

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

Date of decision: February 02, 2017

+ **MAC. APP.416/2009**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K. Soni, Advocate

Versus

ANITA DEVI & ORS. Respondents

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

%

1. Impugned Award of 19th March, 2009, grants compensation of ₹7,50,000/- with interest @7% p.a. to respondents-claimants on account of death of one *Kamlesh*, aged about 27 years, in a road accident on 12th November, 2004. The factual matrix of this case already stands noticed in the opening paragraph of impugned Award and so, needs no reproduction. Suffice to note that deceased was working as Conductor on a private bus and was earning of ₹3,000/- p.m. and he has left behind seven legal heirs i.e. his parents, widow and four minor children. Driver and owner of the bus in question have not contested the claim petition before the learned Motor Accident Claims Tribunal. The breakup of the compensation as granted by learned Tribunal is as under: -

1.	Loss of Dependency	₹7,05,000/-
2.	Loss of Love & Affection	₹35,000/-
3.	Funeral Expenses	₹5,000/-
4.	Loss of Estate	₹5,000/-
Total		₹7,50,000/-

2. In this appeal, respondents-owner and driver of the bus in question have chosen not to contest and respondents-claimants were initially represented by counsel. Mr. A. K. Soni, Advocate, for appellant-Insurer submits that he had telephonically informed Mr. R.S. Mishra, Advocate, for the claimants about pendency of this appeal but still there is no representation on their behalf. With the assistance of Mr. A. K. Soni, Advocate, for appellant-Insurer, evidence on record and impugned Award has been perused.

3. The precise stand of learned counsel for appellant-Insurer is that the quantum of compensation awarded by learned Motor Accident Claims Tribunal is not in consonance with the provisions of Second Schedule appended to the Motor Vehicles Act, 1988. It is submitted that as per Second Schedule appended to *The Motor Vehicles Act, 1988*, which governs the grant of compensation under Section 163A of the aforesaid Act, the upper limit of annual income of the victim is ₹40,000/- p.a.. It is also submitted that the compensation granted under the non-pecuniary heads is unwarranted, as in case of death, Section 163A of the *Motor Vehicles Act, 1988* does not permit grant compensation of more than ₹9,500/- under the non-pecuniary heads. To submit that compensation granted needs to be reduced to bring it in consonance with the provisions

of Second Schedule to *The Motor Vehicles Act, 1988*, reliance is placed upon a three judge Bench decision of Supreme Court in *Deepal Girishbhai Soni and Others v. United India Insurance Co. Ltd. Baroda*, (2004) 5 SCC 385. Nothing else is urged on behalf of appellant-Insurer.

4. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that Section 163-A of *the Motor Vehicles Act, 1988* provides for grant of compensation *de hors* the negligence aspect and so, the compensation granted for '*loss of income*' is limited to the amount as provided in the Second Schedule of the Motor Vehicles Act and the Second Schedule to the aforesaid Act also provides that deductions of 1/3rd towards the personal expenses of the victim is to be made and the general damages which ought to be granted under the Non-Pecuniary heads are also confined to a particular limit. Since the Second Schedule qua Section 163-A of *the Motor Vehicles Act, 1988* came into force w.e.f. 14th November, 1994, therefore, while taking into consideration the inflation aspect suitable addition to the amount quantified in the Second Schedule is required to be made. Such a view is being taken as it is unrealistic that '*funeral expenses*' incurred would be just ₹2,000/- and '*loss of estate*' would be ₹2,500/-. '*Loss of Consortium*' as per Second Schedule in relation to Section 163-A of *the Motor Vehicles Act, 1988* of ₹5,000/- also is quite unrealistic.

5. In the light of above observations, the compensation of ₹5,000/- towards '*funeral expenses*' and of ₹5,000/- towards '*loss of estate*' is justified. Even, the compensation of ₹35,000/- granted by learned Tribunal under the head of '*loss of love and affection*' is also justified.

However, the grant of compensation of ₹7,05,000/- towards '*loss of dependency*' as assessed by learned Tribunal needs to be interfered with for the reason that it grants ₹5,800/- per month towards '*loss of future prospects*'. Since deceased was not in permanent employment so, in view of dictum of a three judge Bench of Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, the addition of ₹5,800/- per month towards '*future prospects*' is disallowed. Accordingly, the '*loss of dependency*' is reassessed while taking the income of deceased as ₹3,500/- per month (*as asserted in the claim petition*) and after deducting 1/3rd towards personal expenses, it comes to ₹5,04,000/- (₹3,500/- X 12 X 18 X 2/3).

6. In view of aforesaid, the compensation payable to legal heirs of deceased is reassessed as under: -

1.	Loss of Dependency	₹5,04,000/-
2.	Loss of Love & Affection	₹35,000/-
3.	Funeral Expenses	₹5,000/-
4.	Loss of Estate	₹5,000/-
Total		₹5,49,000/-

7. Thus, the compensation awarded is reduced from ₹7,50,000/- to ₹5,04,000/-. However, the rate of interest of 7% as granted by learned Tribunal is maintained.

8. Vide order of 17th December, 2009, it was directed that the amount deposited by appellant-insurer be released to respondents-claimants in form of FDRs in a graded manner. The excess amount deposited by appellant-insurer be refunded to appellant and the reassessed

compensation as per this judgment be released to respondents-claimants. The concerned Bank is directed to do the needful. Registry to ensure compliance of this judgment within four weeks. The statutory deposit, if any, made by appellant-insurer be refunded as per Rules.

9. This appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 02, 2017

r/s

