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

Judgment reserved on : 30.07.2014

Judgment pronounced on : 30.09.2014

+ MAC.APP.835/2013

SMT. AFSANA KHATOON @AFSANA Appellants
Through Mr. Ali Murtaza and Ms. Tarannum
Rani, Advs.

versus

M/S THE NEW INDIA ASSURANCE CO.
LTD. & ORS. Respondents
Through Mr. J.P.N. Shahi, Adv for R-1
Mr. Sanjeev Behl, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed to impugn the order of the Tribunal dated 27.04.2013 seeking enhancement of the compensation awarded on a petition filed by the appellants under section 166 and 140 of the Motor Vehicles Act, 1988.
2. The brief facts are that on 26.06.2012 at about 5.30 pm, Sh. Muzzaffar Ali @Lila was going home in an auto rickshaw. When he reached near GATTA Factory, a Tata 407 coming from opposite side being driven rashly and negligently hit the TSR. The deceased suffered injuries and died on the way to the hospital.
3. The Tribunal based on the evidence held that the accident was caused by the rash and negligent driving of respondent No.2.

4. On compensation, the Tribunal awarded the following amount:

i) Loss of dependency	Rs.11,68,128/-
ii) Love and affection	Rs.25,000/-
iii) Loss of consortium	Rs.10,000/-
iv) Loss of estate	Rs.10,000/-
v) Funeral expenses	Rs. 5,000/-

TOTAL	----- Rs.12,18,128/-
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5. The Tribunal had assessed the income based on minimum wages for an unskilled workman which on the date of the accident were Rs.7,020/- per month. The Tribunal awarded 30% enhancement in the said income on account of inflation/future prospects. Further, 1/3rd was deducted towards personal expenses. Taking the multiplier of 16, based on the age of deceased being 32 years at the time of the accident, the Tribunal calculated the loss of dependency as Rs.11,68,128/-.

6. Learned counsel appearing for the appellant has made two submissions for the enhancement of the amount awarded by the Tribunal. He firstly submits that at least 50% enhancement in income ought to have been made on account of future prospects while assessing the loss of dependency instead of 30% according to the age of the deceased at the time of the accident. He secondly submits that non-pecuniary damages on account of loss of consortium, love and affection and funeral expenses have been given on the lower side.

7. On the issue of future prospects, I can take judicial note of the fact that minimum wages for an unskilled worker in 2002 were Rs 2679.70/- P.M. and in 2012 were Rs.7020/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

8. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*, the Supreme Court held that in the case of self employed or those on fixed

wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

9. In the case of *Smt.Savita vs. Bindar Singh & Ors.*, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate.

10. In the case of *V.Mekala vs. M.Malathi & Anr.*, 2014 ACJ 1441, the Supreme Court in the case of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

11. In view of the above, age of the deceased at the time of the accident being 32 years, 50% should be added for future prospects.

12. Accordingly, the loss of dependency amounts to Rs. 13,47,840/- $[(7,020 + 50\% - 1/3) \times 12 \times 16]$.

13. Coming now to the second submission of non-pecuniary heads being on the lower side, on the issue of loss of consortium the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors.* (supra) noted as follows:-

“20. It may be noted that the sum of Rs. 2,500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs. 5,000/- to Rs. 10,000/- .In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc.

English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

14. In the case above, the Supreme Court awarded ₹1,00,000/- for loss of consortium.

15. On the head of funeral expenses, the Supreme Court in the said judgment noted that the funeral expenses did not mean only the fee paid for the use of space in the cemetery. There are various expenses involved including several religious practices, conventions, etc. All those are quite expensive.

16. Hence, the Court was of the view that in the absence of any evidence to the contrary for higher expenses, funeral expenses of at least ₹25,000/- should be awarded.

17. Keeping in view the observations of the Supreme Court, I also increase the Award for funeral expenses from ₹5,000/- to ₹25,000/-.

18. For the loss of love and affection, keeping in view the ratio of the judgment of the Supreme Court in the cases of *Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)* and *Yeramma & Ors. vs. G. Krishnamurthy & Anr., 2014 (10) SCALE 213*, I enhance the compensation for loss of love and affection from Rs.10,000/- to Rs.1,00,000/-.

19. Hence, the total compensation payable amounts as follows:

i)	Loss of dependency	Rs.13,47,840/-
ii)	Love and affection	Rs. 1,00,000/-
iii)	Loss of consortium	Rs.1,00,000/-
iv)	Loss of estate	Rs. 10,000/-
v)	Funeral expenses	Rs. 25,000/-

TOTAL

Rs.15,82,840/-

20. The enhanced amount as per the order today shall be deposited by the Insurance Company within four weeks from today along with interest @ 7.5% per annum from the date of filing of the claim petition till deposit in Court. On receipt of the amount, the same shall be released in favour of the claimants proportionately as per the directions in the Award.

21. The appeal stands disposed of.

JAYANT NATH, J

SEPTEMBER 30, 2014

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