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

% *Date of decision: 08th March, 2019*

\+ LPA 124/2017 & CM. No. 6610/2017

GOVERNMENT OF NCT OF DELHI & ANR ..... Appellants

versus

LAXMI NARAYAN & ORS ..... Respondents

\+ LPA 125/2017 & CM. No. 6617/2017

GOVERNMENT OF NCT OF DELHI & ANR ..... Appellants

versus

URMILA DEVI ..... Respondent

\+ LPA 127/2017 & CM. Nos. 6625/2017 and 6627/2017

GOVERNMENT OF NCT OF DELHI & ANR ..... Appellants

versus

MD RAFIQUE & ANR ..... Respondents

\+ LPA 145/2017 & CM. No. 8099/2017

GOVT OF NCT OF DELHI & ORS ..... Appellants

versus

PRATAP & ORS ..... Respondents

\+ LPA 437/2017

LAXMI NARAYAN & ANR ..... Appellants

versus

GOVT OF NCT OF DELHI ..... Respondent

\+ LPA 438/2017

URMILA DEVI ..... Appellant

versus

GOVT OF NCT OF DELHI ..... Respondent

\+ LPA 451/2017

PRATAP & ANR ..... Appellants

versus

GOVT OF NCT OF DELHI ..... Respondent

\+ LPA 483/2017

NARENDER SINGH & ANR ..... Appellants

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent

\+ LPA 790/2017

MD RAFIQUE & ANR ..... Appellants

versus

GOVT OF NCT OF DELHI ..... Respondent

Present: Ms. Jyoti Taneja, Adv. for petitioners (in LPAs 124/2017, 125/2017, 127/2017 & 145/2017).
Ms. Aruna Mehta, Adv. for respondents (in LPAs 124/2017, 125/2017, 127/2017 & 145/2017).
Ms. Aruna Mehta, Adv. for petitioners (in LPAs 437/2017, 438/2017, 451/2017, 483/2017 & 790/2017).
Ms. Jyoti Taneja, Adv. for respondents (in LPAs 437/2017, 438/2017, 451/2017, 483/2017 & 790/2017).

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. As this batch of appeals arises from a common order passed by the learned Single Judge in a batch of writ petitions filed by the next of kin of the deceased, they are being disposed by this common order. Present batch of appeals arises out of similar unfortunate circumstances involving hapless victims, falling in unfenced, unprotected, uncovered and unguarded *ganda nala / manhole* and succumbing to their deaths. Learned single judge has considered the facts of all the individual writ petitions, and, while disposing off the writ petitions vide a common order dated 3rd November, 2016, seen fit to award compensation to the claimants/next of kin of the deceased.

2. The batch of four appeals being LPA Nos. 124/2017, 125/2017, 127/2017 and 145/2017 have been filed by the Government of NCT of Delhi challenging the order passed by the learned Single Judge on November 03, 2016 whereby the learned Single Judge has allowed the writ petitions filed by the respondents herein and granted compensation to the respondents herein of varying amounts for the unfortunate deaths of the respective victims, who died after falling in *ganda naala / manhole.*

3. The only submission made by the learned counsel for the appellant (in the aforesaid appeals preferred by the state) respondent is that the appellants cannot be held responsible for the death of the deceased persons as it is the case of the appellants that there are disputed question of fact, which require determination through oral evidence and could not have been gone into by the learned Single Judge in the writ petition.

4. The learned Single Judge after taking into consideration the age of the victims and the minimum wage applicable at that time, based on a formula, as noted by her in different judgments of the Supreme Court has granted the compensation.

5. The only plea taken by the learned counsel for the appellant does not impress us as it cannot be disputed that the deceased have died after they fell in the *ganda naala / manhole* which was slippery due to the negligent act of the appellant. The appeals are accordingly dismissed. No costs.

6. Insofar as the appeals filed by the appellants (being Next of kin of the deceased) being LPA Nos. 437/2017, 438/2017, 451/2017, 483/2017 and 790/2017, who were the petitioners before the learned Single Judge, are concerned, the same have been preferred only to the extent of seeking enhancement of compensation so awarded. These appeals have challenged the order of the learned Single Judge on the ground that the compensation awarded is less / on a lower side. Learned counsel for the appellants in these appeals has relied upon a judgment rendered by us in the case of **Rajeev Singhal & Anr. Vs. MCD (East Delhi Municipal Corp.) & Anr. LPA 379/2017**, wherein this Court has, after referring to the various judgments culled out a formula for computation of compensation. The relevant paras of the judgment are reproduced as under:-

> *23. Finally, with regard to quantification of the compensation, we may take note of the principles laid down in the case of Kamla Devi (supra). According to the aforesaid judgment and the principles that can be culled out on the complete reading of the law laid down in the case of Kamla Devi (supra), we find that the courts have evolved a two-tier mechanism for assessment of compensation. The mechanism and the formula laid down have two components. The first is the conventional*

sum or the standard compensation and the second is the pecuniary compensation.

xxx xxx xxx

28. We *find that in the present case both the appellants herein, namely, the father and the mother are earning. As per income tax returns of the appellants which are available on record, the average annual income of the appellant No.1 (father) based on the income tax returns for the three assessment years 2010-2011 to 2012-2013 indicates that his annual average income would come to Rs.2,22,741.66. Similarly, based on the assessment of the income tax returns of the aforesaid three assessment years, the annual average income of the appellant No.2 (mother) would come to Rs.2,03,471.66. It has been held in both these cases that the annual income of the parents can be taken into consideration for assessing the annual income of a child. If that be so, we find that the total annual income of parents comes to Rs.4,26,213.32 and if this is divided by 2, we can safely conclude that the annual income of the deceased child can be assessed at Rs.2,13,106.66. As per the formula laid down for calculating the pecuniary loss, a multiplier of 15 can be applied, considering the fact that the victim was 14 years of age. In the case of Varinder Prasad (supra), it was noted that as the deceased "would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income." Accordingly, the total annual income of the victim as indicated hereinabove, i.e. Rs.2,13,106.66, has to be divided by 2 to arrive at the same and thereafter it has to be multiplied with a factor namely 1.5 to counter inflation and erosion of the value of money and by multiplying it with 15 in terms of the multiplier*

provided in the second schedule of the Motor Vehicles Act, the pecuniary compensation works out to Rs.23,97,449.92.

29. As far as the standard compensation is concerned, it has to be assessed by taking the average CPI(IW) with base year 1982. In the year 1989 as per Kamla Devi's case, the Index was 171 and according to the Labour Bureau, Government of India's Notification of July, 2014, the CPI(IW) with the base year 2001 for the year 2014 is 252 and the linking factor based on the general Index for the particular year would be 4.63. Therefore, the CPI(IW) as in July 2014 would be 252 x 4.63 i.e. 1166.76 and applying the formula for calculation of standard compensation, it would be:

Rs.50,000 x 1166.76/171 = Rs.3,41,157.89."

7. The two components of total compensation are to be quantified as follows:

1. Pecuniary Compensation:

A	*Notional average annual income of deceased* *(Of the deceased, or of the parent, if minor)*
B	*Deduction* *(By a factor, on account of decreasing contribution to family income)*
C	*Multiplier Factor* *(In terms of judgement of Supreme Court in National Indsurance Co. Vs Pranay Sethi, (2017) 16 SCC 680)*
D	*Multiplier to counter inflationary aspects*

Formula:
((A – B) X C X D)

2. *Standard Compensation:*

   Formula:
   (50,000 X CPI (IW) Index for the concerned month (with base year 1982)) / 171
   ("171" being the Index Number in 1989)
   (May also use CPI(IW) Index number with base year 2001 and multiply the same with linking factor 4.63 to arrive at relevant index number with 1982 base)

8. For the purpose of arriving at the notional income of the deceased, we may refer to average monthly income of the deceased / parents of deceased. In LPA 437/2017, appellant No.1, father of the deceased, is stated to be running a shop of Kabari, and earning Rs.6,000/- per month. The appellant in LPA 438/2017 is stated to have been a rikshawpuller, earning about Rs.5,000/- per month. Parent of the deceased, in LPA 451/2017 is also stated to be running a Kabari shop, earning Rs.6,000/- per month. Father of the deceased, appellant in LPA 483/2017 is stated to be a motor mechanic earning Rs.8,000/- per month. Mother of the deceased, in LPA790/2017 is state to have passed away during pendency of the appeal, and consequently substituted by her LRs. As on the date of incidence, she is stated to have been working as a labourer, earning Rs.6,000/- per month. We may clarify that the aforenoted figures have been taken either from the appeals itself (LPA 437/2017 & LPA 438/2017) or from the compilations as filed by Ms. Aruna Mehta, learned counsel for the appellants, (pursuant to submissions made during the course of arguments) which have been taken on record.

9. On the basis of the aforesaid formula and taking into account the income as noticed above, we proceed to compute the compensation as under:-

For Pecuniary Compensation:

Appeal	A	B	C	D	Compensation E (Using formula noted above)
LPA 437/2017	6000 (per month) (72000 annual)	1/2 (Being unmarried)	18	1.5	Rs. 9,72,000/- (36000x18x1.5)
LPA 438/2017	5000 (per month) (60000 annual)	1/3 (Being married)	18	1.5	Rs.10,80,000/- (40000x18x1.5)
LPA 451/2017	6000 (per month) (72000 annual)	1/2 (Being unmarried)	15	1.5	Rs. 8,10,000/- (36000x15x1.5)
LPA 483/2017	8000 (per month) (96000 annual)	1/2 (Being unmarried)	15	1.5	Rs.10,80,000/- (48000x15x1.5)
LPA 790/2017	6000 (per month)	1/2 (Being unmarried)	15	1.5	Rs. 8,10,000/- (36000x15x1.5)

	(72000 annual)				

For Standard Compensation:

Appeal	Relevant CPI (IW) Index Number	Compensation F (Using formula noted above)
LPA 437/2017	529 (June 2005)	Rs. 154678/-
LPA 438/2017	529 (June 205)	Rs. 154678/-
LPA 451/2017	574 (August 2006)	Rs. 167836/-
LPA 483/2017	602 (June 2007)	Rs. 176023/-
LPA 790/2017	525 (March 2005)	Rs. 153508/-

Total Compensation:

Appeal	Total Compensation (E + F)
LPA 437/2017	Rs. 1126678/-
LPA 438/2017	Rs. 1234678/-
LPA 451/2017	Rs. 977836/-
LPA 483/2017	Rs. 1256023/-
LPA 790/2017	Rs. 963508/-

10. Appellants are therefore held to be entitled to compensation as computed above, along with interest @ 9% per annum to be calculated from the date of the presentation of the writ petition till actual payment is made.

Appeals are disposed of accordingly. No costs.

V. KAMESWAR RAO, J

CHIEF JUSTICE

MARCH 08, 2019/*jg*