

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

Date of Decision: March 27, 2017

+ **MAC.APP. 572/2008**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Shoumik Mazumdar,
Advocate for Mr. Pankaj Seth,
Advocate

versus

BASANTI DEVI AND ORS. Respondents

Through: Mr. Mohit Kukreja, Advocate for
respondents No.1 to 4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant is the Insurer of bus in question, which was involved in a road accident on 5th August, 1996 and in the accident, one *Nandan Singh Fonia*, aged 33 ½ years, a Junior Accounts Officer in CPWD, had died. The challenge in this appeal is to impugned Award of 26th March, 2008, which was modified vide order of 18th August, 2008 whereby compensation of ₹5,19,500/- (inclusive of interim Award) with interest @ 7% *per annum* has been granted. The breakup of compensation granted as per modified Award is as under: -

1.	<i>Loss of dependency</i>	₹4,94,500/-
2.	<i>Loss to estate and consortium</i>	₹15,000/-

3.	<i>Funeral & other expenses</i>	<i>₹10,000/-</i>
	<i>Total</i>	<i>₹5,19,500/-</i>

In calculating 'loss of dependency', learned Motor Accident Claims Tribunal (*hereinafter referred to as 'Tribunal'*) has taken the income of deceased as ₹6,431/- and deducted ₹4,000/- on account of employment of wife of deceased in place of deceased. While noting that there were four dependants, learned Tribunal has applied the multiplier of 17 and deducted 1/3rd towards '*personal expenses*'.

As per order of 15th September, 2009, service is complete.

In this appeal, reduction of quantum of compensation is sought by learned counsel for appellant-Insurer by submitting that multiplier of 16 instead of 17 ought to have been applied. It is next submitted that though recovery rights have been granted to appellant-Insurer on account of driving licence in question being fake but the liability to pay compensation is of driver and owner of bus in question and not of appellant-Insurer and so, appellant-Insurer deserves to be exonerated from paying the awarded compensation.

On the contrary, learned counsel for respondents-Claimants supports impugned Award and submits that at best, wife of deceased was not a dependent, but the awarded compensation needs to be granted to the remaining Claimants and so, deduction of ₹4,000/- from the income of deceased was unjustified and that the recovery of rights have been rightly granted and so, this appeal deserves to be dismissed.

Upon hearing and on perusal of impugned modified Award and the

evidence on record, I find that the applicable multiplier is of 16 and learned Tribunal has erred in applying the multiplier of 17. So far as deduction of ₹4,000/- per month from the income of deceased has been made, I find that it has been rightly done because wife of deceased was given employment in place of deceased on compassionate grounds and so, 'loss of dependency' has to be accordingly worked out.

Regarding calculation of 'future prospects', learned Tribunal has erred in calculating it on average basis. Supreme Court in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121 has reiterated that addition of 50% towards 'future prospects' ought to be made where deceased is in the age bracket of 30-40 years. So, while adding 50% towards 'future prospects' and by applying multiplier of 16, the 'loss of dependency' needs to be re-worked. Since there are four dependents, therefore, deduction of 1/3rd towards 'personal expenses' has been erroneously made by learned Tribunal and infact deduction of 1/4th towards 'personal expenses' ought to be made. Upon doing so, 'loss of annual income' is re-assessed as under: -

₹6,431/- p.m. – ₹4,000/- p.m. = ₹2,431/- plus 50% = ₹3,646/- p.m.

Accordingly, 'loss of dependency' is reassessed as under: -

₹3,646/- x 12 x 1/4 x 16 = ₹5,25,024/-

Infact, learned Tribunal has assessed the 'loss of dependency' at ₹4,94,496/-, which is less than the actual 'loss of dependency'. Since respondents-Claimants have not preferred any cross-objections in this appeal, therefore, in view of Supreme Court's decision in *Ranjana Prakash & Ors. v. Divisional Manager & Anr.*, (2011) 11 SCC 639, the

enhancement under the head of '*loss of dependency*' and other heads is uncalled for. Consequentially, the awarded amount is maintained.

So far as exoneration of appellant-Insurer is concerned, I find that in the first instance, the Insurer is liable to pay and then is entitled to recover it from driver and owner of the vehicle in question, who have chosen not to contest this appeal. It is so said in view of Supreme Court's decision in *Pushkar Mehra v. Brij Mohan Kushwaha and Others*, (2015) 12 SCC 688.

In light of the aforesaid, finding no substance in this appeal, it is dismissed. In terms of order of 10th December, 2009, the balance of deposited compensation be released to respondents-Claimants by UCO Bank, Delhi High Court Branch, New Delhi.

Statutory amount, if any, be refunded to appellant-Insurer as per Rules.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

MARCH 27, 2017

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