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

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Date of Decision: 07th March, 2018

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+ MAC. APP. 376/2017 and C.M. Appl. 14647/2017

**BHARTI AXA GENERAL
INSURANCE COMPANY LTD**

..... Appellant

Through: Mr. Navneet Kumar and Mr. Vikas
Bhadana, Advocates

versus

UPENDER KUMAR SHASTRI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
respondent No.1 to 4

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+ MAC. APP. 126/2018

UPENDER KUMAR SHASTRI & ORS

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

BHARTI AXA GENERAL INSURANCE CO LTD Respondent

Through: Mr. Navneet Kumar and Mr. Vikas
Bhadana, Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants have challenged the award of the Claims Tribunal whereby the compensation of Rs.30,05,000/- has been awarded to the appellants in MAC APP.126/2018. The appellant in MAC APP. 376/2017 is

seeking reduction of the compensation amount whereas the appellants in MAC APP.126/2018 are seeking enhancement of the compensation amount.

2. The accident dated 01st September, 2014 resulted in the death of Deepti. The deceased was aged 18 years at the time of the accident and was a student of B.A. (Hons) in Kamla Nehru College, Delhi University. The Claims Tribunal took the earning capacity of the deceased as Rs.40,000/- considering her brilliant academic record and her aspiration to join Indian Police Service. Relevant portion of the award is reproduced hereunder: -

“As far as the income of the deceased is concerned, admittedly she was a student when she met with an accident and died. In order to assess her notional income her academic record is required to be seen. PW-1 in his affidavit has alleged that he deceased was doing BA hon. 1st year course from Kamla Nehru College, she was brilliant in her studies and extraordinary in sport and since her childhood she was maintaining a good academic record and was doing very well at sports at state and national level and secured top positions. It is stated that the deceased has secured 90% marks in her XIIth class and she secured 99% marks in Geography and secured all India top position, she was congratulated by the then HRD Minister Smt. Smriti Zuben Irani vide letter dated 02.06.2014 i.e. Ex.PW1/5. It is stated that the deceased was sincere, hard working student and she was preparing for civil services examination as she wanted to join Indian Police Services. Her educational and sports record were proved as Ex.PW1/6 (Colly) which shows that the deceased was a brilliant student, both in education as well as in sports and it can be safely assumed that she was having a bright future. Her various certificates of merits have been proved on record with respect to her various achievements in sports and education. But it is known to all that life is full of probabilities and

improbabilities and nothing can be said with certainty about anyone's future and the same is with the deceased also but having regard to her achievements in her educational carrier as well as in supports and the fact that she was studying in well reputed college of Delhi University, it can be said with certainty that had she lived longer she must have achieved success in her life. In the totality of facts and circumstances, of the case, the evidence on record and having regard to the uncertainties of life and the fact that the deceased was a girl and she would have married after completing her education and establishing in her carrier in all probabilities and the fact that her parents were not financially dependent upon her at the time of her death, I am of the opinion that it cannot be assumed at this stage that she in all circumstances, would have cleared civil services examination in future, but it can be said with some certainty that even if she would not have cleared he civil services examination, she would have had a great future. Even if she would have worked in a private sector or even if she would have cleared a clerical exam in Govt. Sector, after completing her education she must have got an initial salary of Rs.40,000/- per month. Therefore, the loss of estate would come to Rs.40,000/- x 12 x 18 = Rs.86,40,000/-."

(Emphasis supplied)

3. The Claims Tribunal awarded loss of estate of Rs.28,80,000/- by taking the earning capacity of Rs.40,000/- per month, applying the multiplier of 18 and taking the loss of estate as 1/3. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.30,05,000/-.
4. Learned counsel for the appellant in MAC APP. 376/2017 urged at the time of hearing that the minimum wages be taken into consideration to

compute the compensation. It is submitted that the earning capacity of Rs.40,000/- per month taken by the Claims Tribunal is on a higher side.

5. In the recent judgment dated 09th August, 2017 in MAC. APP. 993/2013 titled **HDFC Ergo General Insurance Co. Ltd. v. Rattan Kumar Dwivedi**, this Court has taken the earning capacity of a student of B.Com (Hons.) with an extraordinary brilliant record of sports as Rs.25,000/- per month. Relevant portion of the judgment is reproduced hereunder: -

“14. In the present case, the deceased Apoorva Dwivedi was a student of B.Com (Hons.) at Bharti College, Delhi University. She was a sports person having won 86 prizes/certificates in athletics, track and field, gymnastics, baseball, soft ball, basketball, cricket etc. The deceased had secured second place in team event at 40th Delhi State Gymnastics Championship, 2001; best athlete of the year 2003-2004 at school and zonal level and first position in baseball in 52nd National School Games conducted by School Games Federation of India held from 23rd December to 28th December, 2006. The deceased was sports captain of Holy Child Senior Secondary School, Tagore Garden, New Delhi for the academic year 2007-08. Judicial notice is taken of the notifications for government job for sports persons as well as advertisements in private jobs for sports persons, under which a graduate sports person can secure a job with a job in the pay scale of Rs.30,000/- to Rs.40,000/- per month. Considering that the deceased was a sports person with an extraordinary talent in various sports, namely, athletics, track and field, gymnastics, baseball, soft ball, basketball, cricket etc. and having been awarded 86 prizes/certificates, it is presumed that the deceased would have earned Rs.25,000/- per month after completing her graduation.....”

(Emphasis supplied)

6. The present case relates to an accident dated 01st September, 2014 whereas ***Rattan Kumar Dwivedi*** (supra) related to the accident of the year 2008. This Court is of the view that the earning capacity of Rs.40,000/- taken by the Claims Tribunal is on a higher side. The earning capacity of the deceased is reduced to Rs.27,600/- per month. The deceased was unmarried and, therefore, 50% has to be deducted towards her personal expenses. The deceased was 18 years of age, therefore the multiplier of 18 has to be applied according to the age of the deceased in terms of ***National Insurance Co. Ltd. v. Pranay Sethi*** 2017 SCC Online SC 1270.

7. Taking the earning capacity of Rs.27,600/- per month, deducting 50% towards the personal expenses and applying the multiplier of 18, the loss of dependency is computed as Rs.29,80,800/-. Rs.24,200/- is awarded towards loss of estate and funeral expenses. The appellants in MAC APP.126/2018 are entitled to a total compensation of Rs.30,05,000/-.

8. For the reasons stated above, the compensation of Rs.30,05,000/- along with interest @ 9% per annum from the date of institution of the claim application i.e. 11th November, 2014 is awarded to the appellants in MAC APP.126/2018. However, the computation of compensation by the Claims Tribunal is set aside. The appeals as well as cross-objections are disposed of.

9. The appellant in MAC APP.376/2017 has deposited the entire award amount with the Claims Tribunal in terms of the order dated 22nd May, 2017 out of which Rs.12 lakh along with interest have been released to respondents No.1 and 2 in MAC APP.376/2017 and the balance amount is lying in fixed deposit. The Claims Tribunal is directed to send the status of the balance amount lying in the FDR.

10. The appellants in MAC APP.126/2018 shall remain present in Court on the next date of hearing along with the documents mentioned in the order dated 18th January, 2018.
11. Statutory amount be refunded back to the appellant in MAC APP.376/2017.
12. Pending application is disposed of.
13. List on 27th April, 2018 at 02:30 p.m.
14. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

MARCH 07, 2018
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J.R. MIDHA, J.

