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

Date of Decision: March 20, 2017

(i) + **MAC.APP. 201/2009**

INDRANI DASGUPTA & ANR. .....Appellants

Through: Mr. R.K. Kohli, Advocate

versus

PARVINDER KUMAR & ORS. .....Respondents

Through: Mr. L.K. Tyagi, Advocate for respondent No.3-Insurer

(ii) + **MAC.APP. 318/2009**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. L.K. Tyagi, Advocate

versus

INDRANI DASGUPTA & ORS. .....Respondents

Through: Mr. R.K. Kohli, Advocate for respondents-claimants

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **(ORAL)**

The above captioned two appeals are directed against common impugned Award of 13th December, 2008 vide which compensation of ₹45,78,000/- has been granted to legal heirs of one *Krishnendu Dasgupta*, aged 46 years, a Senior Manager in *Engineers India Limited* on account of his death in a road accident on 5th June, 2003.

In the above-captioned first appeal, enhancement of compensation is sought by legal heirs of aforesaid deceased whereas in the above-captioned second appeal, reduction of compensation is sought by Insurer of vehicle in question i.e. RTV Bus, while alleging contributory negligence. While entertaining these appeals, vide order of 14th July, 2009, awarded compensation stands released to the legal heirs of deceased (hereinafter referred to as Claimants).

With the consent of learned counsel for the parties, these two appeals have been heard together and are being decided by this common judgment. The facts as noticed in Award of 13th December, 2008 need no reproduction. Suffice to note that an FIR was registered regarding accident in question and this road accident was witnessed by *Puran Singh (PW-3)* and *Anirban Sengupta (PW-4)*. Apart from evidence of Claimants, there is evidence to prove the medical as well as service record of deceased and evidence of Investigating Officer of FIR case registered regarding this accident. On the basis of the evidence recorded, learned Motor Accident Claims Tribunal, Patiala House Courts, New Delhi *(hereinafter referred to as 'Tribunal')* has rendered the impugned Award.

Learned counsel for Insurer submits that learned Tribunal has rightly disbelieved the evidence of eye-witnesses and has relied upon the evidence of Investigating Officer *(R3W2)*, but has failed to take note of the Site Plan of place of accident prepared by him, which reveals that there was contributory negligence on part of scooter driver i.e. the deceased. It is further submitted by Insurer's counsel that the income of deceased has been erroneously taken as ₹50,000/- per month whereas as per the salary certificate, his income was ₹48,758/- and the percentage of tax deducted is on the lower side. So, it is submitted by Insurer's counsel that the compensation awarded needs to be suitably reduced.

On the contrary, learned counsel for Claimants submits that the tax deduction is in order and the income of deceased has been rightly assessed, but it is submitted that no addition towards *'future prospects'* has been made, which ought to have been made as the deceased was Senior Manager with a Public Sector Undertaking. So, it is submitted that the compensation awarded needs to be appropriately enhanced while granting reasonable compensation under the non-pecuniary heads. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and evidence on record and the Site Plan of the spot, I find that one side of the road was blocked and so, no contributory negligence is attributable to deceased. I also find that as per Salary Record *(Ex.PW2/2)* of deceased, *Performance Linked Reward* has been rightly taken into consideration by learned Tribunal, but addition towards *'future prospects'* has not been made. Since the deceased-an Officer, aged 46 years, was in permanent employment in a Public Sector Undertaking at the time of accident, so, in view of Supreme Court's three Judge Bench decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, addition of 30% towards *'future prospects'* ought to have been made while assessing the income of deceased. Learned Tribunal has erred in not doing so. Regarding the percentage of tax deduction, I find that learned Tribunal has erred in calculating the tax deduction. By relying upon tax deduction, as assessed in Income Tax Return *(Ex.PW1/10)* of deceased, *'loss of income'* is recalculated as under:-

Annual Income= ₹5,58,930 minus ₹1,28,193 (tax) = ₹4,30,737+30% (future prospects) = ₹5,59,958 p.a

After deducting 1/3rd towards *'personal expenses'* and by applying multiplier of 13, *'loss of dependency'* comes to ₹48,52,978/-. Thus, the compensation granted under the head of *'loss of dependency'* is enhanced from ₹43,68,000/- to ₹48,52,978/-, which is rounded off to ₹48,52,980/-. The compensation granted under the non-pecuniary heads appears to be just and reasonable except that *'funeral expenses'* are inadequate and are increased from ₹10,000/- to ₹25,000/-. The reassessed compensation payable to Claimants is as under: -

1.	*Loss of dependency*	*₹48,52,980/-*
2.	*Loss of Consortium*	*₹1,00,000/-*
3.	*Loss of love & affection*	*₹1,00,000/-*
4.	*Funeral expenses*	*₹25,000/-*
	Total	***₹50,77,980/-***

In the light of the aforesaid, compensation awarded is enhanced from ₹45,78,000/- to ₹50,77,980/-. Upon Claimants furnishing their bank account details to Insurer, Insurer shall deposit the enhanced compensation of ₹4,99,980/-, which is rounded off to ₹5 lacs, alongwith up-to-date interest @ 9% *per annum* from the date of filing of the claim petition till the date of deposit be directly deposited in equal proportion in bank accounts of claimants within four weeks thereafter. The deposit shall be made by Insurer in the manner as indicated in impugned Award.

Statutory deposit, if any, be refunded to Insurer as per Rules.

The above-captioned two appeals are accordingly disposed of while modifying impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

MARCH 20, 2017
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