95,823/- (30% future prospects) = ₹12,81,899/-.

Compensation awarded by Learned Tribunal under other different heads is as follows: -

Love and Affection	*₹1,00,000/-*
Loss of Consortium	*₹1,00,000/-*
Loss of Estate	*₹ 10,000/-*
Funeral Expenses	*₹ 25,000/-*
Total	*₹2,35,000/-*

In this appeal, the challenge to impugned Award by learned counsel for appellant-insurer is on the ground that deceased was holding Voter Identity Card and Ration Card, which were issued from District Bulandsahar, U.P. and he was not holding any identity proof issued from Delhi and so, the minimum wages of U.P. ought to have been applied and not that of Delhi.

It is submitted by learned counsel for appellant that the rent agreement is not duly proved on record and the case of widow of the deceased is that he was a farmer and so, his notional income ought to have been considered to assess the compensation awarded. It is pointed out by learned counsel for appellant that deceased aged 42 years was having no future prospects and so, addition of 30% towards *future prospects* is wholly unjustified. Thus, it is submitted by learned counsel for appellant that the awarded compensation deserves to be suitably reduced.

On the other hand, learned counsel for respondents-claimants submits that on the basis of rent agreement, minimum wages as applicable in Delhi have been rightly applied. He further submits that the address of the deceased as mentioned in the FIR registered in U.P. is of Delhi and he was brought to Delhi for medical treatment, but despite medical treatment provided to him, he had died in Delhi. So, it is submitted that since the deceased was having *future prospects* so, 30% has been rightly added on this account. Thus, it is submitted that the compensation awarded is just and proper and this appeal deserves to be dismissed.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that though the Voter ID and the Ration Card were of U.P., but there is Rent Agreement *(Ex.PW1/2)* duly proved on record which indicates that the deceased was residing in Delhi. The Muster Roll issued by MCD indicates that the deceased was a *Beldar* with MCD, but it is not duly proved on record. However, the factum of Rent Agreement (Ex.PW 1/2) remains unchallenged in evidence and so, learned Tribunal has rightly concluded that the deceased was residing in Delhi. This stands corroborated from the fact that in the FIR registered in U.P., the address of deceased given is of Delhi. As a necessary consequence thereof, application of minimum wages as applicable in Delhi has to be applied to assess the loss of dependency and the learned Tribunal has rightly done so.

Regarding the addition of 30% towards *'future prospects',* I find that it is unjustified as deceased was not having permanent employment. Although learned Tribunal has reproduced the extract from Supreme Court's decision in *Rajesh & Ors. v. Rajbir Singh & Ors.,* 2013 (6)

SCALE 563, but has failed to apply its dictum. Thus, the addition of 30% towards *'future prospects'* is disallowed and the awarded compensation is accordingly reduced from ₹15,16,899/- to ₹12,21,076/-, which is rounded off to ₹12,21,100/-.

During the course of hearing, appellant's counsel has apprised this Court that 65% of the awarded amount has been already deposited by appellant with UCO Bank, Delhi High Court Branch, New Delhi. After adjusting the amount so deposited, appellant is directed to deposit the remaining amount with interest @ 9% *per annum* as per the modified compensation granted by this judgment with the aforesaid Branch of UCO Bank within six weeks from today. Thereafter, the entire modified compensation be released to respondents-claimants in the ratio and manner as indicated in the impugned Award. If respondents No.2 to 4 have attained the age of majority, then their share be directly transmitted into their bank account whose particulars be supplied to appellant within two weeks.

With aforesaid directions, the impugned Award is accordingly modified.

This appeal stands disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 10, 2017
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