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

Date of decision: March 24, 2017

+ **MAC. APP. No.45/2009**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr.Shoumik Majumdar, Advocate

Versus

SMT. SANTOSH BHARDWAJ & ORS. Respondents
Through: Mr.Arun Srivastava, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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1. Impugned award of 25th September, 2008, Motor Accident Claims Tribunal in Rohini Courts (*hereinafter referred to as the 'Tribunal'*) grants compensation of ₹4,87,168/- with interest @7.5% p.a. on account of death of a student aged 19 years in a road accident on 16th May, 2005. While taking notional income of deceased to be ₹3,493/- and after deducting one-third towards personal expenses and by applying multiplier of 16, the loss of annual contribution by deceased to her family is quantified by Tribunal as ₹4,47,168/-. After adding funeral expenses of ₹10,000/- and ₹30,000/- under the head of '*loss of love & affection*' the

total compensation granted comes to ₹4,87,168/-. While relying upon the evidence of maternal grandmother of deceased and evidence of maternal aunt (PW6) and other formal evidence, impugned award has been rendered.

2. Regarding invalid permit of offending vehicle in question, the appellant-Insurer had led evidence and on its basis recovery rights have been granted to appellant-Insurer qua driver/owner of vehicle in question. It is submitted by appellant's counsel that age of Claimant and not of deceased ought to have been considered for selection of multiplier and deduction towards personal expenses ought to have been 50 per cent and not one-third. The plea put forth by learned counsel for appellant-Insurer is that the maternal grandmother cannot be considered as a dependant and so, there was no loss of dependency and that the compensation payable is only under the head of '*loss of love and affection*' alongwith the funeral expenses. Thus, modification of the impugned award is sought in this appeal.

3. Counsel for the respondent-Claimant supports the impugned award and submits that there is no infirmity in the impugned award and this appeal ought to be dismissed. Nothing else has been urged by counsel for the parties.

4. Upon hearing and on perusal of the impugned award and evidence on record, I find that deceased was a diploma holder in computer application way back in the year 2005. It has come in the evidence of maternal grandmother of deceased that she had taken care of deceased since her childhood and has borne her expenses and the deceased was

living with her since she was 5 years old and there are no other legal heirs of deceased. The evidence of maternal grandmother of deceased finds corroboration from the evidence of maternal aunt of deceased. Pertinently, there is no cross-examination of these two material witnesses on the aspect of dependency. Otherwise also, in Indian society, children do take care of their parents/grandparents. Since there was no other liability of deceased, therefore, once she had started earning, then in common course of events, she would have taken care of her grandmother. So, judicial notice can be taken of the fact that she would have taken care of her grandmother, once she had started earning in the year 2005. A diploma holder in computer application would have earned more than ₹9,000/- per month in 2005 and after gaining experience by now, she would have earned a decent salary, had she been alive. This aspect cannot be overlooked while assessing the notional income of deceased. Learned Tribunal has erred in assessing notional income of deceased on minimum wages by considering deceased to be a matriculate.

5. In case of a student, Supreme Court in *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr.* (2015) 2 SCC 180 has reiterated as under:-

“10. The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs 18,000 per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the

principles laid down by this Court in this aspect in the above case.

11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi [(2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus 1/3 × Rs 3,00,000) × 13].”

6. While taking into consideration Supreme Court’s decision in *Ashvinbhai Jayantilal Modi (Supra)*, the monthly notional income of deceased is computed as follows:-

$\text{₹9,000/- p.m. plus addition of 40\%} = \text{₹12,600/- p.m.}$

7. Regarding the application of multiplier, Supreme Court’s decision in *UPSRTC Vs. Trilok Chand & Ors.* (1996) 4 SCC 362 and *New India Vs. Shanti Pathak* (2007) 10 SCC 1 has reiterated that age of Claimants or the age of deceased, whichever is higher has to be taken into consideration. Learned Tribunal has erred in applying multiplier of 16

while taking into consideration the age of deceased. The applicable multiplier as per the age of maternal grandmother of deceased is 5 and after deducting 50 per cent towards personal expenses, the *loss of dependency* of deceased is as under:-

$$\begin{aligned} & ₹12,600 \times 12 = ₹1,51,200 - 50\% \text{ (personal expenses)} = ₹75,600 \\ & \times 5 \text{ (multiplier)} = ₹3,78,000/- \end{aligned}$$

8. Compensation granted under the non-pecuniary heads appears to be on the lower side. In view of the Supreme Court's decision in *Rajesh Vs. Rajbir* (2013) 9 SCC 54, compensation under the head of '*loss of love & affection*' is liable to be enhanced from ₹30,000/- to ₹1,00,000/- and funeral expenses ought to be increased from ₹10,000/- to ₹25,000/-.

9. In the light of the aforesaid, the compensation which respondent-Claimant deserves is as under:-

<i>Loss of dependency</i>	₹3,78,000/-
<i>Loss of love and affection</i>	₹1,00,000/-
<i>Funeral expenses</i>	₹25,000/-
Total	₹5,03,000/-

10. Though respondent-Claimant is entitled to enhancement of ₹15,832/- but since respondent-Claimant has not filed any cross-objections to seek enhancement of compensation, therefore, the compensation granted by learned Tribunal is not disturbed. To adopt such a course, reliance is placed upon Supreme Court's decision in *Ranjana Prakash & ors. Vs. Divisional Manager & anr.* (2011) 14 SCC 639.

11. In the light of aforesaid reasoning, the quantum of compensation awarded and the recovery rights granted are maintained and this appeal is accordingly disposed of.

12. Statutory deposit, if any, be refunded to appellant-Insurer as per rules.

(SUNIL GAUR)
JUDGE

MARCH 24, 2017
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