

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

Date of decision: March 29, 2017

+ **MAC.APP. 587/2008 & C.M.No. 16998/2008**

NATIONAL INSURANCE CO.LTD. Appellant
Through: **Ms. Neerja Sachdeva, Advocate**

Versus

SHANKAR PANDIT & ORS. Respondent
Through: **Mr. J.S. Kanwar, Advocate for**
respondents No. 1 to 6.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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1. Impugned Award of 10th September, 2008 grants compensation of ₹6,20,000/- to respondents-claimants with interest @8% p.a. on account of death of *Tetra Devi* in a road accident on 29th June, 2005.
2. In this appeal, appellant-Insurer seeks reduction of quantum of compensation granted. As per order of 6th October, 2010, service is complete. The facts already noted in impugned Award needs no reproduction for the reason that challenge to impugned Award is only on the quantum of compensation awarded. Suffice to note that respondents-claimants are husband and three daughters and two sons of deceased, who was 41 years of age and a housewife on the day of the accident. Pertinently, owner and driver of offending vehicle in question had not

contested before learned Motor Accident Claims Tribunal (*hereinafter referred to as the "Tribunal"*) and appellant-Insurer had not led any evidence on the point of quantum of compensation awarded and learned Tribunal, while relying upon the testimony of claimant-husband, has rendered the impugned Award while granting recovery rights to appellant-Insurer, as the driving license in question was found to be fake.

3. Learned counsel for appellant-Insurer submits that learned Tribunal has erred in taking the notional income of deceased as ₹3,000/- p.m. even though she was not earning anything and Supreme Court in *Jitendra Khimshankar Trivedi & ors. & Kasam Daud Kumbhar & ors.* (2015) 4 SCC 237 has taken income of deceased as ₹3,000/- because deceased therein was doing embroidery and tailoring work and 1/3 was deducted towards personal expenses whereas no deduction has been made by learned Tribunal in the instant case. Attention of this Court is drawn by appellant's counsel to Second Schedule of Motor Vehicles Act, 1988 to point out that in a case where deceased is not working, ₹15,000/- p.a. is to be taken as notional income and upon doing so, compensation awarded deserves to be suitably reduced.

4. On the contrary, learned counsel for respondents supports the impugned Award and submits that Supreme Court in *Jitendra Khimshankar (Supra)* has reiterated that even if the deceased is not working but still she was a house wife and a home maker and so, income of house wife/ house maker was notionally taken to be ₹3,000/- p.m. and no case for reduction of compensation is made out. Nothing else is urged by either side.

5. Upon hearing counsel representing both the sides and on perusal of impugned Award, evidence on record and decision cited, I find that Supreme Court in *Jitendra Khimshankar (supra)*, has reiterated that it is hard to monetise the domestic work done by a home maker and even if it is assumed that house wife was not self employed still her notional income was taken to be ₹3,000/- p.m. So, I find that learned Tribunal has rightly taken income of deceased to be ₹3,000/- p.m.. However, Supreme Court in *Jitendra Khimshankar (supra)* has deducted 1/3 towards personal expenses of deceased, as the claimants were husband, daughter and father-in-law of the deceased whereas in the instant case, claimants are six in number and so, deduction has to be 1/4th and not 1/3rd towards personal expenses. Reliance placed upon Second Schedule of *The Motor Vehicles Act, 1988* by appellant's counsel to compute the notional income of deceased at ₹15,000/- p.m., is misplaced for the reason that Supreme Court in *Jitendra Khimshankar (supra)* while dealing with the accident of the year 1990 has assessed the notional income of deceased as ₹3,000/- p.m. and in the instant case, accident is of the year 2005 and so, the notional income of deceased has to be taken at ₹3,000/- p.m. There is no dispute about application of multiplier. The notional income of deceased is assessed as under:-

$$₹36,000 \text{ minus } 1/4^{\text{th}} = ₹27,000 \times 15 = ₹4,05,000/-$$

6. Under the non-pecuniary heads, compensation granted appears to be on the lower side. In view of Supreme Court's decision in *Rajesh and Others v. Rajbir Singh and Others*, (2013) 9 SCC 54, the compensation awarded under the head of "loss of love and affection" is enhanced from

₹60,000/- to ₹1,00,000 and under the head “*funeral expenses*” is enhanced from ₹20,000/- to ₹25,000/-. This Court finds that respondents-claimants are also entitled to compensation under the head of “*loss of consortium*”, as Supreme Court in *Jitendra Khimshankar (supra)* has granted compensation of ₹1,00,000/- under this head to deceased's husband.

7. This Court is conscious of the fact that in the light of *Ranjana Prakash & ors. Vs. Divisional Manager & anr.* 2011 (8) Scale 240, in an appeal filed by Insurer seeking reduction of compensation, the quantum of compensation granted to respondents-claimants cannot be enhanced in the absence of any cross-objections by claimants. However, the reassessment of compensation can be done under various heads but the total of compensation awarded cannot exceed the one granted by Tribunal. Although respondents-claimants are entitled to compensation of ₹6,30,000/-, which is more than the awarded compensation of ₹6,20,000/- so, in view of Supreme Court's decision in *Ranjana Prakash (supra)*, quantum of compensation granted is maintained.

8. With aforesaid observations, this appeal and application are disposed of.

9. Statutory deposit, if any, be released to appellant-Insurer as per rules.

(SUNIL GAUR)
JUDGE

MARCH 29, 2017

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