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

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Decided on: 14.02.2020

+ **MAC.APP. 484/2019 & CM APPL. 18720/2019**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Mr. Manoj R. Sinha, Advocate.

versus

ARADHAN TEWARI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1
& R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On 23.04.2019 and 09.05.2019, the following orders were passed:

Order dated 23.04.2019

“The appellant is aggrieved by the impugned order dated 07.01.2019 passed by the MACT, Shahdara, Karkardooma Courts, Delhi, awarding a compensation amount of Rs.86,52,320/- (rounded off Rs.86,55,000/-) alongwith interest thereon at the rate of 9% per annum from the date of filing of the petition. It is the appellant’s case that the said Award is erroneous for the reasons that a presumptive income of Rs.56,108/- was on the higher side since there was nothing to substantiate or corroborate the same. It is argued that the deceased was only a Commercial Pilot Licence holder

since 2012 but had not been employed till 2015. Furthermore, it is argued that the claimants had not produced any document to show that the deceased had cleared the written examination and interview of Jet Airways and that he was offered a monthly salary of Rs.1,70,000/-. It is argued that the appellant was without a job from 2012-15 and it could not be presumed that he would get an employment as a Commercial Pilot in a Government or a private Airline. Furthermore, admittedly, the deceased was not working at the time of the accident and had no income from any other source. Therefore, on the basis of the settled law apropos victims of motor accidents, who had completed professional courses, a monthly compensation amount was taken to be Rs.25,000/-. Furthermore, the income tax amount would have to be deducted before any monies could be computed for payment to the deceased. Additionally, damages under various other non-pecuniary heads have been awarded, therefore, liable to be reduced.

In effect, the grievance is that the computation is flawed. The challenge is not the entitlement of the respondents – claimants but only to the quantum of the compensation amount that has been awarded.

The Court would note that the impugned Award had referred to the judgment of Reena Bhatia & Anr. vs. Badan Singh & Ors., MAC No. 539/2010, dated 17.5.2012, wherein the salary of a Group A Officer in the Central and State Government was considered on a presumptive basis for award of compensation apropos a First Year Engineering Student. Similarly Rs.18,000/- per month was considered as a notional figure for awarding compensation on the death of an MBBS Graduate doing internship (New India Assurance Co. Ltd. vs. Ganga Devi & Ors., MAC No. 135/2008). Yet again in the case of Oriental Insurance Co. Ltd. vs. Deo Patodi & Ors., I 2009 ACJ 2359, a notional income of Rs.25,000/- per month was considered for awarding compensation to a Graduate in BA Administration from the United Kingdom.

In the present case, the deceased, being holder of a Commercial Pilot License, would perhaps stand in a better place than the MBBS Graduate and the Graduate in BA Administration. While the claimants did not prove that the deceased was offered a monthly salary of Rs.1,70,000/- with respect to an employment by the Jet Airways. The impugned order has relied upon Reena Bhatia's case (supra) and compared the position of the deceased with the salary of a Group A Officer as per the latest Pay Commission's Recommendations, in view of the accident having taken place on 10.04.2015. Accordingly, the basic pay of Rs.56,108/- of a Group 'A' Officer was taken as the base figure and the annual income was computed at Rs.6,73,200/-.

Ordinarily, it would be considered logical, that the prevailing pay scale be considered as applicable and not the one which existed at the time when Reena Bhatia's case (supra) was adjudicated. Hence, thus far there is no ostensible reason to interfere with the aforesaid notional or presumptive income of the deceased. The reasoning of the impugned order is as under:-

“7.5. I have heard the arguments and perused the record. Admittedly deceased graduated from Indira Gandhi Rashtriya Udaan Academy and Commercial Pilot License Graduation certificate dated 10.5.2012 is part of record to prove it. The charges of this course are also part of record, as per which, a fees of Rs. 24.60 Lacs in addition to other expenses was paid by the family of deceased to complete this course and a person who has completed such a complicated engineering course after spending such huge amount cannot be treated at par of a normal graduate. The law to this effect is well settled in the judgment relied upon by Ld. Counsel for petitioners. The Hon'ble High Court of Delhi in Reena Bhatia & Ors. Vs. Badan Singh & Ors., MAC no. 539/2010 considered the salary of Group A Officer in the Central and State Govt. on presumptive (sic) basis to award compensation on the

death of a first year Engineering student. In *New India Assurance Co. Ltd. Vs. Ganga Devi & Ors.*, MAC No. 135/2008, the Hon'ble High Court considered an income of Rs, 18,000/- pm to calculate compensation on the death of MBBS Graduate doing internship. Similarly, in the judgment titled *Oriental Insurance Co. Ltd. Vs. Deo Patodi & Ors.*, 1 2009 ACJ 2359, a notional income of Rs. 25,000/- pm for a graduate in BA administration from UK was considered to award compensation. In view of abovesaid law, it stands clear that the income of deceased cannot be considered similar to a normal graduate. Though Ld. Counsel for petitioners has relied upon some computerized record to assess the presumptive earning of a commercial pilot, yet no evidence to this effect has been led on record to consider that deceased was supposed to earn such income during survival. However, in my opinion, it will be appropriate if a presumptive income of a Group A Officer in Central / State Govt., on the day of accident, is considered to assess the claim of the petitioners. This accident took place on 10.4.2015. The salary of a Group A Officer as per latest New Pay Commission was Rs.56,108/-. Annual income as per this income comes to Rs. 6,73,200/-."

With respect to necessary deductions out of earnings towards personal expenses etc., the impugned order has reasoned as under:-

"7.6. Necessary deductions out of earnings of the deceased towards personal expenses: After choosing the age, multiplier and income of the deceased, necessary deductions have to be made out of the income of the deceased towards his personal expenses. The Hon'ble Supreme Court of India in case titled *Reshma Kumari & Ors. V. Madan Mohan & Anr.*, (2013) 9 SCC 65, in Para 30, has laid down the necessary deductions towards personal living and expenses of deceased as under:

<i>Number of dependents</i>	<i>Deductions out of earning of the deceased</i>
<i>Half / ½</i>	<i>Where dependent is 1</i>
<i>1/3rd</i>	<i>Where the number of dependent family members is 2 to 3</i>
<i>1/4th</i>	<i>Where the number of dependent family members is 4 to 6,</i>
<i>1/5th</i>	<i>Where the number of dependent family members exceeds</i>

7.7. *In view of the above said judgment, Petitioners are parent of deceased, but only mother has to be considered as dependent upon deceased. However, father of deceased has not be considered dependent upon deceased and there was one dependent upon deceased and 1/2 / half of income of deceased has to be deducted towards his personal expenses i.e. Rs. 3,36,600/-, out of, Rs. 6,73,200/- per annum. The loss of dependency is Rs. 3,36,600/- per annum.”*

There is an addition of 40% to the aforesaid annual income towards loss of future prospects in terms of the judgment of the National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680.

The learned counsel for the appellant submits that the income tax would necessarily have to be deducted before release of the compensation amount. The permissible schemes and heads for tax deductions under section 80G of the Income Tax Act, 1961, and investments in insurance and other policies would, however, be taken into consideration, as per the tax slabs.

Compensation on account of non-pecuniary damages are not disputed.

The learned counsel for the appellant submits that the relevant parties are only respondents No. 1 and 2.

In view of the above, issue notice to respondents No. 1 and 2 by way of ordinary process, Speed Post, through approved courier, including dasti and through counsel as well, returnable on 09.05.2019.

In the interim, the admitted amount of Rs.77,55,000/- (Rs.86,55,000 – Rs.9,00,000) alongwith interest at the rate of 9% per annum from the date of filing of the claim petition, shall be deposited within two weeks with the Registrar General of this Court.”

Order dated 09.05.2019

“ The learned counsel for the petitioner has brought a cheque bearing no. 325442 dated 29.04.2019 of Rs. 1,14,88,500/- drawn on Corporation Bank, Laxmi Nagar Branch, in the name of Registrar General of Delhi High Court. The same shall be deposited in the Court today. Upon deposit, the amounts shall be kept in an interest bearing FDR. He submits, upon instructions, that since the lis is apropos the fixation of the notional salary and the deduction of taxes from the compensation payable, for the moment, 60% of the awarded amount could well be released to the beneficiaries of the Award.

Accordingly, let 60% of the awarded amount, alongwith interest accrued, thereon be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein. The remaining amount shall be kept in an interest bearing FDR.”

2. According to the learned counsel for the parties, the only issue to be determined is apropos the amount of Tax Deduction at Source. The total earnings of the deceased was Rs. 6,73,200/- p.a., from which after tax exempt income and permissible deductions, the tax payable would be Rs. 41,225/-. Let the said amount be deducted from the total earnings and the amount payable shall be calculated by the insurer accordingly.

3. It is agreed that the total amount payable to the claimants would be Rs. 81,32,885/-. An amount of over a crore is stated to have been deposited before this Court, of which 60% has already been released. Let the remaining of the awarded amount, alongwith interest accrued @ 9% per annum from the date of filing of the claim petition till its realization, as per this order be paid to the claimants in terms of the scheme of disbursement specified in the Award and the remaining amount, alongwith statutory amount and corresponding interest accrued thereon, be returned to the appellant.
4. Statutory amount, alongwith interest accrued thereon, be returned to the appellant.
5. The appeal is disposed-off in the above terms.

FEBRUARY 14, 2020

AB

NAJMI WAZIRI, J

नात्यमेव जयते