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

\+ **<u>MAC.APP. 458/2017 & CM No.18276/2017</u>**

NATIONAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms.Archana Gaur, Advocate.

Versus

JEBUNANISA & ORS. ..... Respondents

Through: Mr. Pratap Singh, Advocate for Respondents No. 1 to 3 with Respondent No. 1 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 26.05.2017

1. A motor accident on the Sansad Marg Jantar-Mantar crossing in New Delhi took away the life of one Mohd. Salman on 04.03.2015 at about 3:45 pm. The Tribunal awarded compensation of Rs.17,23,384/- alongwith interest at the rate of 9% per annum from the date of filing of the DAR i.e. 15.04.2015. The various heads under which the compensation was granted are as under:-

"1.	Loss of dependency(Rs.6474x12x18)	=	Rs.13,98,384/-
2.	Loss of love and Affection	=	Rs.2,00,000/-
3.	Loss of Estate	=	Rs.1,00,000/-
4.	For funeral expenses	=	Rs.25,000/-
	Total	=	Rs.17,23,384/-

(Rs. Seventeen Lacs Twenty Three Thousand Three Hundred Eighty Four only).

2. The appellant has impugned the Award on the ground that while computing the loss of dependency, the Tribunal ought to have taken the multiplier considering the age of the mother of the deceased instead of the deceased in terms of the dicta of the Supreme Court in ***U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors., (1996) 4 SCC 36***. The Court would note that at the time of the accident the deceased was 20 years old and the claim petition was filed not only by his mother but by other siblings also, whose ages are as under:-

S. No.	**Name**	**Relationship**	**Age**
1.	Reshma	Sister	23 years
2.	Fatma	Sister	20 years
3.	Chand Mohammad	Brother	18 years

The father of deceased Mohd. Salman had predeceased him. Hence, the claimants had contended that he was the bread-earner of the family and was supporting all of them from his earnings Rs.18,000/- to Rs.20,000/- per month as a fruit vendor earning.

3. The deceased was a Matriculate. In the absence of any proof apropos the claimed earnings, the Tribunal took the prevailing minimum wages into account i.e. Rs.8,632/- per month, to which it added 50% towards future prospects i.e. Rs.12,938/- per month. Since the deceased was a bachelor, 50% was deducted as personal expenses in terms of the dicta of the Supreme Court ***in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*** and the multiplier of 18 was applied thereon. Hence, the quantum of loss of dependency was calculated at Rs.13,98,384/-.

4. The learned counsel for the appellant argues that for a self employed

person or a person not in the permanent employment, future prospects cannot be granted. The Court would note that by a Notification dated 01.04.2015, the minimum wages for a matriculate were enhanced to Rs.10,998/- per month, however, the deceased had passed away merely 26 days prior thereto. Ordinarily, the process of revision and notification of the minimum wages by the State takes approximately 8 to 10 months and the wages apropos the period prior to the notification become a subject matter of the wage revision exercise. Therefore, the date of the Notification would not necessarily be reflective of the actual rates prevailing on the date of the accident. For the purpose of a fair and just compensation, the Court would need to take into consideration the prevailing and realistic wages and not necessarily the minimum wages, which otherwise are the bare minimum that ought to be considered. The wages, which were revised 20 days later, can be taken to be applicable to the deceased. In the circumstances, the revised minimum wages of Rs.10,998/- for a matriculate will be applicable to the deceased. Since the deceased was earning his livelihood running a fruit stall i.e. his own enterprise, his earnings would surely be more than the minimum-wage. Accordingly, an addition of Rs.1940/- over and above the minimum wages totalling it to Rs.12,938/- (Rs.10,998/- + Rs.1940/-), is accepted as a fair and just compensation. In the circumstances, the amount calculated by the Tribunal cannot be faulted and the Court finds no reason to interfere with the same. In view of the above, the appeal alongwith pending application is dismissed.

5. At this stage, the learned counsel for the respondents/claimants upon instructions from respondent No.1/mother of the deceased, who is present in the Court and has been awarded 70% of the compensation amount, states

that respondent No.1 has to repay loans of Rs.5,00,000/- which were taken for upkeep of the family and is also in need of money to marry her elder daughter Reshma i.e. respondent No.2.

6. Accordingly, an amount of Rs.5,00,000/- shall be released to respondent No.1 from her share of the Award into her Bank A/c No.3220760866 maintained with the Central Bank of India, Dilshad Colony Branch, Delhi. The remaining amount shall remain in FDRs as directed in the Award. In case of financial exigency, the beneficiaries of the Award shall be free to move an appropriate application before the Tribunal.

NAJMI WAZIRI, J.

MAY 26, 2017

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