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

***Date of decision: January 19, 2017***

\+ **MAC APP 397/2008 C.M.No. 10139/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

RABINDER NATH ARORA & ORS. ..... Respondents
Through: Mr. Amit Sharma, Advocate for respondents No.1 & 2

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**
% **ORAL**

1. Impugned Award of 26th March, 2008 grants compensation of ₹10,23,728/- with interest to respondents-claimants in respect of death of *Ms. Shalini Arora*, aged 27 years, who died in a road accident on 12th January, 2005. The facts of this case are already noted in the opening paragraph of the impugned Award and so, need no reproduction. Suffice to note that deceased was earning ₹2,75,000/- p.a. and respondents-claimants are her parents, who were aged 58 years and 52 years on the day of accident. Mother of deceased had stepped into witness box to assert that there was financial loss but she had not quantified the said loss. On the basis of evidence led, learned Motor Accident Claims Tribunal

has assessed the *loss of dependency* at ₹10,03,728/- by applying multiplier of 8. Under the non-pecuniary heads, composite compensation of ₹20,000/- only has been awarded towards *'love and affection and cremation expenses'*.

2. The challenge to impugned Award by learned counsel for appellant-insurer is on the ground that there is no loss of dependency and that tax deduction has not been taken into consideration. It is submitted that personal expenses deducted are 1/3$^{rd}$ whereas it ought to have been 1/2. So, it is submitted that impugned Award needs to be suitably modified.

3. On the other hand, learned counsel for respondents-claimants supports the impugned Award and submits that the compensation granted is rather inadequate and multiplier of 11 ought to have been applied while taking the average age of parents of the deceased. It is also submitted that compensation awarded under the non-pecuniary heads is wholly inadequate and even if cross-objections are not filed, this Court can suitably enhance it.

4. Upon hearing and on perusal of impugned Award and the evidence on record, I find that though father of deceased has not stepped into witness box but the evidence of mother of deceased does show that there was financial loss due to death of earning hand i.e. their daughter. Pertinently, mother of deceased in her evidence has negated the suggestion of appellant that there was no financial loss. So, it cannot be said that there was no loss of dependency. Regarding the application of multiplier, I find that in the facts and circumstances of this case,

multiplier adopted is correct. However, tax deduction ought to have been made. On the aspect of Tax Deduction at Source, Supreme Court in *Vimal Kanwar v. Kishore Dan* (2013) 7 SCC 476 has reiterated that where the annual income is in taxable range, the words "actual salary" should be read as "actual salary less tax".

5. During the course of hearing, it was brought to the notice of this Court that annual income to the extent of ₹1,80,000/- is exempt from tax and even if there is a tax deduction, it would be negligible, as taxable income would be ₹8,200/- p.a.. The tax payable on taxable income would be just ₹800/-. So, the loss of dependency is reduced from ₹1,88,200/- to ₹1,87,400/- and after deducting 50% towards personal expenses, loss of dependency comes to ₹93,700/- which is in consonance with Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another,* (2009) 6 SCC 121. Under the non-pecuniary heads, a sum of ₹20,000/- has been granted towards loss of love and affection, cremation charges etc., which is wholly inadequate. It needs no reiteration that the Courts are under legal obligation to award fair and reasonable compensation and non-filing of cross-objections would not deter the Courts from granting reasonable compensation under the non-pecuniary heads. Such a view is being taken in view of decision of Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297, wherein it has been held as under:-

> *"17. Before we deal with various contentions raised by the parties it is desirable to look into the legislative history of the provisions for their interpretation. The relevant provisions*

*of the Act indisputably are beneficent to the claimant. They are in the nature of a social welfare legislation."*

6. In the facts and circumstances of this case, it is deemed appropriate to award the compensation of ₹50,000/- towards loss of estate, ₹25,000/- towards funeral expenses and ₹1,00,000/- towards loss of love and affection. Thus, the modified compensation payable to respondents-claimants is as under:-

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| Loss of dependency | ₹7,49,600/- |
| Loss of estate | ₹50,000/- |
| Loss of love and affection | ₹1,00,000/- |
| Funeral expenses | ₹25,000/- |
| Total | ₹9,24,600/- |

7. Motor Accident Claims Tribunal has granted interest @7% p.a. on the awarded amount which is slightly lower. In view of Supreme Court's decision in *Rajesh & Ors vs. Rajbir Singh & Ors.* (2013) 9 SCC 54 interest on the awarded amount is enhanced from 7% to 7.5% p.a. The excess amount, if any, deposited by appellant be refunded to appellant along with interest accrued thereupon along with the statutory deposit.

8. With aforesaid modification, this appeal and application are disposed of.

**(SUNIL GAUR)**
**JUDGE**

**JANUARY 19, 2017**
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