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

% **Date of Decision: 19th February, 2020**

\+ MAC.APP. 633/2016

RAJESH KUMAR & ANR ..... Appellants

Through: Mr.Suresh Chandra, Mr.Mukesh Kumar and Mr.Rinendra Kumar, Advocates

versus

RAVINDAR KAUL & ORS ..... Respondents

Through: Mr.Vikram Gujral and Mr.Prem Lal, Advocates

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.20,28,700/- has been awarded to the claimants.

2. On 13th April, 2011, Bal Krishan Kaul was waiting at the bus stop on national highway near Airtel Building when he was hit by motor cycle No. DL-4SAZ-6474 which resulted in fatal injuries. The deceased was aged 64 years at the time of the accident and he was working with BPTP Ltd. after retirement from Border Security Force. The deceased was survived by his widow, two sons and two daughters who claimed compensation.

3. The Claims Tribunal took the income of the deceased as Rs.42,707/-; deducted 50% towards the personal expenses and applying the multiplier of 7 to compute the loss of dependency as Rs.1,79,370/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/-

towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.17,93,700/-.

4. Learned counsel for the appellant urged at the time of the hearing that the income of the deceased has not been duly proved. It is submitted that the compensation amount is liable to be reduced.

5. Learned counsel for the claimants submits that income of the deceased has been duly proved by leading additional evidence. It is submitted that the deceased retired from Border Security Force and was drawing a pension of Rs.13,050/- per month. It is submitted that the widow of the deceased was drawing Rs.6,420/- per month as family pension. It is further submitted that PW-3 appeared before this Court and proved the income of the deceased as retainer at a remuneration of Rs.40,000/- per month.

6. The deceased was working as a retainer with M/s BPTP Ltd. Vide order dated 06th October, 2016, this Court directed the claimants to produce the income tax returns, assessment orders and passbook of the deceased in which his salary and pension were being deposited.

7. The claimants could not produce the relevant documents on the ground that the deceased was having bank account with Royal Bank of Scotland which has been closed and the Income Tax Returns were not traceable. The claimants sought permission to lead evidence which was granted vide order dated 22nd September, 2017.

8. The claimants examined the Senior General Manager (Compliances) of BPTP Ltd. as PW-3 who deposed that the deceased joined BPTP Ltd. as Deputy Manager (Accounts) on 01st November, 2015. PW-3 proved the letter dated 01st November, 2005 as exhibit PW-3/B, letter dated 01st May,

2006 as PW-3/C, letter dated 12th August, 2006 as PW-3/D, letter dated 17th April, 2007 as PW-3/E, letter dated 18th October, 2007 as PW-3/F, letter dated 06th May, 2008 as PW-3/G and letter dated 12th May, 2010 as PW-3/H. PW-3 further deposed that the deceased resigned on 02nd March, 2011 when he was retained as the retainer at a consolidated amount of Rs.40,000/- per month vide letter dated 02nd March, 2011 which is Ex. PW-3/I.

9. The Claims Tribunal has taken the income of the deceased as Rs.42,707/-. However, the Claims Tribunal erred in not considering that the deceased resigned from the service on 02nd March, 2011 and was, therefore, working as a retainer meaning thereby that Rs.40,000/- per month was the professional receipt out of which the deceased would have incurred professional expenditure. The Claims Tribunal erred in taking the gross receipts as the income of the deceased. This Court is of the view that the professional income of the deceased from the retainership fee of Rs.40,000/- per month could not be more than Rs.10,000/- per month. Adding loss of pension by Rs.6630/- (Rs.13050 - Rs.6420), the total income of the deceased is taken as Rs.16,630/-. Deducting 50% towards personal expenses and applying the multiplier of 7, the loss of dependency computed as Rs.6,99,000/- (Rs.6,98,460/- rounded off). The compensation awarded by the Claims Tribunal under the head of loss of love and affection, loss of consortium, loss of estate and funeral expenses is upheld. The claimants are entitled to compensation of Rs.9,34,000/- along with interest at the rate of 9% per annum from the date of institution.

10. The appeal is allowed and the compensation amount is reduced from Rs.20,28,700/- to Rs.9,34,000/- along with interest at the rate of 9% per annum from the date of institution.

11. The appellant has deposited FDR for Rs.5,00,000/- with the Registrar General of this Court in terms of order dated 06th October, 2016. The Registrar General is directed to encash the FDR and release the FDR amount along with interest thereon to respondent No.3 by transferring the same to her savings bank account. The respondent No.3 has savings bank account No.00000031777460612 with State Bank of India, Indirapuram Branch, Ghaziabad. The Registrar General shall transfer the amount along with interest to the aforesaid savings bank account of respondent No.3 within a period of three weeks.

12. The statutory amount deposited by the appellant shall also be transferred to respondent No.3 which shall also be adjusted in the award amount.

13. The appellants have directed to deposit the balance award amount with the Claims Tribunal within a period of four weeks. Upon deposit of the balance amount the Claims Tribunal shall disburse the same to the respondents in the following ratio:

(i)	Respondent No.1	=	10%
(ii)	Respondent No.2	=	10%
(iii)	Respondent No.4	=	10%
(iv)	Respondent No.5	=	10%
(v)	Respondent No.3	=	60%

14. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

FEBRUARY 19, 2020/ds