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

% *Decided on: 17.09.2019*

+ MAC.APP. 266/2019

RAM VISHAL GUPTA & ORS

..... Appellants

Through: Mr. S.N. Parashar, Advocate.

versus

SHOKEEN & ORS (CHOLAMANDLAM GEN INS CO LTD)

..... Respondents

Through: Mr. Pankaj Gupta, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the award of compensation dated 11.05.2018 passed by the learned MACT in Suit No. 503/2017, on the ground that it is on the lesser side. The deceased had attained a degree in Bachelor of Computer Applications (BCA) and was pursuing his Masters in Computer Application (MCA) from a private institute namely, Krishna Institute of Engineering and Technology, Ghaziabad. He had claimed to be earning Rs. 30,000/- per month by imparting tuition. This earning was not proven. The claimants had put forth documents to show that the students who passed out from the said institution would be getting approximately Rs. 4 lacs per annum. However, the learned Tribunal had not taken the same into consideration. It has reasoned that employment of an MCA is dependent on

a host of factors, such as the individual merit of the candidate, his response to the queries by the prospective employers, his performance, his personality; etc. as well as economic condition prevailing in the industry and the overall robustness of the economy. It thus concluded that all those who qualify MCA from KIET will not necessarily get an annual compensation package of Rs. 4 lacs per annum. On the contrary, as per the data i.e. Exhibit PW1/5 supplied by KIET, the minimum annual compensation offered in 2017 was Rs. 1.86 lacs and the maximum was Rs. 3.50 lacs i.e. salary offered ranged between Rs. 15,500/- per month to Rs. 19,000/- per month.

2. The impugned order has reasoned as under:-

“19. The age of the deceased at the time of accident was 21 years as per his educational certificate (Mark A). It is stated that the deceased was MCA 2nd year student of KIET (Krishna Institute of Engineering and Technology), Ghaziabad and was also imparting tuition and was earning Rs.30,000/- per month. It was argued on behalf of the petitioner that as per the placement record of KIET, income of the deceased should be assumed @ Rs.4 Lacs p.a., it being the average compensation package offered to the candidates in campus placement. The argument raised does not appeal. The deceased was a student of MCA 2nd year. The placement of candidates depend upon various factors including track record of the candidate, his response to the queries raised by the prospective employers, his performance, his personality etc. etc. As such, it cannot be assumed that all those who qualify MCA from KIET will get an annual compensation package of Rs.4 Lacs p.a. Even as per the data Ex. PW/1/5 supplied by KIET the minimum annual compensation offered in 2017 was Rs.1.86 Lacs whereas the maximum was Rs.3.50 Lacs, In other words the salary offered

ranged between Rs.15,500/- per month to about Rs.19,000/- per month to those who qualified MCA and were hired in campus placement. As the deceased was only a student of MCA and hiring depend on various factors as noted above, after passing MCA, notional salary can not be assumed.

20. There is no documentary evidence of occupation of deceased that he was earning Rs.30,000/- pm by imparting tuition. Since the accident took place at Muradnagar, U.P. and the deceased was also resident of U.P., the minimum wages applicable to UP shall apply in this case. Hence, income of deceased is taken as per the Minimum Wages Act For skilled category (as he was graduate at the time of accident) which was Rs.9119/- p.m. on the date of accident Deceased was unmarried and as such the deductions For personal expenses are to be effected at the rate of 50% of monthly salary.”

3. The learned counsel for the appellant relies on the dicta of the Supreme Court in **Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr.** (2015) 2 SCC 180. He submits that in a related circumstance, the Supreme Court has granted a higher compensation apropos a 19 year old medical student, who was pursuing his MBBS course but lost his life on account of a motor-vehicular accident. The Supreme Court had referred to the decision in **Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr.** (2010) 10 SCC 254, and had found it appropriate to assume his future income as Rs. 25,000/- per month in the year 2013 apropos the accident which had occurred in the year 2002. It reasoned as under:-

“9. We have heard the learned counsel for the parties. In our considered view, the deceased was 19 years old and was pursuing his medical degree with good marks at the time of the

accident. With respect to the future income of students pursuing professional courses we refer to Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254: (2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258] , wherein this Court held as under: (SCC p. 258, para 14)

“14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs 3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis.”

10. The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs 18,000 per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case.

11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation

and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. "

4. In **Ashvinbhai Jayantilal Modi** (*supra*), the Court had assumed Rs. 60,000/- per annum, as the earnings of the student who was still pursuing his degree in Bachelor of Engineering (Mechanical) from a prestigious institute like B.I.T. It had considered that such students were interviewed by big companies such as Tata as well as Reliance Industries and have been offered pay packages of upto Rs. 3.5 lacs p.a. It was reasoned that even a higher package was not to be considered for BE (Mechanical) Graduate from BIT. A person so qualified, if he decided to join government service could have gotten employed and he would have been put in the pay scale for Assistant Engineer for which he would have earned atleast Rs. 60,000/- per annum. The said amount was taken as the loss of his future earnings.

5. What is gleaned from the above is that the circumstance of each individual will have to be seen apropos her/his academic record, the Institute or the University from which the person was pursuing the academic/professional course and the likely employment which such a person would get or other economic activities that would engage him for remuneration. In each of the cited cases, the victims of motor vehicular accident were still pursuing their studies and despite the improbabilities of life, the Court had assumed that they would qualify and/or would otherwise in due course, be employed or earn a certain amount per month. In the present case, the calculation of loss of income was based simply on the minimum wage

notified for a Graduate. If the deceased was pursuing his 2nd year in MCA, he would have been a cut above the other students who have completed only a BCA. Upon completion of MCA, he would, in effect, be more qualified and would be more likely to get employed and with a higher pay package than the students who were merely BCA degree holders. The learned counsel for the appellant submits that Krishna Institute of Engineering and Technology, Ghaziabad was affiliated with Dr. A.P.J. Abdul Kalam Technical University at Lucknow and it had placed on record the minimum and the maximum pay packages offered to its students through campus placements.

6. The appellant also relies upon the judgment of this Court in ***Bharti Axa General Insurance Company Ltd vs. Upender Kumar Shastri & Ors.*** MAC. APP. 376/2017 decided on 07th March, 2018, wherein the deceased, aged 18 years was a student of B.A. (Hons.) at Kamla Nehru College, Delhi University. The learned Tribunal assessed the earning capacity of the deceased at Rs. 40,000/- but this Court reduced the amount relying, inter alia, upon the judgment in ***HDFC Ergo General Insurance Co. Ltd. v. Rattan Kumar Dwivedi*** in MAC. APP. 993/2013 decided on 09th August, 2017, wherein the earning capacity of B.Com (Hons.) student was taken as Rs. 25,000/- per month. It was reasoned as under:-

“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.....”

7. In the instant case, the deceased was 23 years old on the date of the accident in the year 2017. The applicable minimum wage in Delhi at that time was Rs. 17,916/- for graduates. Surely a person holding a BCA degree and/or pursuing 2nd year of MCA would get a higher amount. For a 19 year old medical student, the Supreme Court in **Ashvinbhai Jayantilal Modi** (*supra*) had, in 2015, considered prospective salary as Rs. 25,000/- for an accident which happened in the year 2002; while in **Bharti Axa General Insurance Company Ltd vs. Upender Kumar Shastri & Ors.** (*supra*) the Court had considered minimum monthly earnings at the rate of Rs. 27,600/- for the accident that happened in 2014 for an 18 year old student of B.A. (Hons.). With the passage of time, pay packages linked to inflation and the amount payable would also increase. In view of the above, for the instant case, the minimum amount payable to a student pursuing his second year Masters in Computer Application, is taken as Rs. 25,000/.

8. In the case of ***Bharti Axa General Insurance Company Ltd vs. Upender Kumar Shastri & Ors.,(supra)***, it was held as under:-

“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/-.”

9. In the present case, the deceased had scored 63% marks in Class XIIth and 65% in BCA and 80% in 1st semester of MCA from the private institute at Ghaziabad as mentioned hereinabove, whereas in the case of ***Bharti Axa General Insurance Company Ltd.*** (*supra*) the student had secured 90% marks in her class 12th Board examination and 99% in Geography and had secured the topmost position in the country; she was studying at Kamla Nehru College, Delhi University. The academic standing of both the candidates are different.

10. Similarly in ***Ashvinbhai Jayantilal Modi*** (*supra*), the Court had considered a medical student who could have had a bright future because today medical practice is one of the most sought after and rewarding professions and a doctor would ordinarily not be out of job. Therefore Rs. 25,000/- as future income was considered as just, in the facts of that case. In the present case, however, the circumstances are different.

11. According to the data provided by KIET, the minimum annual compensation offered to a BCA graduate was ranged between Rs. 15,500/- to Rs. 19,000/- per month (sic). In the circumstances, a very high amount would not be justified. It is to be borne in mind that in the aforecited two cases, the individual merit of the candidates were starkly noticeable alongwith the fact that they were studying in prestigious Institutes. However, the records of the deceased have not been placed on record in this regard.

12. Additionally, each of the claimants i.e. parents of the deceased are also entitled to compensation towards 'loss of consortium (filial)' and 'loss of love and affection' @Rs. 40,000/- and Rs. 50,000/- respectively, in terms

of the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546, i.e. Rs. 40,000/-x2 + Rs. 50,000/-x2= Rs. 1,80,000/-.

13. Accordingly, the total compensation payable is as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [25,000 (notional income) x 12 (months) x 18 (multiplier) x 140/100 (future prospects) x 50/100 (personal expenses)]	Rs. 37,80,000/-
2.	Loss of Consortium Rs. 40,000 x 2 (claimants)	Rs. 80,000/-
3.	Loss of Love and Affection Rs. 50,000 x 2 (claimants)	Rs. 1,00,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Loss of Estate	Rs. 15,000/-
TOTAL		Rs. 39,90,000/-

14. Therefore, the total amount payable to the appellant shall be Rs. 39,90,000/-. Let the aforesaid amount be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be disbursed to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

15. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 17, 2019/RW