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

Date of decision: January 18, 2017

+ **MAC.APP. 574/2008**

NATIONAL INSURANCE CO LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

R. SUNEETA & ORS. Respondents

Through: Mr. S.N. Prashar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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ORAL

1. Impugned Award of 5th July, 2008 grants compensation of ₹27,95,966/- with interest to respondents-claimants, i.e. legal heirs of *Shri Rambhatla Laxman Rao*, aged 32 years, who had died in a road accident on 18th June, 2005.

2. Appellant-insurer as well as respondents-claimants are dissatisfied with the impugned Award, which has given rise to the instant appeal and the cross-objections filed by respondents-claimants. The factual background of this case already stands noted in the impugned Award and so, needs no reproduction. Suffice to note that deceased was working as Assistant Manager with M/s T.V. Today Network on contractual basis

and was earning ₹3,17,996/- p.a. which included Leave Travel Allowance and Special Allowance of ₹3,060/-. Loss of dependency has been calculated by the learned Motor Accident Claims Tribunal as ₹27,55,966/- while taking loss of income to be ₹3,17,996/-p.a. and by applying the multiplier of 13, loss of dependency has been worked out. Under non-pecuniary heads, a sum of ₹15,000/- towards loss of estate; ₹5,000/- towards funeral expenses; ₹10,000/- towards loss of consortium and ₹15,000/- towards loss of love and affection has been awarded by the learned Motor Accident Claims Tribunal.

3. Challenge to the impugned Award by learned counsel for appellant-insurer is on the ground that while calculating the income of deceased, *Leave Travel Allowance* and *Special Allowance* ought to have to be excluded, as the employment was of contractual nature and because the deceased had died during the period of probation. On the other hand, learned counsel for respondents-claimants seek enhancement of compensation on the ground that in the light of Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, multiplier of 16 ought to have been applied whereas in the impugned Award, multiplier of 13 has been adopted. It is also submitted by learned counsel for respondents-claimants that the compensation granted under the non-pecuniary heads needs to be suitably enhanced in the light of Supreme Court's decision in *Rajesh & Ors vs. Rajbir Singh & Ors* : (2013) 9 SCC 54. Nothing else is urged by either side.

4. Upon hearing and on perusal of impugned award, evidence on

record and the decisions cited, I find that though the employment of deceased was of contractual nature but it is apparent from the Appointment Letter (*Ex. PW-1/4*) that at the end of every three years, the contractual employment was to be renewed by mutual consent for such period as parties agree. In such a situation, it cannot be said that the employment of deceased was of purely temporary nature. Moreover, Appointment Letter (*Ex. PW-1/4*) reveals that *Leave Travel Allowance* as well as *Special Allowance* was paid to the deceased irrespective of his contractual nature of employment and so, there is no justification to exclude these allowances while computing the income of the deceased. The learned Motor Accident Claims Tribunal has rightly done so and the impugned award cannot be faulted with on this ground.

5. During the course of hearing, learned counsel for appellant-insurer pointed out that as per Tax Deduction at Source Certificate (*EX. PW-3/D*) a sum of ₹1,431/- was deducted towards income tax. On the aspect of Tax Deduction at Source, Supreme Court in *Vimal Kanwar v. Kishore Dan* (2013) 7 SCC 476 has reiterated that where the annual income is in taxable range, the words “actual salary” should be read as “actual salary less tax”. In the instant case, both the sides agree that annual deduction of tax from the income of deceased would be ₹6370/-.

6. As regards enhancement of compensation is concerned, I find that in view of Supreme Court’s decision in *Sarla Verma (Supra)*, multiplier of 16 is to be applied, as the deceased was aged 32 years at the time of accident. So, upon adopting multiplier of 16, *Loss of Dependency* is assessed at ₹33,24,050/- after deducting 1/3rd towards personal expenses

and after tax deductions.

7. Under the non-pecuniary heads, the compensation awarded appears to be on the lower side. In *Rajesh (Supra)*, deceased was aged 33 years and Supreme Court has awarded compensation of ₹1,00,000/- for *Loss of Consortium* and ₹25,000/- towards *Funeral Expenses* and a sum of ₹1,00,000/- towards *Loss of Love and Affection*. In the instant case, the compensation granted under the non-pecuniary heads is accordingly enhanced from ₹10,000/- to ₹1,00,000/- for *Loss of Consortium*; from ₹15,000/- to ₹1,00,000/- towards *Loss of Love and Affection* and *Funeral expenses* are enhanced from ₹5,000/- to ₹25,000/-. Since in *Rajesh (Supra)* no compensation is granted for *Loss of Estate*, therefore, grant of ₹15,000/- under this head to respondents-claimants is declined.

8. Thus, the enhanced compensation payable to respondents-claimants is as under:-

Loss of dependency	₹3,11,626 x 16 x 12 = ₹33,24,050/- (rounded off to ₹33,24,100/-)
Loss of consortium	₹1,00,000/-
Loss of love and affection	₹1,00,000/-
Funeral expenses	₹25,000/-
Total	₹35,34,050/- (rounded off to ₹35,34,100/-)

9. In terms of order of 25th November, 2008, 75% of the compensation awarded by Motor Accident Claims Tribunal if released to respondents-claimants be adjusted and the balance of it along with the enhanced compensation alongwith interest @9% p.a. be released to

respondents-claimants in the same manner and ratio as provided in the impugned Award. It is made clear that if the enhanced amount is not deposited by appellant-insurer with the Registrar General of this Court within four weeks, then it will carry interest @9% p.a. till realisation.

10. The statutory deposit, if any, be refunded to the appellant-insurer after enhanced amount is deposited.

11. With aforesaid modification, this appeal and cross-objections are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 18, 2017

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