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

\+ MAC.APP. 292/2022

SUNITA & ORS. .....Appellants

Through: Mr. Pankaj gupta, Advocate.

versus

RAM NARAIN YADAV & ORS. (NATIONAL INSURANCE COMPLAY LTD.) .....Respondents

Through: Ms. Rakhi Dubey & Mr. Thakur Nishant Kumar, Advocates for R-3/Insurance Company.

**CORAM:**
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**<u>O R D E R</u>**

% **13.11.2024**

**<u>CM APPL. 41207/2022</u>**

1. The present Application under *Section 5 of the Limitation Act, 1963* has been filed on behalf of the Appellants seeking condonation of 108 days' delay in filing the present Appeal.

2. For the reasons and grounds stated in the Application, the Application is allowed. The delay of 108 days in filing the present Appeal is hereby condoned.

3. Accordingly, the Application is disposed of.

**<u>MAC.APP. 292/2022</u>**

4. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the Appellants against the Award dated 02.12.2021 *vide* which a compensation in the sum of Rs. 43,44,000/- along

with interest, has been granted to the Claimants-Appellants on account of demise of Shri Ashok Kumar, Assistant Sub-Inspector (ASI) in Delhi Police, who died in the road accident on 28.11.2017.

**GROUNDS OF CHALLENGE** —

5. The impugned Award has been challenged on two grounds:

(i) The deduction of *ex gratia* amount of Rs. 25,00,000/- that was sanctioned by the Delhi Government, on the demise of Shri Ashok Kumar, ASI.

(ii) That all the six dependents are entitled to Rs. 40,000/- each, as consortium.

**SUBMISSIONS OF RESPONDENT NO.3-INSURANCE COMPANY** –

6. Learned counsel for the Respondent No. 3-Insurance Company submits that the present Appeal may be decided in accordance with law.

7. **Submissions heard.**

**GRANT OF EX-GRATIA**

8. The *first ground of Challenge in the* Appeal is that while the loss of income was calculated at Rs. 56,59,657.38/-, a sum of Rs. 25,00,000/- that was sanctioned as *ex gratia* amount to the family of the deceased-Shri Ashok Kumar, ASI, had been deducted on the ground that the deceased-Shri Ashok Kumar, ASI has not made any contribution throughout his life time and the same is liable to be deducted. However, *vide* Letter bearing No. F.1(58)/Relief/Ex-gratia/Martyr/2023/(CD No. 087741124)/496970 dated 22.02.2024, the Government of National Capital Territory of Delhi has withdrawn the *ex gratia* amount by observing that *"the Group of Ministers noted that the death of the deceased occurred due to a road accident. Being a case of accident, the case is not eligible for grant of ex-gratia of Rs. 1*

*Crore. Therefore, the GoM recommended that the case of deceased is NOT covered under the provisions of relevant Cabinet Decisions for grant of ex-gratia of Rs. 1 Crore to his family". Vide* Letter bearing No. 287-92/W-(4)/Pension Cell (AC-2)/Welfare dated, Delhi 01.03.2024, the said decision of the GoM/Cabinet has been conveyed to the respondent No. 1-wife of deceased-Shri Ashok Kumar, ASI.

9. Without going into the question of whether this *ex gratia amount* was rightly deducted, considering the Notification/Letter dated 22.02.2024, whereby the *ex gratia* amount of Rs. 25,00,000/- has been denied to the Claimants-Appellants, the said amount is hereby granted in addition to the loss of income in the sum of Rs. 31,59,657.38/-. **The total compensation for Loss of Income is now calculated as Rs. 56,59,657.38/-.**

**LOSS OF CONSORTIUM:**

10. There are admittedly six claimants, namely the wife, children, and the father. Though the father (Respondent No. 6) may not be technically a legal heir of deceased-Shri Ashok Kumar, ASI, but here what is being considered is the compensation to be granted towards the loss of consortium, which cannot be denied to the father.

Considering the number of Claimants-Appellants, the loss of consortium is enhanced from total Rs. 40,000/- to ***Rs. 2, 40,000/-*** for the six Claimants.

**RELEIF:**

11. Accordingly, the Award dated 02.12.2021 is hereby modified/revised to the following extent: -

| S.No. | Heads | Award Amount |
|---|---|---|
| 1. | Income of deceased (A) | Rs. 63,095.40 (70,106-7,010.60 i.e., |

| | | |
|---|---|---|
| | | 10% towards income tax) |
| 2. | Add-Future Prospects (B) | Rs. 9,464.31 (15%) |
| 3. | Less-Personal expenses of deceased (C) | Rs. 24,186.57 (1/3 being two dependents) |
| 4. | Monthly loss of dependency {(A+B) – C = D} | Rs. 72,559.71 – 24,186.57 = 48,373.14 |
| 5. | Annual loss of dependency (Dx12) | Rs. 6,28,850.82 (13 months salary) |
| 6. | Multiplier (E) | 9 |
| 7. | Total loss of dependency (Dx12xE = F) | **Rs. 56,59,657.38 (including Rs. 25,00,000/- which was earlier deducted).** |
| 8. | Medical Expenses (G) | Nil |
| 9. | Compensation for loss of love and affection (H) | Nil |
| 10. | Compensation for loss of consortium (I) | Rs. 40,000/- (each to all six dependents = **Rs. 2,40,000/-)** |
| 11. | Compensation for loss of estate (J) | Rs. 15,000/- |
| 12. | Compensation towards funeral expenses (K) | Rs. 15,000/- |
| 13. | Total compensation (7+10+11+12) | **Rs. 59,29,657.38/-** |
| 14. | Rate of Interest awarded | 9% per annum |

12. The Award is hereby modified and the Compensation amount is re-calculated as **Rs. 59,29,657.38/-** along with interest 9% p.a. from the date of Claim till disbursement, with all other terms of the Award being the same. The Respondent No. 3-Insurance Company is directed to deposit the aforesaid amount with the learned Tribunal within four weeks.

13. The learned Tribunal shall release the award amount to the Claimants-Appellants in accordance with law.

14. The present Appeal is disposed of in the above terms.

**NEENA BANSAL KRISHNA, J**

**NOVEMBER 13, 2024**
***S.Sharma***