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

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Date of Decision:10th August, 2017

+ MAC.APP.263/2009 & CM Nos.7645-7646/2009

M/S. NEW INDIA ASSURANCE
COMPANY LIMITED

..... Appellant

Through: Mr.D.K. Sharma, Advocate

versus

SHARDA DEVI & ORS.

..... Respondents

Through: Mr.H.R. Jha, Advocate for
respondents no.1 to 4.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.11,47,000/- has been awarded by the Claims Tribunal.
2. The accident dated 19th November, 2004 resulted in the death of Naveen Kumar. The deceased was aged 23 years at the time of the accident and was survived by his widow, daughter and parents. Respondent no.3, mother of the deceased expired during the pendency of the appeal and her rights have devolved upon respondents no.1 to 3 who are already on record and are substituted in place of deceased respondent no.3.
3. The deceased was working as a Compounder with Jay Clinic in

Najafgarh earning Rs.6,000/- per month. The occupation and income of the deceased was proved by PW-3 by salary certificate, Ex.PW-1/16 issued by Dr. Sanjay Parashar, employer of the deceased. The Claims Tribunal deducted the transport allowance of Rs.500/- and took the income of the deceased as Rs.5,500/- per month. The Claims Tribunal added 50% towards his future prospects, deducted $1/3^{\text{rd}}$ towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency as Rs.11,22,000/-. The Claims Tribunal awarded Rs.25,000/- towards loss of love and affection and funeral expenses. The total compensation awarded is Rs.11,47,000/-.

4. Learned counsel for the appellant urged at the time of hearing that no evidence was led to prove the future prospects and, therefore, the future prospects should not have been granted by the Claims Tribunal.

5. Learned counsel for respondents no.1 to 4 urged at the time of the hearing that the occupation and income of the deceased was duly proved by examining PW-3 who proved the salary certificate, Ex.PW-1/16. It is further submitted that the deceased was aged 23 years and addition of 50% towards future prospects is fair and reasonable.

6. Learned counsel for respondents no.1 to 4 seeks enhancement of the compensation on the ground that the deceased has left behind four legal representatives, namely, widow, daughter and parents and therefore, the appropriate deduction towards personal expenses is $1/4^{\text{th}}$ whereas the Claims Tribunal has deducted $1/3^{\text{rd}}$ towards the personal expenses. Respondents no.1 to 4 seeks compensation under the head of loss of consortium. Respondents No.1 to 4 seek enhancement under the heads of loss of love and affection and loss to the estate. He further submits that the Claims Tribunal

has taken multiplier of 17 whereas the appropriate multiplier at the age of 22 years is 18. Respondents no.1 to 4 seeks enhancement of interest from 7.5% to 9% per annum.

7. The position with respect to the addition towards future prospects and deduction towards the personal expenses is well settled. In respect of victims aged upto 50 years, the addition of 50% is made towards the future prospects. With respect to the deduction towards the personal expenses, 1/3 is deducted in cases where the deceased has left behind upto 3 legal representatives and 1/4th is deducted where the deceased has left behind 4 to 6 legal representatives. In the present case, the deceased has left behind four legal representatives and therefore, appropriate deduction towards the personal expenses is 1/4th whereas the Claims Tribunal has taken 1/3rd. The appropriate multiplier at the age of 22 years is 18 whereas the Claims Tribunal is taken the multiplier of 17. The multiplier is enhanced from 17 to 18. With respect to the compensation for loss of love and affection and loss of consortium, this Court is consistently awarding Rs.1 lakh under each of the two heads whereas the Claims Tribunal has awarded meager amount of Rs.25,000/- under the heads of loss of love and affection, loss of estate and funeral expenses. No compensation has been awarded under the heads of loss of consortium. The Claims Tribunal has awarded interest @ 7.5% per annum whereas the Supreme Court as well as this Court are consistently awarding interest @ 9% per annum.

8. Though no written cross-objections have been filed by the respondents, it is well settled that this Court is duly empowered to enhance the award amount in exercise of power under Order XLI Rule 33 of Code of Civil Procedure. Reference in this regard is made to decision of this Court in

National Insurance Co. Ltd. v. Komal, 2014 ACJ 1540 in which the principles relating to the power of the Court to enhance the award amount in the absence of the cross-objections has been discussed.

9. Taking the income of the deceased as Rs.5,500/- per month, adding 50% towards future prospects, deducting 1/4th towards his personal expenses and applying the multiplier of 18, the loss of dependency is computed as Rs.13,36,500/-. Rs.1 lakh is awarded towards loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation is computed as Rs.16,11,500/-. The rate of interest is enhanced from 7.5% to 9% per annum.

10. The appeal is dismissed. However, the award amount is enhanced from Rs.11,47,000/- to Rs.16,11,500/- along with interest @ 9% per annum from the date of the filing of the claim i.e. 4th January, 2005. The pending applications are disposed of.

11. The appellant has deposited Rs. 14,89,300/- with the Claims Tribunal in terms of the order dated 25th May, 2009 out of which Rs.1,00,000/- has been released to respondent No.1 from her share and the share of respondents no. 2 to 4 has been released to them .

12. The balance award amount is lying in Claims Tribunal. The Claims Tribunal is directed to furnish the particulars of the FDR along with the photocopy of the FDR and the statement of interest released to respondent No.1 within four weeks. If the said FDR has not been renewed up to this date, the Claims Tribunal shall direct the concerned bank to renew the FDR from the date of its expiry before sending the copy thereof to this Court.

13. The appellant is directed to deposit the balance award amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Sharda Devi within four weeks. The computation of interest along with the proof of deposit be filed before this Court before the next date of hearing.

14. Respondent No.1 present in Court submits that she has not source of income and, therefore, she is not assessed to Income Tax. She further submits that she will furnish the Form No.15G so that no TDS is deducted by the appellant.

15. List for disbursement of the award amount on 13th September, 2017.

16. Respondent No.1 shall remain present in Court on the next date of hearing along with the passbook of her savings bank account near the place of her residence along with PAN card and Aadhaar card.

17. The statutory amount be refunded back to the appellant after the deposit of the enhanced award amount.

18. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

AUGUST 10, 2017

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J.R. MIDHA, J.