$~R-210

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

Date of Decision: January 10, 2017

\+   **MAC.APP. 332/2009 & C.Ms.9574/09, 9576/09**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

NANU MAYA THAPA & ORS. .....Respondents
Through: Mr. Sanjeev Srivastava, Advocate for respondents No.1 to 5

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
%   **(ORAL)**

Impugned Award grants compensation of ₹29,05,144/- with interest @ 7.5% *per annum* to the legal heirs of *Arjun Thapa,* who had died in a road accident on 7th March, 2006.

The facts of this case are already noticed in the opening paragraphs of the impugned Award and so, needs no reproduction. On the basis of the evidence led by the parties, learned Tribunal has awarded the compensation in the following manner.

Annual Loss of Dependency:
₹30,000/- + ₹10,000/2= ₹20,000/- per month
(₹20000 X 1/3rd) = ₹6666/- and loss of dependency comes to

₹13334/- (20000 – 6666). The annual loss of dependency comes to ₹13334 X 12 = ₹1,60,008/-.
₹160008 X 18 = ₹28,80,144/-

	=	*₹28,80,144/-*
For funeral expenses and loss of love and affection	=	*₹25,000/-*
Total	=	*₹29,05,144/-*

At the final hearing, learned counsel for appellant-insurer has assailed the impugned Award on the ground that benefits of revised salaries as per the Pay Commissions, which are yet to take place, has been erroneously taken into consideration by the learned Tribunal while working out average salary. It is pointed out that at the time of accident, the deceased was earning ₹9051/- *per month* and at that time, 6th Pay Commission had not come into force and so, actual salary of the deceased ought to have been taken and not the average salary by taking into consideration the three Pay Commissions post the accident in question. Thus, it is submitted that the compensation granted deserves to be suitably reduced.

On the other hand, learned counsel for respondents-claimants submits that enhanced salary as per Pay Commissions have to be taken into consideration to work out *'future prospects'* and that learned Tribunal has failed to grant any compensation under the Head of *'loss of amenities of life'* and *'loss of estate'* and the compensation granted under the Head of *'loss of love and affection'* is wholly inadequate and so, fair compensation ought to be granted to respondents-claimants. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that deceased was a Sepoy in BSF and so, *'future prospects'* have to be taken into consideration while keeping in view the fact that at the time of his death, he was aged 28 years. It is no doubt true that the actual income of the deceased as on the date of the accident has to be the basis for grant of compensation, but addition of 50% towards *'future prospects'* has to be made in view of Supreme Courts' decision in *Rajesh & Ors. v. Rajbir Singh & Ors.,* 2013 (6) SCALE 563. Thus, applying the parameters as laid down in *Rajesh (supra)* to the facts of the instant case, the impugned Award is modified as under: -

<u>'A'</u>

Annual Loss of Dependency: -

Monthly Salary	*= ₹9,051/-*
Salary after adding 50% towards future prospects	*= ₹13,576.50/- per month*
So, Annual Salary (₹13,576.5/- X 12)	*= ₹1,62,918/- (rounded off to ₹1,63,000/-)*
Annual Salary after deducting 1/3rd towards personal expenses	*= ₹1,08,667/-*
Annual Loss of Dependency assessed by applying the multiplier of 17 (₹1,08,667/- X 17)	*= ₹18,47,339/- rounded off to ₹18,47,500/-)*

It is no longer *res integra* that the courts are under a legal obligation to grant just and fair compensation without strictly applying the rules of evidence as applicable to civil cases. It is so said because Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 has reiterated that the enactment of *the Motor Vehicle Act, 1988* is a social legislation and indisputably beneficent to the claimant.

In the instant case, learned Tribunal has erred in clubbing the compensation payable for *'loss of estate'* and *'loss of amenities of life'* under single head of *'loss of love and affection'*. Compensation under other heads is assessed as under:-

<u>'B'</u>

Loss of Love and Affection	=	₹1,00,000/-
Loss of Consortium	=	₹1,00,000/-
Loss of Estate	=	₹ 50,000/-
For funeral expenses	=	₹ 25,000/-
Total (A+B)	=	₹21,22,500/-

The rate of interest @ 7.5% granted by learned Tribunal is wholly inadequate and is accordingly enhanced to 9% *per annum.* Consequently, the differential interest component on the amount i.e. ₹21,12,205/- already deposited by appellant shall be payable by appellant within four weeks. Further, as per modified Award the balance compensation amount i.e. ₹10,295/- (as per modified Award) is rounded of to ₹10,300/- alongwith interest @ 9% *per annum* from the date of filing of the suit, till realization, shall be deposited by appellant with UCO Bank in A/c Nanu Maya Thapa, Delhi High Court Branch, within four weeks from today, which shall be released to respondents-claimants in the same ratio and manner as indicated in the impugned Award.

With aforesaid directions, the impugned Award of 11th December, 2008 stands modified.

The appeal and the pending applications are accordingly disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

JANUARY 10, 2017
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