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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment delivered on: 25.03.2019**

+ **MAC. APP. 396/2019 and CM APPL.13419-20/2019**

TATA AIG GEN. INSURANCE CO. LTD. ..... Appellant

Through: Mr. S.P. Jain, Advocate with Ms.Amandeep Kaur, Mr. Himanshu Gambhir, Mr. Abjijit Chakravarty and Ms. Akanksha, Advocates.

versus

JAGDISH & ORS. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

JUDGMENT

A.K. CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant-the insurer, in effect, assails the quantum of compensation that has come to be awarded in favour of the respondent Nos.-1 to 8 under Section 166 of the Motor Vehicle Act, in short 'the MV Act'.

2. Concisely, the relevant facts are that on 19.04.2014 at about 10:05a.m., Ms. Nanki Devi (since deceased)–the mother of the claimants-respondent Nos.1 to 8, sustained injuries in a motor accident involving car

bearing registration No.DL 7CP 3264, in short 'the offending vehicle', and on account of injuries so sustained, she died. It resulted into filing of DAR in the first instance followed by a claim petition under Sections 140 and 166 of the MV Act. Though, according to the claimants-the respondent Nos.1 to 8, the deceased, at the relevant time, was doing private service and earning Rs.20,000/- per month and contributing her entire income towards the household expenses, her husband having pre-deceased, the Tribunal has assessed her income applying the minimum wages applicable at the given time and having allowed 1/5th deduction towards personal expenses of the deceased and thus, assessed the loss of dependency of the claimants-respondent Nos.1 to 8 in the sum of Rs.5,74,896/-. Added to this, the compensation towards loss of love and affection of the eight respondents is assessed at Rs.1,60,000/- (Rs.20,000/- x 8). Besides that, a sum of Rs.15,000/- each has come to be awarded towards the funeral expenses and the loss of estate. Total compensation awarded thus, comes to Rs.7,64,896/-, rounded off, to Rs.7,65,000/-.

3. Mr. Jain, learned counsel for the insurer, during the course of hearing, did not dispute either the involvement of the offending vehicle or the liability of the insurer-the appellant, to pay the compensation. His stress, pressing the appeal, was directed only to the aspect of the quantum of compensation. In his submissions, the deceased was 65 years of age and unemployed, and, therefore, assessing compensation even on the premise of minimum wages, was erroneous. Also, in his submissions, none of her legal heirs-the respondent Nos.1 to 8, were dependent upon the income of the deceased, and, therefore, no compensation under the head of loss of

dependency was payable. Lastly, in his submissions, the age of the deceased was more than 65 years and it attracted a multiplier of 5 instead of 7.

4. The basic contention of Mr. Jain, learned counsel for the appellant that the deceased was unemployed and no compensation could be awarded under the head of loss of dependency, has an inherent fallacy. Assuming, the deceased was not employed, there cannot be denying the fact that she was the mother of eight children, the husband having pre-deceased her. No doubt, her children-respondent Nos.1 to 8, by themselves, would even be married, can it be, thereby, assumed that she would not be involved in domestic work of a house mother. The answer thereto, certainly has to be in the negative. In ***Jitendra Khimshankar Trivedi & Ors. vs. Kasam Daud Kumbhar & Ors.,*** (2015) 4 SCC 237, the Supreme Court adverting to such nature of the work rendered by a housewife, reiterated its observations, as under:

> "*12. Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in Arun Kumar Agrawal & Anr. vs. National Insurance Company Ltd. & Ors., this Court has held as under:-*
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> > *"The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the*

unforeseen costs in terms of deterioration of both human capabilities and social fabric.

Household work performed by women throughout India is more than US $612.8 billion per year (Evangelical Social Action Forum and Health Bridge, p.17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation"."

5. Families, in the Indian context, continue to be well knit and in view of the settled position of law, the contention raised to the contrary by Mr. Jain, learned counsel for the appellant, is wholly meritless and is rejected. For assessing the value of the services rendered by a housewife, even the surrounding circumstances like status of parties and the place, where the claimants reside, are equally relevant factors to be taken note of. Suffice to say, if, the claimants would be residing in a small village, the value of services rendered by the housewife could be assessed on a lower side whereas, in urban area like Delhi, it is bound to be higher. The deceased was, and, the claimants are pre-dominantly residents of Delhi and taking into account the totality of the facts and circumstances, the compensation towards loss of dependency applying the minimum wages of an unskilled worker, is quite conventional and no perversity can be seen in its application

by the Tribunal. Keeping in view the fact that 1/5th deduction towards personal and living expenses of the deceased has come to be made there-from, in the considered opinion of this Court, it is quite reasonable, especially, in view of the fact that she was the mother of eight children and would have the grand children, looking forward to showering of her blessings sometimes in the form of small gifts in cash or otherwise. It does not require any elaboration that in our society, the bonds of love and affection, besides dependency, are not restricted to only the first relations, but, travel beyond. As regards the application of multiplier of 7, the judgment in the case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.***, (2009) 6 SCC 121 speaks for it for the age group of 61 to 65 years. In view thereof, no infirmity is seen even in that regard in the impugned judgment-Award.

6. For the foregoing reasons, the appeal is meritless and is dismissed.

(A.K. CHAWLA)
JUDGE

MARCH 25, 2019
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