$~9

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

% ***Date of Decision: 18th December 2024***

\+ **MAC.APP. 916/2019**

1. Smt. NEELAM VATS
W/o Late Sh. Arvind Kumar Vats .....Appellant No.1

2. MASTER ISHAN VATS (Minor Son)
S/o Late Sh. Arvind Kumar Vats ....Appellant No. 2

3. MASTER KARTIK VATS (Minor Son)
S/o Late Sh. Arvind Kumar Vats .....Appellant No.3

4. Smt. BALA VATS
(Mother of Late Sh. Arvind Kumar Vats) ....Appellant No. 4

(Respondent No. 2 & 3, being minor sons are Represented through her mother/Appellant No. 1, natural guardian)

All resident of:

71-D, HumayunPur,
Safdarjung Enclave, Delhi-110029.

Through: Mr. Ravi Sabharwal, Advocate.

Versus

1. Sh. SANDEEP
S/o Shri Vinod Kumar
R/o 1-82, Mahavir Enclave,
Palam Dabri Road, Delhi. ...Driver/Respondent No. 1

2. Sh. VARUN KAPOOR
S/o Sh. Vijay Kapoor
R/o J-52, D-1, Beriwala Bagh

Hari Nagar, Delhi-64. ...Owner/Respondent No.2

3. FUTURE GENERALI INDIA INSURANCE CO. LTD.
303-310, 3rd Floor, Kailash Building,
26, K.G.Marg, New Delhi-11001 .....Insurer/Respondent No.3

Through: Ms. Suman Bagga, Advocate for Insurance Company.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Claimants, against the Award dated 10.11.2017, *to seek enhancement of* the compensation granted in the sum of Rs.67,67,206/- along with the interest @9% p.a., on account of demise of Mr. Arvind Kumar Vats in a road accident on 28.02.2016.

2. *Briefly stated,* on 28.02.2016 at about 8:05 PM the deceased Sh. Arvind Kumar Vats, who was employed as a constable with Delhi Police, was crossing the road to go towards Kothi No. 17, when the Hyundai X-Cent Car bearing Registration No. DL-1Z-7559 ('offending car') being driven in a rash and negligent manner by Respondent No. 1/Sh. Sandeep, struck him which resulted in grievous injuries on his person. He was taken to Dr. RML Hospital for treatment, where he expired during his treatment.

3. FIR No. 22/2016 under Sections 269/338 of *Indian Penal Code, 1860* ('IPC') was registered at PS Tughlak Road.

4. DAR in respect of the above accident was filed before the Ld. Tribunal on 11.05.2016.

5. Petition under Section 166 and 140 was filed by the Claimants

seeking compensation for the Accident dated 28.02.2016. The Ld. Tribunal granted compensation in the sum of Rs. Rs.67,67,206/- along with the interest @9% p.a.

6. The ***enhancement of compensation*** has been sought on the following grounds:

i. that the salary of the deceased has been taken as Rs.42,377/- per month, however, the 7th Pay Commission became effective from 01.01.2016 and the revised salary of the deceased was Rs. 48,309/- per month; and

ii. that *Loss of Consortium along with Loss of Estate and Funeral Charges*, have been given in a lump sum of Rs.70,000/-, when each of the four Claimants, were entitled to Rs. 40,000/- each towards the Loss of Consortium.

7. Learned counsel on behalf of the Appellant has placed reliance on judgment of Apex Court in *Rajesh and Ors. v. Rajbir Singh and Ors*. (2013) 9 SCC 54, *Oriental Insurance Company v. Usha Devi & Ors*. 2015 LawSuit(Del) 1988; *Bajaj Allianz General Insurance Co Ltd. v. Kamlesh & Ors*. MAC. APP. No. 3/2011 dated 22.12.2011; *ICICI Lombard General Insurance Co Ltd v. Darshna & Ors*. 2009 LawSuit (Del) 226; *United India Insurance Co Ltd. v. Sonia & Ors*. 2023:DHC:8110.

8. ***Learned counsel on behalf of the Insurance Company*** has submitted that the income of the deceased at the time of the accident was Rs.42,000/- p.m. and has been rightly taken so by the learned Tribunal. Even if, it is taken as Rs.48,309/- per month in view of the salary revision under 7th Pay

Commission, then too the salary component on account of Transport Allowance, Washing Allowance and Income-Tax, are liable to be deducted. Insofar as, the Loss of Love and Affection, Consortium and Non-Pecuniary Heads are concerned, it is submitted that the same may be considered in accordance with law.

9. **Submissions heard and record perused.**

Loss of Dependency:

Income of Deceased:

10. The *first ground* on which enhancement is sought, is that the income of the deceased has been taken as Rs.42,000/- per month. However, he was entitled to the revised salary in the sum Rs. 48,309/- per month as per the 7th Pay Commission which became effective from 01.01.2016.

11. The Ld. Tribunal in the impugned Award had noted that the Deceased, a constable with Delhi Police was getting the salary as Rs. 42,568/- per month. The Ld. Tribunal also noted that the 7th Pay Commission has also been implemented with retrospective effect from 01.01.2016 and the revised monthly salary of the deceased at the time of accident, comes to Rs. 48,309/- per month. However, the Ld. Tribunal still assessed the compensation as per the Salary Certificate for the reason that the report of 7th Pay Commission was implemented much later and such contention was disallowed by the Apex Court in the case of *Sarla Verma v. DTC*, (2009) 6 SCC 121. However, in *Sarla Verma* (supra) the only principle enunciated is that actual income as on the date of accident must be calculated and it does not consider the aspect of retrospective applicability of the pay commission on the income of the deceased.

12. In the case of *Rajesh* (supra) a Three-Judge Bench of the Apex Court granted compensation on the basis of salary revised by the Sixth Pay Commission which had come was announced subsequent to the death of the deceased, but was made applicable retrospectively.

13. Similar observations have been made by Coordinate Benches of this Court in *ICICI Lombard General Insurance Co Ltd v. Darshna & Ors.*(supra), and *United India Insurance Co Ltd. v. Sonia* (supra).

14. In *Bajaj Allianz General Insurance Co Ltd. v. Kamlesh & Ors.*(Supra) the Coordinate Bench of this court clarified that as per *Sarla Verma* (supra) actual income of the deceased is to be taken into consideration for the purpose of computing the loss of dependency, which implies the date from which the Pay Commission comes into effect.

15. The deceased was employed with Delhi Police and expired due to accident occurred on 28.02.2016 whereas the 7th Pay Commission came into effect from 01.01.2016 and in light of the above discussion, the income is liable to be taken as Rs. 48,309/- p.m. as per the 7th Pay Commission.

16. However, perusal of the revised Salary Slip Ex. PW 2/4 reflects that the deceased was getting Total salary of Rs. 48,309 including *Basic Pay* in the sum of Rs. 37,000, *H.R.A* in the sum of Rs. 4,269, and *Corp. HRA* in the sum of Rs 310, *Transport Allowance* in the sum of Rs. 3,600, *Washing Allowance* in the sum of Rs. 90, *Metropolitan Allowance* in the sum of Rs. 180, *Ration Money* in the sum of Rs. 2,770 and *Conveyance Allowance* in the sum of Rs. 90.

17. In the case of *Oriental Insurance Company v. Jashuben and Ors* (2008) 4 SCC 162, the Apex Court has discussed the aspect of inclusion

of allowances and has observed that the amounts which were paid to the deceased as ***perks,*** should be included for computation of his monthly income as the same would have constituted a part of his monthly income by way of contribution to the family. However, the *allowances which were for personal benefit* were liable to be deducted.

18. Relying upon the above judgment, a Co-ordinate Bench of this Court has observed in the case of *Ram Charan & Ors. vs The New India Assurance Co. Ltd. & Ors.*, *MAC.APP. 433/2013* decided on 18 October, 2022, that including all incentives, bonuses or allowances to the income would be of inconsistent logic as the legal heirs would reap the benefits of certain allowances regardless of whether they enjoyed the same status prior to the demise of the deceased or not.

19. *Thus, evaluating the nature of the allowance/perk becomes a decisive factor for determining whether such allowance/perk would constitute a part of the actual income of the deceased.*

20. Pertinently in the present case, the deceased was getting *Transport Allowance* in the sum of Rs. 3,600/- *Washing Allowance* in the sum of Rs. 90, *Metropolitan Allowance* in the sum of Rs. 180 and *Conveyance Allowance* in the sum of Rs. 90 which were the consumable perks in the nature of reimbursements, the benefits of which were reaped by the employee individually and was thus, a total of Rs. 3,960 is liable to be deducted from the monthly salary on account of allowances and perks.

21. As per the Income Tax slab for the Financial year 2016-2017, there is Nil tax upto the income of Rs.2,50,000/- and 10% tax rate is applicable from Rs.2,50,001/- to Rs.5,00,000/-. Hence, the Income Tax payable on the above

income comes to *Rs. 2,747.56 per month*.

22. Thus, the net salary, therefore is reassessed as: -

(i) Rs. 48,309/- p.m. – Rs. 2,747.56/- p.m. (Income Tax) = ***45,561.44/-***

*(ii)*Total of deductible incentives/allowances/perks = Rs. 3600 + Rs. 90+ Rs.180+ Rs. 90 = ***Rs. 3,960/-***

(iii) Net Salary after deductions = 45,561.44 – 3,960= ***Rs. 41,601.44/- p.m.***

23. ***Therefore, the Ld. Tribunal erred in considering income of the deceased as Rs.42,377/- p.m. rather than as per the 7th Pay Commission, which is reassessed as Rs. 41,601.44/- p.m. and the Award is liable to be modified accordingly.***

Non-Pecuniary Heads:

24. The *Second ground* on which enhancement is sought is that Loss of Consortium along with Loss of Estate and Funeral Charges have been given in a lump sum of Rs.70,000/-, when each of the four Claimants were entitled to Rs. 40,000/- each towards the Loss of Consortium.

25. In *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 the Apex Court held that *loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively.*

26. In the present case, the Deceased is survived by his Wife, two minor children and his mother. *Therefore, the impugned Award is liable to be modified as per the Pranay Sethi* (supra).

Relief:

27. In view of the aforesaid discussion, the impugned Award is modified

as follows:-

S.No.	Heads	Compensation granted by this Court
1.	Income of Deceased Less income Tax (A)	***Rs. 41,601.44/-***
2.	Add-Future Prospects (B)	30% (12,480.43)
3.	Less-Personal Expenses of Deceased (C)	¼ (13,520.46)
4.	Monthly loss of Dependency [(A+B)-C=D]	**Rs. 40,561.404/-**
5.	Annual loss of Dependency (Dx12)	**Rs. 4,86,736.848/-**
6.	Multiplier (E)	14
7.	Total loss of Dependency	**Rs. 68,14,315,87/-**
8.	Medical Expenses	Nil
9.	Compensation for loss of Love and affection	**Nil**
10.	Compensation for loss of Consortium	**1,60,000/- (40,000 x 4)**
11.	Compensation for loss of Estate (I)	**15,000/-**
12.	Compensation towards funeral expenses (J)	**15,000/-**
13.	Total Compensation (F+G+H+I+J) – (K) =L)	**70,04,315.87**

28. Thus, the total compensation granted to the Claimants is enhanced to Rs.70,04,315.87 which is rounded off to **Rs.70,05,000/-** along with interest @6% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 10.11.2017 of the learned Tribunal.

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

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 18, 2024/RS