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

% *Judgment delivered on: 31st October, 2013*

+ **MAC.APP. 1298/2012**

HARI LAL & ORS.

..... Appellants

Represented by: Mr. Lokesh Kumar Mishra,
Adv.

versus

PARYAG DUTT & ORS

..... Respondents

Represented by: Mr. Kunal Rawat, Adv. for
R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. NO. 21319/2012

In view of the averments made in the application, the delay of 58 days in filing the instant appeal is condoned.

The application stands disposed of.

+ **MAC.APP. 1298/2012**

1. Instant appeal has been preferred against the impugned award dated 24.02.2012 passed by the Id. Tribunal and granted compensation with interest @ 7.5% from the date of filing of the petition till realization, as under:

1. *Loss of dependency* : *Rs.16,67,790/-*

2.	<i>Funeral expenses</i>	:	<i>Rs.10,000/-</i>
3.	<i>Loss of consortium</i>	:	<i>Rs.10,000/-</i>
4.	<i>Loss of estate</i>	:	<i>Rs.10,000/-</i>
5.	<i>Loss of Love and Affection</i>	:	<i>Rs.10,000/-</i>
<hr/> <i>Total</i>			<i>Rs.17,07,790</i>

2. Instant appeal has been filed for enhancement of the compensation amount.

3. Ld. Counsel appearing on behalf of the appellant submits that PW1, Anita, wife of the deceased deposed that deceased was working as export contractor and was earning Rs.3,00,000/- per annum. To this effect, she has proved his Income Tax Return for the assessment year 2009-2010, 2008-2009, 2007-2008 and 2006-2007 as Ex.PW1/5 to Ex.PW1/8. As per the said ITR, income of the deceased was Rs.1,06,760/-, Rs.1,06,130/-, Rs.1,14,210/- and Rs.1,70,950/- for the assessment year 2006-2007, 2007-2008, 2008-2009 and 2009-2010 respectively.

4. Ld. Counsel for the appellant argued that income of the deceased was continuously increasing. Therefore, ld. Tribunal ought to have considered the last ITR for the assessment year 2009-2010 filed by the deceased himself and as per the said ITR his income was Rs.1,68,972/- (Rs.1,70,950 – Rs.2,158/-).

5. To strengthen his arguments, ld. Counsel for the appellant has relied upon a case of ***Amrit Bhanu Shali & Ors. v. National Insurance Co. Ltd. & Ors. 2012 (6) SCALE*** wherein the Apex Court has held as under:

The Income Tax Returns for the year 2007-2008 filed on 12.03.2008 at Raipur four months prior to the accident shows

that the income of Rs.99,000/- per annum. The Tribunal has rightly taken into consideration the aforesaid income of Rs.99,000/- for computing the compensation”.

6. Ld. Counsel for the appellant submits that the trend of earning of the deceased was on an increasing side and on the date of accident, he was earning net income of Rs.1,68,972/- per annum. Therefore, ld. Tribunal has erred in considering the average income of 4 years of the deceased.

7. On the other hand, ld. Counsel appearing on behalf of the respondent / insurance company has opposed the instant appeal on this issue for the reasons that deceased was an export contractor and his profession was not permanent in nature and his income is not ascertained on the increasing trend. Therefore, ld. Tribunal has taken the average of the 4 ITRs and accordingly assessed the income of the deceased as Rs.1,23,540/- per annum.

8. After hearing, learned counsel for the parties and on perusal of the ITR of the deceased from the year 2006-2010, it is established that the deceased was earning more and more almost in every year and was on the increasing trend. Had he been alive, certainly he would have earned more what he earned in the year prior to the date of his accident, in which he died.

9. Moreover, similar issue has already been considered by the Apex Court in case of **Amrit Bhanu (Supra)**. Therefore, keeping in view the dictum of the Apex Court and the last ITR of the deceased, the income of the deceased is considered as Rs.1,68,972/- per annum.

10. The second issue, argued by the ld. Counsel for the appellant is that, at the time of accident, the age of the deceased was 26 years. The ITRs for the

year 2006-2010 establish that he was in a regular and continuous business.

11. On the issue of future prospects, this court has followed the dictum of the Apex Court in case of *Rajesh & Others v. Rajbir Singh and Ors.* 2013 (6) SCALE 563, in case of *ICICI Lombard Gen. Insurance. Co. Ltd. v. Angrez Singh in MAC.A. 846/2011*. Therefore, on this issue, I grant 50% towards future prospects.

12. Last ground argued by the Id. Counsel for the appellant is that towards non-pecuniary losses, Id. Tribunal has granted compensation on a very lower side, i.e., Rs.10,000/- towards funeral expenses, Rs.10,000/- for loss of consortium and Rs.10,000/- for loss of love and affection.

13. Id. Counsel has relied upon the dictum of Apex Court in *Rajesh Supra* and *Angrez Singh (Supra)* decided by this court and submitted that towards non-pecuniary losses, amount may be enhanced.

14. This court has enhanced the compensation on non-pecuniary loss in number of cases as rightly submitted by the counsel for the appellant. Therefore, I enhance the compensation on non-pecuniary benefits as Rs.25,000/- towards funeral expenses, Rs.1,00,000/- for loss of consortium and Rs.1,00,000/- for loss of love and affection. Accordingly, the compensation comes as under:

1.	Loss of dependency	
	Rs.1,90,093.5x18	: Rs.34,21,683/-
2.	Loss of Love and Affection	: Rs. 1,00,000/-
3.	Loss of consortium	: Rs. 1,00,000/-
4.	Loss of Estate	: Rs. 10,000/-
5.	Funeral Expenses	: Rs. 25,000/-
<hr/> Total		<hr/> : Rs.36,21,683/-

15. Therefore, the enhanced compensation comes to Rs.28,76,023/- (Rs.36,21,683 – Rs.17,07,790).

16. The enhanced compensation shall also carry interest @ 7.5% per annum from the date of filing of the petition till realization.

17. In view of above, respondent / insurance company is directed to deposit the enhanced compensation with interest within five weeks from today with Registrar General of this court.

18. Out of the total enhanced compensation amount, 30% each shall be deposited in favour of appellant Nos.3, 4 & 5 respectively. The balance 10% of the amount shall be deposited in favour of appellant No.2

19. The share of appellant No.4 & 5 shall be deposited in the form of FDR till they attain the age of majority.

20. The share of appellant No.2 & 3, shall be deposited in the form of F.D.R. for a period of five years.

21. The appellants are entitled to receive the monthly accrued interest on the enhanced amount.

22. Instant appeal is allowed in the above terms.

SURESH KAIT, J

OCTOBER 31, 2013

jg