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

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Decided on: 18th May, 2017

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MAC.APP. 282/2017 & CM No.11119/2017

THE NATIONAL INSURANCE CO LTD. Appellant

Through: Mr. S.P.Jain and Mr.Himanshu
Gambhir, Advocates.

Versus

SUMITRA DEVI & ORS

..... Respondents

Through: Mr.S.N.Parashar and Mr. Jai Prakash,
Advocates with Respondent No.2
Mr. Mayank Sharma in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant impugns the award dated 30.01.2017 holding it liable to pay the compensation amount (i.e. the insurer or the owner of the offending vehicle), the quantum of compensation also, is challenged. It is argued that the compensation granted towards non-pecuniary award, as under, is on the higher side.

S. No.	Head	Amount
1.		
2	For funeral expenses	Rs.25,000/-
3	Loss of Consortium	Rs. 1 lac
4	Loss of estate	Rs. 1 lac
5	Loss of Love and affection towards Children (1 lac X 2)	Rs. 2 lacs
TOTAL		Rs.4,25,000/-

2. The Court is unable to agree with the contention that the aforesaid amounts are on the higher side keeping in mind the judgment of the Supreme Court in ***R.D. Hattangaddi v. M/s Pest Control (India) Pvt. Ltd. & Ors.*** 1995 SCC (1) 755 wherein it was held:

" While fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate the two concepts, pecuniary damages may include expenses incurred by the claimant on account or : (i) medical attendance (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

3. In ***Rajesh vs. Rajvir*** 9 SCC 54 (2013), the Supreme Court held:

"20.....In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That nonpecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary

damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-."

4. In view of the aforesaid dicta, the challenge to non-pecuniary award fails. The Court is of the view that amounts awarded under the aforesaid heads is justified and in accordance with the principles of 'just' compensation as discussed by the Supreme Court in **Nagappa vs. Gurudayal Singh and Ors. AIR 2003 SC 674.**

5. The other challenge is to interest granted at the rate of 10% p.a. instead of the usual 9% p.a. The principle of 9% interest p.a. was laid down by the Supreme Court in ***Municipal Corporation of Delhi vs Association of Victims of Uphaar Tragedy AIR 2012 SC 100***. This Court has consistently granted interest @ 9% p.a. e.g. ***Sandhya Rani Debbarma & Ors. vs. The National Insurance CO. Ltd. & Ors. 2016 ACJ 2717***.

6. Accordingly, the Award is modified to the extent that on the compensation awarded interest at the rate of 9% per annum shall be payable.

7. The learned counsel for the appellant further argues that since the deceased was travelling as a gratuitous passenger in the goods vehicle, therefore, no liability can be fastened on the insurer.

8. In this regard, the Court would note that only three issues were framed by the Tribunal while determining the compensation, which are as under:-

“ISSUE NO. 1:

Whether Sh. Jagdish Chandra sustained fatal injuries in a motor vehicle accident dt. 25-26.01.2005 due to rash and negligent driving of vehicle (Truck) no. RJ 01 RG 4386 being driven by R1/Rajesh, owned by R2/Pratap Singh and insured by R3/National Insurance Company Ltd.? ...OPP

ISSUE NO.2:

Whether the petitioners are entitled to claim compensation, if so, what amount and from whom? ...OPP

ISSUE NO. 3 :

Relief.”

9. Apropos whether the deceased was a gratuitous passenger, the Tribunal recorded as under:-

“4. PE was led and PW1 deposed that the deceased Jagdish Chandra died in road accident and the said accident took place due to rash and negligent driving of respondent no. 1 and an FIR bearing no. 32/05 u/s 279/337/304A IPG was registered at PS Gharnavada, Distt. Guna, Madhya Pradesh on 27.01.2005. He exhibited copy of challan Ex. PW1/A (Colly.) and last quarterly salary slip of his deceased father Ex. PW1/B. As per the PW1, his father was working in army as Hawaldar (Rank) and was earning Rs.8,000/- (Rs. Eight thousand only) per month and used to contribute his entire income for household expenses and for welfare of the family. No RE was led.

*5. Final arguments were advanced. It was argued on behalf of petitioners that they have proved their case as per law and that due to rash and negligent driving by the respondent driver Rajesh, deceased was killed in the road accident and suitable compensation may be awarded to them. Written arguments were also filed on behalf of petitioners. Ld. Counsel for petitioner has relied upon judgment of Hon'ble Supreme Court in case titled as **Vimal Kanwar &Ors. Vs. Kishore Dan &Ors. (Civil Appeal No.5513 of 2012)**. On the other hand, it was argued by Ld. Counsel for R3/insurance company that deceased was travelling in the offending vehicle as gratuitous passenger, therefore, there is no liability of insurance company. Written arguments were also filed on behalf of R3/insurance company. Ld. Counsel for R3/insurance company has relied upon judgments of Hon'ble Supreme Court in case titled as **M/s National Insurance Co. Ltd. Vs. Baljit Kaur & Ors. (Civil Appeal No. 17/04)** and **National Insurance Co. Ltd. Vs. Abhay Ram etc. (FAO No. 1903 of 1993)**.”*

10. No evidence was led by the insurer to prove that the deceased was a gratuitous passenger. On the contrary, the statement of the claimant i.e. son

of the deceased contradicts the insurer's contention; he stated that the deceased/Army Hawaldar was travelling in the goods vehicle to transport his household goods from Talbehat Cantt. to Bhopal Cantt and had denied the suggestion that his father was a gratuitous passenger.

11. The learned counsel for the appellant refers to the statement of Mr. Vishnu Prasad Sharma, who had deposed that he had seen the accident site and had spoken to the cleaner of the vehicle bearing Registration No.RJ 01 RG 4386, which was lying upturned. The cleaner had informed that the household goods were being carried in it and the deceased, Jagdish Chandra, had lost his life in the accident. It is argued that the statement is not clear as to whether the goods were belonging to the claimants or to the deceased. However, the Court would note that statement of the claimant is clear to the extent that the deceased was travelling in the goods vehicle with his household goods on being transferred from Talbehat Cantt. to Bhopal Cantt. For the purpose of determining whether the passenger was gratuitous or whether he was going with his own goods, the aforesaid statement of the claimant is sufficient.

12. The appellant argues that it is not clear whether the deceased was sitting in the cabin or in the rear portion of the goods vehicle. This issue was never raised before the Tribunal hence, it cannot be raised now. The liability to pay for the injuries to the third party is clearly established.

13. He further contends that 100% addition of income towards future prospects has been added towards loss of future prospects whereas it should have been 30% and relied upon the dicta of **Sarla Verma (Smt.) and Others vs. DTC & Ors. (2009) 6 SCC 121** , which held that whether the deceased

had a permanent job and was between the age group of 40 to 50 years, the addition towards future prospects should not be more than 30%. Mr. S.N. Parashar, the learned counsel for the beneficiaries agrees that the Award may accordingly be re-computed.

14. In the circumstances, the amount payable towards pecuniary loss i.e. loss of dependency would come to Rs.11,62,912/- $[(7987 + 30\% - 1/3^{\text{rd}}) \times 12 \times 14]$. To it, the other non-pecuniary damages i.e. totalling Rs. 4,25,000/- shall be added. The total compensation amount comes to Rs.15,87,912/- alongwith interest at the rate of 9% per annum from the date of the filing of the petition i.e. 19.10.2015, till its realisation. The counsel for the respondents/claimants concurs. The Awards stands modified accordingly. Let the said amount be paid as per the Tribunal's order. The excess amount deposited along with proportionate interest and the statutory deposit shall be released to the appellant upon taking appropriate steps.

15. The appeal is partly allowed. The pending application stands disposed off.

NAJMI WAZIRI, J.

MAY 18, 2017

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