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

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Decided on: 23rd May, 2017

+ **MAC.APP. 1013/2014 & CM Nos.18289-90 & 44841 of 2016**

NATIONAL INSURANCE CO LTD. Appellant

Through: Mr. Arihant Jain for Mrs. Shantha
Devi Raman, Advocate.

Versus

BEENA DEVI & ORS. Respondents

Through: Mr. Anshuman Bal, Advocate for
Respondents No. 1 to 3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. A motor vehicle accident on 05.12.2011 claimed the life of one Mr. Rakesh Kumar Saini. His kin were awarded an amount of Rs.44,13,304/- alongwith interest at the rate of 7.5% per annum from the date of the filing of the claim petition i.e. 22.12.2011 till its realization. Of the amount awarded, a sum of Rs.41,78,304/- was granted towards loss of dependency while the remaining amount was for non-pecuniary compensation. He was survived by his wife, two children and mother. The latter has since passed away.

2. The appellants have questioned the computation of loss of dependency on the ground that addition of 30% towards future prospects

to the income of the deceased is erroneous in view of the dicta of the Supreme Court in ***Reshma Kumari Vs. Madan Mohan (2013) 9 SCC 65***, which held that 30% addition is permissible if the deceased was between the age group of 40-50 years and no addition is permissible beyond the age of 50 years. The appellant's argument is specious because in the aforesaid judgement, the last sentence of para 39 provides a window for departure from the above principle, in extraordinary circumstances. The Court notices that at the time of the accident, the deceased was 50 years and 5 months old. He would still be considered a 50 year old person i.e. his enjoyment of his 50th years would continue till he attained the age of 51 years. Therefore denying him the benefit of 30% addition towards future prospects would be unjust. In the circumstances, the addition of 30% future prospects for a 50 year old person is legitimate and just.

3. The other ground of challenge is that the deceased came under the category of income-tax payers; hence, the TDS of 10% should have been deducted from his salary amount above Rs.1,80,000/- upto Rs.5,00,000/-. The learned counsel further submits that although transport allowance of Rs.2,528/- has been deducted, deduction on account of dearness allowance and conveyance allowance of Rs.75/- each ought to have been made as well. The Court finds reason in the contention, since the latter two allowances were personal in nature they would need to be deducted. However, the amount towards transport allowance could well have been used by the deceased for the benefit of the family also, such as conveyance to their school/college or place of work, while he was on his way to his office. In the circumstances, some element of transport allowance could have enured to the benefit of the family – say 50% of it.

Thus, the Court considers it just and proper that 50% of the aforesaid amount of Rs.2528/- (transport allowance) be added to the salary of the deceased as a loss of benefit to his survivors.

4. Accordingly, the compensation towards loss of dependency is re-computed as under: Salary taken at Rs.29,999 – (50% of Rs.2528 i.e. Rs.1264) – Rs.75 – Rs.75= Rs.28,585/- per month. Hence, the annual salary would be Rs.3,43,020/- (Rs.28,585 x 12); the taxable income comes to Rs.1,63,020/- (Rs.3,43,020 – Rs.1,80,000), thus the total TDS would be Rs.16,302/- (10% of Rs.1,63,020/-). The annual income of the deceased would be Rs.3,26,718/- (Rs.3,43,020 – Rs.16,302/-). The monthly income comes to Rs.27,226.5 (Rs.3,26,718 ÷ 12). After adding 30% towards future prospects, the monthly income of the deceased comes to Rs.35,394.45 (Rs.27,226.5 + Rs.8,167.95). Out of this one-fourth is to be deduced towards personal expenses, hence, the monthly loss of dependency would be Rs.26,545.88 (Rs.35,394.45 – Rs.8,848.61), which is rounded off to Rs.26,550/-. On the annual earnings applying the multiplier of 13, the loss of dependency would come to Rs.41,41,800/- (Rs.26,550 x 12 x 13). To this the non-pecuniary compensation of Rs.2,35,000/- is added.

5. The learned counsel for the beneficiaries submits that interest at the rate of 7.5% per annum granted on the awarded amount is on the lower side. The Court finds substance in the said contention. Keeping in mind the decision of the Supreme Court in *Municipal Corporation of Delhi vs. Association of Victims of the Uphaar Tragedy and Ors. (2011) 14 SCC 481* and the fact that this Court has consistently granted interest at the rate of 9% per annum, interest shall be payable at 9% p.a. Thus,

the total compensation payable would be Rs.43,76,800/- alongwith interest at the rate of 9% per annum from the date of filing of the petition i.e. 22.12.2011 till its realization.

6. It is noted that respondent No.4/mother of deceased has since passed away. Amended memo of parties is on record. There is no other claimant to her share. Let it be apportioned equally amongst respondents Nos. 1, 2 and 3. The awarded amount shall be released to the aforesaid beneficiaries in terms of the Award. After the Award is satisfied in terms of the aforesaid computation, the excess amount if any, alongwith proportionate interest, shall be refunded to the appellant. The statutory deposit too shall be refunded to the appellant.

7. The appeal alongwith pending applications stands disposed off in the above terms.

NAJMI WAZIRI, J.

MAY 23, 2017

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