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

% ***Date of decision:14th November, 2024***

\+ **MAC.APP. 643/2019, CM APPL. 29232/2019**

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD

.....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

ROHTASH KUMAR GUPTA & ORS

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

1. An *Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed on behalf of the Insurance Company to challenge the Award dated 12.04.2019, whereby the compensation in the sum of Rs.12,22,500/-, along with interest @ 9% per annum, has been granted to the Respondent No.1/ son of deceased Sh. Rameshwar Dayal Gupta, who was 76 years old at the time of his demise in the accident on 31.10.2017.

2. The *sole ground of challenge* is that the deceased had only one claimant who is the married major son of the deceased. There is not an iota of evidence to show that he was financially dependent upon the deceased father. Moreover, the deceased was 76 years old and was getting a pension of Rs.29,813/- per month which cannot be considered as a case of *Loss of*

Dependency or income to Respondent No.1; rather it can only be taken as a Loss of Estate for which 2/3rd deduction from the pension should have been made to calculate the quantum of compensation.

3. **Submissions heard and record perused**.

4. Indisputably, the deceased was 76 years old and father of Respondent No.1 the son who was major and there is nothing to reflect that he was financially dependent on the deceased. Yet at the same time, it cannot be over looked that the deceased was residing with this major son. The learned Tribunal has deducted 1/3rd from the monthly pension of Rs.29,813/- towards his own personal expenses. However, it cannot be overlooked as he was 76 years old man and it can be reasonably taken that he would have been spending a lot more amount on his own personal requirements and thus, the deduction towards the personal expenses should have been made to the extent of ½.

5. The compensation towards **Loss of Dependency** is, therefore, recalculated as Rs.29183 – 14591 (50%) X 5 X 12 = **Rs.8,75,490/-**.

6. The compensation has, therefore revised as under:

Sl. No.	**Compensation awarded under Head**	**Amount awarded by the Tribunal**	**Amount awarded by this Court**
1.	**Loss of Dependency**	11,92,500/-	**8,75,490/-**
2.	Loss of Estate	15,000/-	Same
3.	Funeral Charges	15,000/-	Same
TOTAL COMPENSATION		Rs.12,22,500/-	**Rs.9,05,490/-**

The compensation granted *vide* impugned Award is hereby modified and the **total compensation granted is Rs.9,05,490/-** along with interest @ 9% per annum as per the terms of the impugned Award dated 12.04.2019.

7. The statutory amount deposited by the Insurance Company be refunded in accordance with law.

8. The Appeal stands disposed of along with the pending application.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 14, 2024
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