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

Date of Decision: February 20, 2017

\+ **MAC. APP.776/2013**

NATIONAL INSURANCE COMPANY ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

SHIKHA JAIN & ORS. .....Respondents
Through: Mr. S.S. Jain, Advocate for respondents-claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

C.M.1250/2015

In this appeal, an application has been filed by respondents-claimants for deposit of differential amount of ₹1,26,404/-, which is said to be shortfall in the pre-deposit made. This application proceeds on the basis of net income of deceased has been taken into consideration whereas his gross income has to be considered. Since no cross-objections have been filed by respondents-claimants, therefore, this plea is not available in an appeal filed by Insurer. So, this application deserves to be dismissed.

MAC. APP.776/2013

Impugned Award of 30th April, 2013 grants compensation of ₹22,60,083/- with interest @ 9% *per annum* to respondents-claimants on account of death of one *Ankush Jain,* aged 45 years in a road accident on 15th May, 2011. The Breakup of compensation awarded by learned Tribunal is as under: -

1.	Loss of Financial Dependency	₹21,30,083/-
2.	Loss of Love and Affection	₹1,00,000/-
3.	Loss of Estate	₹10,000/-
4.	Funeral Expenses	₹10,000/-
5.	Loss of Consortium to Wife	₹10,000/-
	Total	**₹22,60,083/-**

The factual details already find mention in impugned Award and so, it needs no reproduction. Suffice to note that appellant is the Insurer of Mini Bus in which deceased was travelling and challenge to the compensation assessed by learned Tribunal is on the ground that contributory negligence of another Mini Bus with which the Mini Bus in question collided has not been considered and that the quantum of compensation granted is on the higher side. While relying upon the evidence of eye-witness-*Nikhil Ahuja,* learned Tribunal has held that the Mini Bus of which appellant is the Insurer was negligent in causing the accident in question. On the strength of the evidence led, impugned Award has been rendered.

The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that the evidence of eye-witness-*Nikhil Ahuja* (PW-1) has been misread and the site plan of the spot has not been considered and if it is so done, then it would be apparent that the instant case is of contributory negligence. To submit so, attention of this Court is drawn to the evidence of eye-witness-*Nikhil Ahuja (PW-1)* and the site plan of the spot. It is next submitted that deceased aged about 45 years was a shop keeper engaged in the business of selling *sarees* and addition of 30% towards *'future prospects'* by learned Tribunal is unjustified as there is no evidence regarding *'future prospects'*. It is pointed out that only one Income Tax Return has been filed which would not indicate *'future prospects'*. It is further submitted that deduction of 1/4th towards *'personal expenses'* by learned Tribunal is not correct for the reason that the dependency was of mother and wife only as the children were of major age. So, it is submitted that 1/3rd towards *'personal expenses'* ought to have been deducted.

Attention of this Court is drawn by learned counsel for appellant-Insurer to the additional evidence of appellant's Investigator, who has stated in his evidence that the shop of deceased was being run by son of deceased and so, it is submitted that there was no loss of dependency. Thus, it is submitted that impugned Award needs to be suitably modified.

On the contrary, learned counsel for respondents-claimants supports the impugned Award and submits that deceased was in a stable employment and so, addition of 30% towards *'future prospects'* has been rightly made. It is submitted that evidence of appellant's investigator stands demolished from his cross-examination and so, impugned Award needs no modification. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that there is no cross-examination of eye-witness-*Nikhil Ahuja (PW-1)* on the aspect of contributory negligence and even the site plan of the spot does not indicate that there was contributory negligence of stationary vehicle or of another Mini Bus, which had purportedly collided with the bus in question. So, the submission regarding contributory negligence is negatived.

Regarding grant of *'future prospects',* I find that learned counsel for respondents-claimants has relied upon solitary Income Tax Return which by itself is not sufficient to assess the future prospects and so, addition of 30% towards *'future prospects'* is unjustified as a Three Judge Bench of Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr*. (2013) 9 SCC 65 has reiterated that in cases where deceased is self-employed, the actual income without any addition towards future prospects is to be considered. It has to be so done as Supreme Court in a recent decision in *Sandeep Khanuja v. Atul Dande,* 2017 SCC Online SC 88 has reiterated that the multiplier method takes care of loss of earnings and so, the rise in cost of living is taken care of.

Appellant's stand of there being no loss of dependency is baseless for the reason that the additional evidence led is of investigator, who had inspected the shop in question after the Award was passed and that too in the absence of any neighbouring shopkeepers. Non-availability of public witness cannot be a ground for the reason that the shop keepers of the adjoining shops were very much available. No inventory of the stocks, account books, etc in the shop has been prepared.

Pertinently, no customer was found inside the shop at the time of inspection. Regarding deduction of 1/4th towards *'personal expenses'* by learned Tribunal, it is found to be justified for the reason that there is unchallenged evidence of widow of deceased to the effect that deceased has left behind one son and one daughter, who are unmarried and are dependent and there is no money available for their marriage. So, no case for deducting 1/3rd towards *'personal expenses'* is made out. In such a situation, it cannot be said that there is no loss of dependency. So, loss of dependency is reassessed as ₹1,56,050/- X 14 X 3/4 =₹16,38,525/-.

In view of Supreme Court's decision in *Rajesh and Others v. Rajbir Singh and Others,* (2013) 9 SCC 54, the compensation granted under the non-pecuniary head as reassessed as under: -

Loss of love and affection	₹1,00,000/-
Loss of Estate	₹1,00,000/-
Funeral Expenses	₹25,000/-
Loss of Consortium	₹1,00,000/-
Total	**₹3,25,000/-**

Thus, the total compensation payable to respondents-claimants is reassessed as ₹19,63,525/-.

Vide interim order of 30th August, 2013, it was directed that 80% of the awarded amount be released to respondents-claimants. Learned counsel for respondents-claimants submits that the aforesaid interim order has been complied with by appellant. In view thereof, reassessed compensation of ₹19,63,525/- shall carry interest @9% *per annum,* as awarded by learned Tribunal. Consequentially, impugned Award is modified to the aforesaid extent. The excess compensation deposited, by appellant-Insurer be refunded with interest, if any. Statutory deposit, if made by appellant-Insurer, be also refunded as per Rules.

This appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 20, 2017
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