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

\+ MAC.APP. 983/2016, CM APPL. 43764/2016 (stay)

HDFC ERGO GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

REKHA DEVI & ORS ..... Respondents

Through: Mr. Jatinder Kamra, Adv. for R-1 & R2

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **20.04.2017**

1. This appeal impugns the award dated 24.09.2016 in petition No. 76703 of 2016 awarding compensation of an amount of Rs.8,64,000/- along with interest @ 9% p.a. from the date of filing of the petition on 10.09.2012 till the realisation of the same to the parents of the deceased minor. Relying upon the dicta of the Supreme Court in *Krishna Gopal vs. Lala Ram* 2014(1) SCC 244 the appellant contends that the amount of Rs.4,32,000/- granted towards composite non-pecuniary damages is illegal, arbitrary and exorbitant. However, the learned counsel for the respondent, refutes the same by relying upon the judgment of this Court in *Chetan Malhotra & Ors. vs. Lala Ram 2016 SCC 896 (Del)* in which the applicability of *Krishna Gopal* (supra) has been distinguished. In *Chetan Malhotra (supra)* it was observed as under:

> *"54. The argument of erosion of real value of money on account of inflationary trends apart, that the notional income of Rs.15,000/- per annum, as specified in the Second Schedule to MV Act, has become obsolete and cannot be a valid benchmark, was one consideration on which the decision of Supreme Court in case reported as Kishan Gopal Vs.*

Lala, 2014 (1) SCC 244 turned. In that case, the son of the claimants, aged ten years, had died in an accident that had occurred on 19-07-1992. The Supreme Court declined to adopt the income specified in the Second Schedule to MV Act and after assuming the notional income as Rs. 30,000/- granted the compensation in the sum of Rs. 4,50,000/- on account of loss of dependency besides Rs. 50,000/- under the conventional head."

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....

"71. Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (Rs.15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section

48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997- 1998 shall be treated as the "base year" and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :-

Rs.15,000/- x A ÷331

[wherein the figure of 'Rs.15,000/-' represents the notional income specified in the second schedule requiring inflation-correction; 'A' represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of '331' represents the CII for the 'base year']

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one-third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as "the multiplicand").

(v). For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii). For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).

(viii). After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary damages taking care of not only the conventional heads but also towards future prospects as awarded in R.K. Malik v. Kiran Pal (2009) 14 SCC 1.

(ix). The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.

72. The ruling in National Insurance Company Ltd. v. Farzana (2009 ACJ 2763) was rendered by a learned single Judge of this Court on 14.07.2009. Though it had built upon the dispensation in R.K.Malik (supra), given the effect of inflation elaborately discussed above, it has outlived its utility for cases relating to later years. At the same time, it must be noted, that the view in Farzana (supra) has governed the field till date, inasmuch as it has been followed by other single benches of this Court as also by tribunals in various cases. Given the modified method of calculation as is being determined by this judgment, it is possible that in some of the earlier decided cases, the compensation computed on revised lines may fall below the amount of ₹3,75,000/- computed in Farzana (supra). Since the awards in such earlier

> *decided cases were granted with reference to the ratio in Farzana (supra), it will not be fair to order any modification in cases that relate to the period on or after 10.05.2000 (the date of cause of action in Farzana) so as to reduce the awards below the said amount of ₹3,75,000/-, particularly as some of such awards may already have been satisfied, including on account of interim orders of this Court.*
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> *73. Thus, in cases founded on cause of action arising on or after 10.05.2000, the amount of compensation shall not in any case be less than ₹3,75,000/- which was awarded in the case of National Insurance Co. Ltd. v. Farzana (2009 ACJ 2763)."*

3. The Tribunal has computed the compensation in terms of the formula and the directions of this Court as laid down in *Chetan Malhotra (supra)*. There is no reason to interfere with the same. The appeal is without merit and is accordingly dismissed.

4. The Registry shall release the statutory amount of Rs.25,000/- as deposited by the appellant, within four weeks from today.

NAJMI WAZIRI, J

APRIL 20, 2017/acm