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

Date of Decision: January 17, 2017

(i) + **MAC.APP. 1012/2013**

TATA AIG GENERAL INSURANCE CO. LTD Appellant

Through: Mr. Akshay Bhandari and Ms.
Meenakshi Midha, Advocates

versus

SHASHI GULATI & ORS Respondents

Through: Mr. Rajesh Kaushik, Advocate for
respondents No.1 to 3

(ii) + **MAC.APP. 53/2017**

SHASHI GULATI & ORS Appellants 1

Through: Mr. Rajesh Kaushik, Advocate

versus

TATA AIG GENERAL INSURANCE CO LTD & ANR

..... Respondents

Through: Mr. Akshay Bhandari and Ms.
Meenakshi Midha, Advocates
respondent-insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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C.M.42720/2016 (delay) & MAC.APP. 53/2017

There is delay of 1114 days in filing the accompanying application to place on record the cross-objections.

Notice.

Mr. Akshay Bhandari, Advocate accepts notice on behalf of insurer.

Upon hearing, I find that averments made in paragraph No.1 of the instant application, which is duly supported by affidavit on record, provide sufficient cause to condone the delay occasioned. The application is allowed and the delay stands condoned.

The application is disposed of while taking on record the cross-objections.

MAC.APP. 1012/2013

MAC.APP. 53/2017

The above-captioned two appeals are directed against common impugned Award of 17th August, 2013 vide which compensation of ₹19,12,120/- with interest has been awarded to the claimants on account of death of one *Subhash Chander Gulati*, who had died due to injuries sustained in a road accident on 3rd November, 2005. In the above-captioned first appeal, insurer assails the impugned Award on the ground that deceased was aged 58 years and so, addition of 50% towards '*future prospects*' is unjustified. Whereas in the above-captioned second appeal, which is in the shape of cross-objections, enhancement of compensation is sought by claimants, who assert that the income of deceased ought to

have been taken as ₹22,000/- odd as per his salary certificate and not ₹16,000/- odd.

The break-up of compensation granted by learned Tribunal is as under: -

S. No.	On account of	Amount (Rs.)
1.	Loss of dependency	₹18,24,120/-
2.	Loss of consortium	₹10,000/-
3.	Towards medical bills	Nil as reimbursed from the Department
3.	Loss of love and affection	₹25,000/-
4.	Loss of estate	₹10,000/-
5.	Funeral expenses	₹10,000/-
6.	Room Rent	₹33,000/-
	Total	₹19,12,120/-

The factual background of this case already stands noted in the opening paragraph of the impugned Award and so, needs no reproduction. Suffice to note that the deceased was aged 58 years at the time of this accident and as per his salary certificate, he was drawing gross salary of ₹22,384/- per month and after deductions, his net salary was ₹16,218/- per month.

Learned counsel for insurer contends that the net salary has been rightly taken into account to assess '*loss of dependency*', but learned Tribunal has erred in adding 50% towards '*future prospects*' as there is no evidence on record to show that any promotion or financial benefit

was due to deceased. It is submitted that within two years, deceased would have retired and in such a situation, ₹500/- towards increment has been already taken into consideration by learned Tribunal and so, grant of 'future prospects' is wholly unjustified.

On the other hand, learned counsel for respondents-claimants submits that in view of decision in *K.R. Madhusudhan and Others v. Administrative Officer and Another*, (2011) 4 SCC 689, 'future prospects' are to be granted even if deceased is aged more than 50 years and so, the addition of 50% towards 'future prospects' is very well justified.

To seek enhancement of compensation, learned counsel for respondents-claimants has drawn the attention of this Court to the salary certificate of deceased to submit that 'loss of dependency' is required to be calculated while taking into account the income of deceased as ₹22,000/- odd as disclosed by the salary certificate and the compensation awarded needs to be suitably enhanced. To submit so, reliance is placed upon Supreme Court's decision in *Sunil Sharma and Others v. Bachitar Singh and Others*, (2011) 11 SCC 425. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award and the evidence on record as well as the decisions cited, I find that no evidence has been led by claimants to show that had deceased lived upto the age of his retirement there would have been any definite rise in income. It is also not shown that any financial benefits would have accrued to the deceased during the period of remaining two years of his service.

Supreme Court in *K. R. Madhusudhan (supra)* has reiterated that

after the age of 50 years, addition towards '*future prospects*' can be made only if concrete evidence is on record. Since no such evidence is on record, therefore, addition of 50% towards '*future prospects*' by learned Tribunal is unjustified. So, addition of ₹8,445/- towards '*future prospects*' is excluded. The salary certificate of deceased reveals that his gross salary was of ₹22,384/- per month and after deductions, it was ₹16,218/- per month. Supreme Court in its decision in *Sunil Sharma (supra)* has reiterated that no deduction on account of HRA, CCA and Medical Allowances is to be made while calculating the income of deceased. So, in the instant case, statutory deductions of ₹6,166/- in the case of deceased have been erroneously excluded.

In the aforesaid view, the salary of deceased is taken as ₹22,384/- per month and after deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses, it comes to ₹14,923/- per month. Thus, the '*loss of dependency*' is taken as ₹16,11,684/- (₹14,923/- X 12 X 9), which is rounded off to ₹16,11,700/-.

The compensation granted by learned Tribunal under the '*Non-pecuniary*' heads appears to be on lower side. The courts are under legal obligation to award just and fair compensation. Accordingly, the compensation under the head of '*loss of consortium*' is enhanced from ₹10,000/- to ₹50,000/-. Similarly, compensation granted under the head of '*loss of love and affection*' is enhanced from ₹25,000/- to ₹50,000/- and compensation under the head of '*loss of estate*' is enhanced from ₹10,000/- to ₹30,000/-. Funeral expenses are also enhanced from ₹10,000/- to ₹25,000/-. However, the compensation awarded towards '*room rent*' is maintained. Thus, modified compensation payable to the

claimants is as under: -

S. No.	On account of	Amount (Rs.)
1.	Loss of dependency	₹16,11,700/-
2.	Loss of consortium	₹50,000/-
3.	Towards medical bills	Nil as reimbursed from the Department
3.	Loss of love and affection	₹50,000/-
4.	Loss of estate	₹30,000/-
5.	Funeral expenses	₹25,000/-
6.	Room Rent	₹33,000/-
	Total	₹17,99,700/- rounded off to ₹18,00,000/-

The modified compensation payable as per this judgment would be in the same ratio and the manner as provided in the impugned Award after adjusting the 80% of the awarded amount, if already paid to claimants in terms of order of 8th November, 2013. The excess amount deposited by insurer alongwith the statutory deposit be refunded to insurer.

With aforesaid modification, the above-captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 17, 2017

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