* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: March 09, 2017

(i) + **MAC.APP.294/2008**

GYANTI DEVI & ORS. ..... Appellants
Through: Mr. Bhupesh Narula and Mr.Gaurav Wadhwa, Advocates

versus

BRIJESH KUMAR & ORS. .....Respondents
Through: Mr. L.K. Tyagi, Advocate for respondent-Insurer

(ii) + **MAC.APP.520/2008**

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

versus

GYANTI DEVI & ORS. .....Respondents
Through: Mr. Bhupesh Narula and Mr.Gaurav Wadhwa, Advocates for respondents-claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **ORAL**

The above-captioned two appeals are directed against common impugned Award of 16th January, 2008 vide which compensation of

₹15,68,000/- with interest @ 7.5% *per annum* has been granted on account of death of MTNL Officer – *Jagat Narayan Singh* in a road accident on 13th January, 2006. The impugned Award stands modified vide order of 12th March, 2008 and the modified compensation granted is ₹21,41,000/- with the same rate of interest i.e. 7.5% *per annum.* The breakup of compensation granted by learned Tribunal in Award as modified vide order of 12th March, 2008 is as under: -

Loss of dependency	*₹20,83,000/-*
Loss of love and affection	*₹40,000/-*
Funeral expenses	*₹8,000/-*
Loss of estate	*₹10,000/-*
Total compensation	***₹21,41,000/-***

In the above-captioned first appeal, enhancement of compensation is sought by Claimants whereas in the above-captioned second appeal, reduction of compensation is sought by Insurer. Service is complete in these appeals. Since both these appeals arise out of common impugned Award and order of 12th March, 2008, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

While entertaining Insurer's appeal, Insurer was directed to deposit the entire awarded amount with interest and it was directed that 75% out of it with interest be released to Claimants, who are widow, two sons and two daughters. Learned counsel for Claimants submits that aforesaid order has been complied with. The facts are already noted in detail in impugned Award and so, need no reproduction. Suffice to note that apart from evidence of Claimants, there is evidence of *Kishan Chand (PW-3),* concerned official from MTNL where deceased was working. This witness *(PW-3)* has proved the service record of deceased including salary slip for the month of December, 2005. On the basis of evidence recorded, impugned Award and the order of 12th March, 2008 have been rendered.

Learned counsel for Insurer submits that *'future prospects'* have been wrongly granted as deceased was aged about 50 years and as per Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121, no addition towards *'future prospects'* is to be made after the age of 50 years is crossed and so, addition made towards *'future prospects'* ought to be disallowed.

On the other hand, learned counsel for Claimants submits that deduction of 1/3rd towards *'personal expenses'* of deceased is uncalled for and infact, the deduction ought to be 1/4th as there are six Claimants. It is also submitted by learned counsel for Claimants that income tax deduction has been made on monthly basis whereas it should have been made on annual basis and that the *'future prospects'* have not been granted while taking into consideration the enhancement in salary as per the 5th Pay Commission w.e.f. 1st January, 2006. Lastly, it is submitted that the compensation granted under the non-pecuniary heads is on the lower side and it needs to be suitably enhanced. Thus, it is submitted that the total compensation granted needs to be appropriately enhanced. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and evidence on record and the decision cited, I find that deduction of 1/3rd towards *'personal expenses'* of deceased is not justified as Claimants are six in number and therefore, deduction has to be 1/4th towards *'personal expenses'* of deceased. The deceased was an officer in Public Sector Undertaking and so his salary slip can be safely relied upon to assess loss of income. Regarding the grant of *'future prospects',* I find that as per the service record of deceased, he was aged 49 years on the day of accident and so, in view of Supreme Court's decision in *Sarla Verma (supra),* addition of 30% towards *'future prospects'* is required to be made in deceased's net annual income of ₹1,98,803/-. After tax deduction of ₹23,017/- from annual income of ₹2,21,820/- and upon adding 30% towards *'future prospects'* and on deducting 1/4th towards personal expenses of deceased and by applying multiplier of 13, *'loss of dependency'* is reassessed as under: -

₹2,58,884/- X 3/4 X 13 = **₹25,19,829/-**
(rounded off to ₹25,19,830/-)

The compensation granted under the non-pecuniary heads is apparently on the lower side. Accordingly, compensation granted under the head of *'love and affection'* is enhanced from ₹40,000/- to ₹1 lac and the *'funeral expenses'* are increased from ₹8,000/- to ₹25,000/- and the compensation granted under the head of *'loss of estate'* is enhanced from ₹10,000/- to ₹50,000/-. I also find that widow of deceased is entitled to *'loss of consortium'* which is quantified at ₹1 lac. Accordingly, compensation payable to Claimants is reassessed as under: -

Loss of dependency	*₹25,19,830/-*
Loss of love and affection	*₹1,00,000/-*
Loss of consortium	*₹1,00,000/-*
Funeral expenses	*₹25,000/-*
Loss of estate	*₹50,000/-*
Total compensation	***₹27,94,830/-***

The interest granted on the awarded compensation by learned Tribunal @ 7.5% *per annum* is also found to be on the lower side. So, in light of a recent decision of Supreme Court in *Shivakumar M. v. The Managing Director, BMTC,* 2017 SCC Online SC 148, the interest granted on the awarded compensation is enhanced from 7.5% to 9% *per annum.*

In light of the aforesaid, compensation awarded is enhanced from ₹21,41,000/- to ₹27,94,830**/-**. The enhanced compensation shall carry interest @ 9% *per annum* from the date of filing of the claim petition till the date of deposit of the enhanced amount. Respondent-Insurer is granted six weeks time to deposit the enhanced compensation of ₹6,53,830/- with interest @ 9% *per annum* and differential interest on the entire awarded amount with learned Tribunal. Upon Claimants furnishing their bank account details, learned Tribunal shall ensure that the enhanced compensation alongwith interest component is directly transmitted into the bank account of Claimants as per this judgment and in the manner as provided in impugned Award.

Both the appeals are accordingly disposed of, while modifying the impugned Award in aforesaid terms.

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

(SUNIL GAUR)
JUDGE

MARCH 09, 2017
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