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

% ***Date of Decision: 11th December 2024***

+ **MAC.APP. 211/2022**

1. SMT NIRMALA (Mother of the deceased).....Appellant No.1

2. Sh. PRADEEP KUMAR (Father of the deceased)

....Appellant No.2

Through: Mr. S.N. Parashar, Advocate.

versus

1. AMIT KUMAR

S/o Sh. Virender Kumar

.....Respondent No. 1

2. Smt. RESHMA DEVI

W/o Sh. Rewa Chand Vaswani

.....Respondent No. 2

3. HDFC ERGO GENERAL INSURANCE CO. LTD.

.... Respondent No. 3

Through: Mr. Sameer Nandwani and Ms. Heeba Ansari, Advocates for R3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

1. Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act' *hereinafter*) has been filed on behalf of the Appellants/Claimants to seek enhancement of compensation granted in the sum of Rs.14,60,000/- along with the interest 9% p.a. by the impugned Award dated 06.01.2022 on account of death of Ms. Deepika, aged about 27

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years, in a road accident on 17.12.2018.

2. The Appellants have challenged the *quantum of compensation*, on the following grounds:-

- i. that their deceased daughter had completed B.B.A. and was studying in Final Year of M.B.A. from Dr. A.P.J. Abdul Kalam Technical. University, Lucknow, Uttar Pradesh despite which her income has been calculated as per the Minimum Wages of a skilled worker instead of Prospective Income, which was around approximately Rs.25,000/- per month, as per her technical qualifications;
 - ii. that the Tribunal has not awarded compensation towards *Loss of love and affection*.
3. Reliance is placed on Ashwinbhai Jayantilal v. Ramkaran 2015 (2) SCC 180 wherein the Apex Court considered the income of a medical student aged 19 years, as potential income of Rs.25,000/- per month. Further, reliance is placed on Sri Upender Shastri v. Bharti Axa Gen. Insurance Co. Ltd. MAC 126/18 & MAC 376/17 dated 07.03.2018 wherein potential income of a student pursuing Graduation in Delhi University, was considered as Rs.27,600/- per month.
4. ***Learned counsel on behalf of the Insurance Company*** submits the income has been rightly calculated as per the Minimum Wages since there is no proof of Prospective Income.
5. **Submissions heard and Record Perused.**
6. ***Briefly stated***, on 17.12.2018, Ms. Deepika (deceased in MACP No. 2791/19) along with her friend Ms. Swati (injured in MACP No. 408/19),



was returning to Murad Nagar from RD Engineering College, after attending their duty as an Invigilator. They both were standing in front of RD Engineering College, Chowki Vardhmanpuram, Meerut to Ghaziabad Road, PS. Murad Nagar, Ghaziabad for crossing the road, when one car bearing registration no. DL12-CJ-7830 which was being driven by its Driver/Respondent no. 1 at very high speed, rashly, negligently, without taking necessary precautions, came from Meerut side and hit Ms. Deepika Kumari and her friend Swati as a result of which they both sustained grievous injuries. They were immediately taken to District Combined Hospital, Sanjay, Nagar, Ghaziabad and thereafter, Ms. Deepika was referred to G.T.B hospital, Shahdara, Delhi, where her MLC No. BD-55BG1411B was prepared by the Doctor and after examination, she was declared "*Brought Dead*".

7. FIR No. 1790/18 under Sections 279/338/304A of *Indian Penal Code, 1860* ('IPC') was registered at PS. Murad Nagar, UP.

8. Petition under Section 166 and 140 of M.V. Act was filed by the claimants/Parents for grant of compensation.

Prospective Income:

9. The *first ground* on which enhancement is sought by the Appellant is that her income has been calculated as per the Minimum Wages of a skilled worker. However, considering her technical qualification, it should have been taken on the basis of Prospective Income, which was around approximately Rs.25,000/- per month.

10. The Ld. Tribunal in the impugned Award observed that PW1 Smt, Nirmala (mother of deceased) deposed in her Affidavit of evidence Ex.



PW1/A that deceased was aged about 27 years of age and was working as Manager with Globe Insulation Co. and getting monthly salary of Rs. 50,000/- per month, at the time of accident. She further deposed that besides the job, she had to appear in MBA Final Year back examination to complete her MBA from Dr. A.P.J. Abdul Kalam Technical University, Ghaziabad. The Ld. Tribunal observed that there was no definite evidence whatsoever on record to prove his monthly income of Rs.50,000/- at the time of accident and consequently considered the income as per Minimum Wages of a Skilled Worker, in the sum of Rs.9,457/- per month.

11. In the peculiar facts of the present case, it is evident from the record that the Deceased was a graduate and was pursuing her MBA degree from Dr. A.P.J. Abdul Kalam Technical University, Ghaziabad at the time of accident in 2018. The educational Certificates of the deceased have been exhibited as Ex. PW 1/1. Considering the income of an MBA student at Rs.9,457/- per month, is on the lower side. In the light of her technical qualifications, her Prospective Income is taken as Rs.25,000/-p.m. in line with judgement in Sri Upender Shastri (supra) and Ashwinbhai Jayantilal (supra).

12. Loss of Income is re-calculated as :

$$[\text{Rs. } 25,000 + (40\% \times 25,000)] - (\frac{1}{2} \times 25,000) = \text{Rs. } 22,500/-$$

$$\text{Rs. } 22,500/- \times 12 \times 17 \text{ (multiplier)} = \text{Rs. } 45,90,000/-$$

Loss of Love and Affection:

13. The *Second ground* on which enhancement is sought by the Appellant is that *loss of love and affection* has not been granted.

14. In United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder



Kaur AIR 2020 SC 3076 the Apex Court has categorically observed that the Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

15. Loss of love and affection is comprehended in loss of consortium. There is no justification to award compensation towards loss of love and affection as a separate head. The Ld. Tribunal has *granted Loss of Consortium in the sum of Rs.80,000/-*. Therefore, no further compensation is warranted on account of Loss of Love and Affection.

16. Relief:-

17. In the light of the above discussion, the Compensation amount awarded to the Claimant is modified as under:

S.No.	Heads	Compensation granted by the Tribunal	Compensation granted by this Court
1.	Income of Deceased (A)	Rs. 9,457/- (minimum wages of skilled worker)	Rs. 25,000/-
2.	Add-Future Prospects (B)	40%	40%
3.	Less-Personal Expenses of Deceased (C)	½	½
4.	Monthly loss of Dependency [(A+B)-C=D]	Rs. 6,619.9/-	Rs. 22,500/-
5.	Annual loss of Dependency (Dx12)	Rs. 79,438.8/-	Rs. 2,70,000/-
6.	Multiplier (E)	17	17
7.	Total loss of Dependency	Rs. 13,50,459.6/-	Rs. 45,90,000/-
8.	Medical Expenses	Nil	Nil



9.	Compensation for loss of Consortium	Rs. 80,000/-	Rs. 80,000/-
10.	Compensation for loss of Estate (I)	Rs. 15,000/-	Rs. 15,000/-
11.	Compensation towards funeral expenses (J)	Rs. 15,000/-	Rs. 15,000/-
12.	Total Compensation (F+G+H+I+J) – (K) =L)	Rs. 14,60459.60/-	Rs. 47,00,000/-
13.	Rate of Interest Awarded	9%	9%

18. Thus, the total compensation granted to the Claimants is re-calculated as Rs.47,00,000/- along with interest @9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 06.01.2022 of the learned Tribunal.

19. The Appeal is allowed.

20. The Appeal stands disposed of along with the pending application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024/RS