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

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Date of Decision: 29th MAY, 2018

+ **MAC.APP. 442/2018**

ABDUL RASHID & ORS

..... Appellants

Through: **Mr. Jatinder Kamra, Adv.**

versus

SANJAY & ORS

(THE NEW INDIA ASSURANCE CO LTD) Respondents

Through: **Mr. R. K. Tripathi, Adv. for R-3.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

CM APPL. 18742/2018

1. The delay of 20 days in filing the appeal is condoned. Application is disposed of.

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2. The appellants have challenged the award of the Claims Tribunal whereby the compensation of Rs.70,000/- has been awarded to the appellants. The appellants are seeking enhancement of the award amount.

3. On 03rd May, 2015 at about 5:30 PM, Abdul Rashid was going on his motorcycle from Meerut to Delhi with his wife, Hazra who was sitting as

pillion rider when a speeding truck bearing No. HR-69A-6771 came from Garh side and hit the motorcycle which resulted in fatal injuries to Hazra. The deceased Hazra was aged about 62 years and was survived by her husband and nine major children. The deceased was doing tailoring work.

4. The Claims Tribunal awarded Rs. 40,000/- towards loss of consortium, Rs. 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. However, the Claims Tribunal declined to award any compensation for loss of dependency on the ground that her husband cannot be said to be financially dependent on his deceased wife. Total compensation awarded is Rs.70,000/-. Para 25 of the impugned award is reproduced hereinunder;

“25. Compensation in the fatal case of Hazra:- As per the aadhar card of deceased Smt. Hazra the age of deceased was 62 years on the date of the accident i.e. 03.05.2015. It is stated that she was working as Ladies Tailor and was earning Rs.15,000/- p.m. The deceased is survived by 9 legal representatives who were married children of deceased. PW1 Abdul Rashid, in his cross examination stated that his all children are married and are doing thrift jobs and all are independent. Husband of the deceased namely Abdul Rashid can also not be said to be financially dependent upon his deceased wife as he had his own income. Since none of the LR of the deceased was financially dependent on her, there would be no financial loss to any of the LRs of the deceased. In these circumstances, they would be entitled only to non-pecuniary damages.”

5. Learned counsel for the appellants submits that the appellant /husband is doing the work of Kabadi (scrap dealer) in Badarpur area on bicycle/tricycle and he was running the household with the joint income of himself and his wife who was working as a tailor and was earning

Rs.15,000/- per month. It is submitted that the finding of the Claims Tribunal that her husband was not dependant on her is perverse and is liable to be set aside.

6. It is submitted that the appellant has filed a detailed affidavit with respect to the occupation and income of appellant No.1 as well as of his deceased wife before this Court.

7. This Court is satisfied that the impugned award declining award amount to appellant No.1 under the head of loss of dependency is perverse and is liable to be set aside. The deceased Hazra, widow of appellant No.1, was aged about 62 years at the time of the accident and was doing the work of ladies tailor. Her income is taken as Rs.9,048/- per month as minimum wages of unskilled person, $\frac{1}{3}^{\text{rd}}$ of her income is deducted towards personal expenses considering that all children were major and multiplier of 7 is applied to compute the loss of dependency as Rs.5,06,688/-. Adding Rs. 40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses, the total compensation is computed as Rs.5,76,688/-.

8. The appeal is allowed and award amount is enhanced from Rs.70,000/- to Rs.5,76,688/- along with interest @ 9% per annum from the date of institution i.e. 31st July, 2015 till realization.

9. Respondent No.3 is directed to deposit enhanced award amount with the Registrar General of this Court within four weeks.

10. List for disbursement of compensation amount on 18th September, 2018.

11. Copy of this judgment be sent to the ACR Committee of the Judicial Officer who passed the award dated 15th November, 2017.

12. Copy of this judgment be given *dasti* to both the counsels for the parties under the signature of Court Master.

J.R. MIDHA, J.

MAY 29, 2018

Pallavi

