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

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Date of Decision: 8th September, 2017

+ MAC.APP. 383/2015

KULDEEP SINGH AND ANR.

..... Appellants

Through: Mr. Partap Singh, Advocate

versus

PARVEEN KUMAR & ANR.

..... Respondents

Through: Mr. Pankaj Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.2,50,000/- has been awarded in respect of the death of a fetus.
2. On 05th February, 2013 at about 04:45 P.M, Sunita Devi was hit by a truck bearing No.DL-1LP-4892 which resulted in the fatal injuries. The deceased was carrying a four months' fetus in her womb. The deceased was survived by her husband and minor daughter, who filed two separate claim petitions, one in respect of death of Sunita Devi and the second in respect of the death of the fetus.
3. The Claims Tribunal awarded compensation of Rs.19,97,722/- in respect of the death of Sunita Devi and Rs.2,50,000/- in respect of the death of the fetus. The appellant is seeking enhancement of the compensation amount in respect of the fetus.

4. In ***Prakash v. Arun Kumar Saini***, (2010) 167 DLT 311, this Court examined the law with respect of the compensation in respect of the death of the fetus and held that fetus aged five months onwards in mother's womb till its birth is treated as an unborn child. This Court held that the unborn child to be a 'person' and awarded Rs.2,50,000/- in respect of a seven month old fetus. Relevant portion of the said judgment is as under:

“18. This Court is of the view that the rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law causing death of foetus has been held to be an offence under Sections 312 to 316 of the Indian Penal Code, and the law of property considers the unborn child in being for all purposes which are to its benefit, such as taking by will or descent. This Court is in respectful agreement with the judgments of Andhra Pradesh High Court in the case of Oriental Insurance Co. Ltd. (supra) and Kerala High Court in the case of Maniknttan(supra), and holds that an unborn child aged five months onwards in mothers womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The foetus is another life in woman and loss of foetus is actually a loss of child in the offing. The appellants are, therefore, entitled to compensation for the loss of foetus.

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21. The judgment of this Court in National Insurance Company Ltd. v. Farzana (supra) relates to the death of 7 year old child whereas the present case relates to the death of a seven months old foetus. The seven months old foetus cannot be compared with seven years old child and, therefore, this Court is not inclined to award Rs. 3,75,000/- to the appellants. A foetus shall be treated as a child does not mean that the compensation in respect of a foetus shall be equal to a seven year old school going child. The love and affection of the parents for seven year old child cannot be equated with that of a foetus which has yet to take birth. The love and affection develops after the birth of the child and it keeps on growing and goes deep in the memory. The death of a seven year old child would leave deep memories and, therefore, deeper hurt. In case of death of a child, the photographs of the child and other articles belonging to him/her keep on reminding the parents of the child and make them sad. Memories

are also refreshed when parents see other children of same age and it takes a very long time for pain and suffering to dissolve, whereas there are no such memories in case of a foetus and, therefore, lesser hurt. The compensation awarded to a seven year old child, therefore, needs appropriate correction. Considering that Rs. 2,50,000/- was awarded by Madhya Pradesh High Court in the case of Shraddha (supra), Rs. 2,00,000/- by Madras High Court in the case of Krishnaveni (supra) and Rs. 1,50,000/- by Karnataka High Court in the case of Bhazvaribai (supra), Rs. 2,50,000/- is awarded to the appellants in the present case.”

5. Learned counsel for the appellant urged at the time of the hearing that the judgment of **Prakash v. Arun Kumar Saini** (supra) relates to an accident dated 08th June, 2008 in which the compensation of Rs.2,50,000/- in respect of a seven months old fetus was awarded on 05th February, 2010. It is submitted that the enhancement be awarded on the ground of inflation in the cost of living. Reliance is placed on **Krishna Gopal v. Lala**, (2014) 1 SCC 244 in which the Supreme Court took note of the inflation.

6. In the present case, the fetus was four months old for which the Claims Tribunal has awarded Rs.2,50,000/- whereas in the case of **Prakash v. Arun Kumar Saini** (supra) fetus was of seven months old for which this Court awarded Rs.2,50,000/-. This Court is of the view that the compensation awarded is just, fair and reasonable and no enhancement of compensation is warranted.

7. The appeal is dismissed.

SEPTEMBER 08, 2017
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J.R. MIDHA, J.