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

\+ **<u>MAC.APP. 53/2022</u>**

RAJESH KUMAR TOMAR
& ORS. .....Appellants

Through: Mr. Anshuman Bal, Advocate.

versus

ROYAL SUNDARAM GENERAL INS CO LTD
& ORS. .....Respondents

Through: Ms. Suman Bagga & Ms. Rhea Duggal, Advocates for Respondent No.1/ Royal Sundaram General Ins Co Ltd.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **06.03.2025**

1. The present appeal is filed challenging the award dated 05.02.2021 (hereafter '**the impugned order**') passed by the learned Presiding Officer, Motor Accident Claims Tribunal ('**Tribunal**'), Saket Courts, New Delhi, on the ground that the learned Tribunal, while calculating the loss of dependency took into consideration only $1/3^{rd}$ of the income of the deceased instead of $3/4^{th}$, as loss of estate.

2. It was the case of the claimants/appellants before the learned Tribunal that on 25.03.2018 at about 2:40 pm, Smt. Hemlata (now deceased) along with her husband and three minor children (appellants) were going in a car which was driven by Respondent No.2 in a very rash and negligent manner. It was

alleged that when they reached Garhi-Sadrana road, Respondent No.2 lost control of the car and hit against a tree whereafter, the car overturned and consequently, the deceased got severely injured. In the course of her treatment, the deceased unfortunately died.

3. The deceased was survived by three minor children and her husband, who were the claimants before the learned Tribunal.

4. Reliance is placed by the learned Tribunal on the judgment of this Court in ***Keith Rowe v. Prashant Sagar*** **: 2010 SCC OnLine Del 4686**, wherein it was held that the claimants were entitled to 1/3rd of the income of the deceased for calculating the loss of estate.

5. This Court, in a later judgment in the case of ***Indrawati v. Ranbir Singh*** **: 2021 SCC OnLine Del 114**, clarified the position and held as under :

> *"**20.** In view of the law well settled by the Supreme Court in the aforesaid judgments, this Court holds that the parents of the deceased child are considered as dependents for computation of compensation. The principles laid down in Keith Rowe (supra) and Dinesh Adhlak v. Pritam Singh, ILR (2010) 5 Del 463, would not apply to the claim for compensation by the parents in respect of their child, as it is in the present case. The principles relating to the loss to the estate referred to in Keith Rowe (supra) and Dinesh Adhlak (supra) would also not apply in respect of the claim of a spouse for compensation in respect of death of his/her spouse, as well as children's claim for compensation in respect of death of their parents. In that view of the matter, the principles relating to the loss to the estate shall apply only to claimants other than parents, children and spouse."*

6. The learned counsel for the parties are at *ad idem* that the compensation should have been awarded applying the principle laid down in ***Indrawati v. Ranbir Singh*** (*supra*). The deceased is

survived by a spouse and three minor children and therefore 1/4th of the income of the deceased is to be considered towards personal expenses for calculating compensation under the head 'Loss of Estate', and the learned Tribunal has erroneously deducted 2/3rd of the income.

7. In view of the above, the impugned award shall stand modified as under:

S. No.	Heads	After Re-calculation
1.	Income of the deceased (A) Add: Future 40%	9118
2.	Prospects (B)	3647
3.	Less:- Personal expenses of the deceased (C)	1/4
4.	Monthly loss of Dependency (A + B) - C = D	9,573.90
5.	Annual Dependency (D X 12)	1,14,887
6.	Multiplier (E)	15
7.	Total loss of dependency (D X 12 X E = F)	17,23,302
8.	Medical Expenses (G)	NIL
9.	Compensation for loss of love and affection (H)	NIL
10.	Compensation for loss of Consortium (I)	1,60,000
11.	Compensation for loss of Estate (J)	15,000/-
12.	Compensation towards funeral expenses (K)	15000/-
Total Compensation (F+G+H+I+J+K=L)		19,13,302/-
Interest Awarded		9%

8. In view of the above, the total amount of compensation awarded by the learned Tribunal was ₹9,40,900/-, whereas, the same is re-calculated and enhanced to ₹19,13,302/-. The

Insurance Company is directed to deposit the enhanced awarded/balance amount along with interest as awarded by the learned Tribunal within a period of three weeks with the learned Tribunal. The same shall be released in favour of the appellants in accordance with the schedule of disbursement as stipulated in the impugned award.

9. The appeal is allowed in the aforesaid terms.

10. It is made clear that this Court has not interfered with the recovery rights given to the insurance company.

AMIT MAHAJAN, J

MARCH 6, 2025

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