

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

Date of Decision: February 13, 2017

(i) + **MAC.APP. 625/2008**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Advocates

Versus

NIRMAL GUPTA & ORS. Respondents

Through: Mr. Saurabh Sharma, Advocate for
respondent for claimants-
respondents

(ii) + **MAC.APP. 145/2009**

NIRMAL GUPTA AND ORS. Appellants

Through: Mr. Saurabh Sharma, Advocate

Versus

SUBHASH CHAND AND ORS. Respondents

Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Advocates for respondent
No.3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Impugned Award of 18th September, 2008 grants compensation of ₹15,45,000/- with interest @ 7.5% *per annum* to claimants on account of death of one *Arvind Kumar Gupta*, who was a businessman aged 42 years, in a road accident on 27th December, 2006. In the above-captioned

first appeal, Insurer seeks reduction of compensation granted whereas in the above-captioned second appeal, claimants seek enhancement of compensation.

With the consent of learned counsel for the parties, the above-captioned two appeals have been heard together as they arise out of common impugned Award and by this common judgment, they are being decided. The factual background of this case already stands noted in the impugned Award and so, needs no reproduction.

Since the challenge to impugned Award in these two appeals is on the quantum of compensation, therefore, it would suffice to note that learned Tribunal has proceeded to assess the income of deceased by relying upon, Income Tax Returns for the years 2002-03, 2003-04 & 2004-05 and 50% has been added towards '*future prospects*'. Under the non-pecuniary heads, the compensation awarded by learned Tribunal is as under:-

1.	Loss of Estate	₹5,000/-
2.	Funeral expenses, etc.,	₹10,000/-
3.	Loss of consortium	₹10,000/-
4.	Loss of love and affection	₹20,000/-

Learned counsel for Insurer seeks reduction of the compensation awarded by submitting that the tax deductions have not been taken into consideration while assessing the income of the deceased by relying upon Income Tax Returns and in view of Supreme Court's decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, addition of 50% towards '*future prospects*' is unjustified. Thus, it is submitted that

the compensation awarded needs to be suitably reduced.

On the contrary, learned counsel for respondents-claimants submits that learned Tribunal has rightly assessed the '*loss of dependency*', but compensation granted under the non-pecuniary heads is on lower side. So, it is submitted that the compensation granted needs to be suitably enhanced. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that deduction of income tax out of the income of deceased as reflected in the Income Tax Returns is not required for the reason that Supreme Court in *Amrit Bhanu Shali and Others v. National Insurance Company Limited and Others*, (2012) 11 SCC 738 has assessed the income of deceased on the basis of Income Tax Returns without deducting anything towards the tax payable.

Regarding grant of '*future prospects*', I find that it is unjustified for the reason that three Judge Bench of Supreme Court in *Reshma Kumari (supra)* has reiterated that in a case of self-employed or persons on fixed salary without provision for annual increments, the actual income at the time of death is to be considered without any addition towards future prospects. Accordingly, applying the afore-noted dictum to the facts of the instant case, the addition made towards '*future prospects*' is set aside.

Learned Tribunal has applied the multiplier of 15, but in view of Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, for the age group of 41-45 years, multiplier of 14 is to be adopted. Accordingly, while adopting the multiplier of 14, the '*loss of dependency*' is re-assessed at

₹9,01,133.33/-, (₹96,550/- X 14 X 2/3), which is rounded off to ₹9,01,140/-

As regards the compensation granted by learned Tribunal under the non-pecuniary heads, it is certainly on lower side and is accordingly enhanced as under: -

1.	Loss of Estate	₹50,000/-
2.	Funeral expenses, etc.,	₹25,000/-
3.	Loss of consortium	₹1,00,000/-
4.	Loss of love and affection	₹1,00,000/-

Thus, the total compensation payable to respondents-claimants is re-assessed as under: -

1.	Loss of Dependency	₹9,01,140/-
2.	Loss of Estate	₹50,000/-
3.	Funeral expenses, etc.,	₹25,000/-
4.	Loss of consortium	₹1,00,000/-
5.	Loss of love and affection	₹1,00,000/-
Total		₹11,76,140/-

In the light of aforesaid, impugned Award is modified in terms of this judgment. During the pendency of this appeal, Insurer had deposited the awarded amount and vide order of 31st March, 2009, the Registry was directed to partly release the awarded amount to claimants in the manner indicated in impugned Award. The balance amount of compensation, if any, payable to the claimants in terms of this judgment be released to claimants by the Registry and the excess amount deposited, be refunded to Insurer alongwith interest accrued thereon.

The statutory deposit, if any, made by Insurer be refunded to Insurer as per Rules.

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

(SUNIL GAUR)
JUDGE

FEBRUARY 13, 2017

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