$~15

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

\+ **MAC.APP. 1020/2016 & CM No.44770/2016**

NEW INDIA ASSURANCE CO LTD. ..... Appellant
Through: Ms. Seema Gulati, Advocate.

Versus

PUSHPA & ORS. ..... Respondents
Through: Mr. Tarunesh Kumar, Mr. Ramesh Sharma, Ms. Rishina Parashar and Ms. Sweety Chattopadhyay, Advocates for Respondents No. 1 to 5.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 22.05.2017

1. The appeal has impugned the Award on the ground that addition of 50% was made towards loss of future prospects. In a motor vehicle accident dated 18.09.2013 the victim suffered fatal injuries for which the Tribunal granted compensation as under:-

Loss of financial dependency	Rs.28,86,408/-
Loss of Consortium to Wife	Rs. 1,50,000/-
Loss of love and affection	Rs.1,50,000/-
Loss of Estate	Rs.50,000/-
Funeral Expenses	Rs.50,000/-
Total	Rs.32,86,408/-

(Rupees ThirtyTwo Lakh Eighty Six Thousand Four Hundred &Eight Only)”

2. The first component towards loss of financial dependency was calculated on the basis of the accepted earnings i.e. Rs.13,363/- per month or Rs.1,60,356/- per annum. To this 50% was added towards loss of future prospects. The rationale for doing so was that initially the deceased Pawan Kumar Sooda was working as Assistant from 27.08.2012 to 18.09.2013 in Fortis Hospital, Noida and the remuneration he took as total cost to the company was Rs. 15,327/- per month. His appointment letter reflected that his probation period of six months was extendable. His salary was to be reviewed on 01.01.2014 but he passed away on 18.09.2013. Ordinarily he would have retired from such employment at 58 years. The Tribunal considered the dicta of the Supreme Court in ***National Insurance Company Ltd, Vs. Indira Srivastava & Ors*** **(2008) 2 SCC 763.**, which held that the pay packet of an employee not only includes the money which he takes home at the end of the month but also other perks which are beneficial to the members of the entire family. Hence, the deduction, towards transport and monthly performance allowances from the salary of the deceased were not allowed. The relevant portion of the impugned order reads as follows:-

> *" In the instant case, it has been brought on record that the deceased was employed since 27.08.2012 till the date of death on 18.09.2013. Further, the probation period as per appointment letter (Ex.PW2/4) was only for a period of six months unless extended by the Management. There is no evidence on record that the employment of the deceased was temporary and even as per the appointment letter deceased was to retire at the age of 58 years. In view of above, since the deceased was aged about 32 years and in permanent employment, an addition of 50% be made towards future prospects for the purpose of assessment of compensation."*

3. The fact that the deceased continued in the employment even after the expiry of the probation period showed that his work and services were considered satisfactory by the employer otherwise he would have been removed from the service.

4. Furthermore, this Court in MAC. APP.No. 1140/2011 titled ***ICICI Lombard General Insurance Company Ltd. Vs. Renu and Ors.*** (decided on 12.03.2015) held that :-

> *"18. The counsel for the appellant has also contended that the deceased could not be said to be having a permanent job and for this reason compensation towards future prospects ought not to have been computed on the basis of 50% increase in income. I have wondered as to what can be construed as 'permanent employment'. In common parlance it is only employment with the government or with the public sector which is understood as permanent. However in legal terms, there is no permanency in employment in the government also. Employment even in the government can be brought to an end by the government on account of misconduct, closure of department etc. The same is the position in most of the private sector also. In fact, as has been wisely said, it is only the change which is permanent / constant, else nothing is permanent or constant in this world. I am also unable to take a view that the Supreme Court, by use of the expression "permanent job" in Sarla Verma (supra) while laying down the thumb rule for the increase in income to be taken into account for computing compensation on account of future prospects, intended to create two classes of victims of fatal accidents, one government employees and the other private employees. Such a classification would have no rationale / nexus whatsoever to the computation payable on account of a motor accident. Experience of life also shows that often the increases in wages are much higher in the private sector than in the government. The purport of the provisions of the Motor Vehicles Act, 1988 is to provide just compensation and I am of the opinion that in computing such just compensation no classification as*

aforesaid can be introduced."

5. In view of the above discussion regarding the continuation in his employment even after the expiry of the probation period; his retirement age being 58 years, as per the letter of appointment, the employment of Pawan Kumar Sood at Fortis Hospital, Noida would be deemed to be permanent. Therefore, the addition of 50% towards future prospects in the income of the deceased cannot be faulted. The appeal is without merit. The Award along with the pending application is dismissed. The amount awarded with interest accrued thereon shall be released to the beneficiaries of the Award in the terms specified in it. The statutory deposit shall be refunded to the appellant.

NAJMI WAZIRI, J.

MAY 22, 2017
sb