

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

% *Judgment delivered on: 8th January, 2014*

+ **MAC.APP. 819/2013**

UNITED INDIA INSURANCE CO LTD. Appellant
Represented by: Mr. L.K. Tyagi, Advocate.

Versus

MEENAKSHI & ORS. Respondents
Represented by: Mr. Peeush Sharma,
Advocate for Respondent Nos. 1 to 4.

AND

MAC.APP. 538/2013

MEENAKSHI & ORS. Appellants
Represented by: Mr. Peeush Sharma, Advocate.

Versus

BANNE ALI & ORS Respondents
Represented by: Mr. L.K. Tyagi, Advocate
for Respondent No.3/Insurance Company.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

1. Both the appeals have been preferred against the impugned award dated 07.01.2013, whereby the learned Tribunal has awarded compensation

for a sum of Rs.43,31,064/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition till realization.

2. Vide appeal bearing MAC. APP. No.819/2013, the Insurance Company has sought reduction of the compensation amount, whereas appeal bearing MAC. APP. No.538/2013 has been filed by the claimants for enhancement of the compensation amount.

3. Since both these appeals have been arisen from the same impugned judgment dated 07.01.2013, therefore, these appeals are being decided by this common judgment.

4. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that as per the salary certificate dated 01.04.2008 issued by ZEE News Ltd., gross monthly salary of the deceased was Rs.25,300/- inclusive of allowances and taxes, whereas the learned Tribunal has assessed his monthly income as Rs.24,300/-. As per the salary certificate for the month of June, 2008, monthly salary of the deceased was Rs.33,039/-, wherein a sum of Rs.13,200/- was shown as payment towards incentive. He submitted that if the said incentive amount of Rs.13,200/- is deducted from the income of the deceased, then the balance monthly income comes to Rs.19,839/- only, whereas the learned Tribunal has wrongly assessed the salary/income of the deceased as Rs.24,300/-per month.

5. Learned counsel further argued that at the time of the accident, the age of the deceased was 34 years; and the claimants failed to prove that he was in permanent employment. Despite this fact, while computing the loss of dependency, the learned Tribunal has added 40% of the income of the

deceased towards future prospects, which is contrary to the law settled by the Supreme Court in the case of *Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 12*, which has been thereafter confirmed by the Full Bench of the Apex Court in the case bearing *Civil Appeal No. 4646 of 2009*, titled as '*Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*', decided on 02.04.2013.

6. He submitted that in view of the dictums noted above, the claimants are not entitled for grant of any amount towards future prospects.

7. Learned counsel further argued that the learned Tribunal has considered the wife, parents and a daughter, who was in womb at the time of the accident, as dependants upon the deceased and accordingly deducted 1/4th of the income of the deceased towards personal expenses. He argued that father could not be considered as dependent upon the deceased, therefore, learned Tribunal ought to have deducted 1/3rd of income of the deceased towards personal expenses.

8. On the issue raised above, learned counsel has relied upon the case of *Sarla Verma & Ors. (supra)*, wherein the Apex Court has held as under:-

“15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as

dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

9. As regards the issue of salary is concerned, undisputedly, deceased Jagdev Singh was working with ZEE Telefilms Limited as a cameraman since 2005, as is evident from Ex.PW 2/1, i.e., his appointment letter dated 01.04.2005. At the time of accident his age was 34 years. On 01.04.2008, in continuation of his work, his pay was revised to Rs.25,300/- per month, which is also evident from the letter dated 01.04.2008 issued by Divya Verma, Vice President-HR. This salary includes various items like Rs.1,000/- as uniform allowance.

10. The claimants have also placed on record a salary certificate for the month of June, 2008, the last drawn salary of the deceased. In this month, total earnings have been shown as Rs.33,039/- including incentive payment of Rs.13,200/-.

11. Since no evidence regarding incentives being part of monthly income have been placed on record by the claimants, therefore, the learned Tribunal while assessing the monthly income of the deceased has relied upon the salary computation sheet issued on 01.04.2008 showing monthly income as

Rs.25,300/- from which Rs.1,000/- of the uniform allowance has been deducted by the learned Tribunal. Thus, the income of the deceased has been considered by the learned Tribunal as Rs.24,300/- per month.

12. Moreover, this Court in case bearing MAC. APP. No. 110/2007, titled as '*Meenakshi Mishra & Ors. Vs. Tarsem Singh & Ors.*', decided on 19.12.2011, has held as under:-

"4. The deceased's salary was extracted in Para 10 of the impugned judgment. Apart from basic salary of ` 9,56, 808/- the deceased Prafull Chandra Mishra was getting Bonus, House Rent, Vehicle Allowance, Medical Allowance and contribution towards Provident Fund, Superannuation, House Maintenance, Telephone Expenses, Mobile Charges and Hard Furnishing allowances. The Tribunal relied on Asha & Ors. v. United India Insurance Company & Anr. 2004 ACJ 448 in not adding the allowance in the deceased's income. While interpreting Asha (supra), the Supreme Court in National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 held as under:-

"17. This Court in Asha (supra) did not address itself the question raised before us. It does not appear that any precedent was noticed nor the term "just compensation" was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be "just compensation" must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income."

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6. In Sarla Verma (supra) the Supreme Court had the occasion to consider the grant of compensation in fatal accident cases and

dwelled in detail as to how the multiplicand is to be arrived and how the multiplier is to be selected. It was held that generally the income tax should be deducted from the actual income to arrive at the deceased's net income. In Para 20 of the report it was held as under:-

“20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.”

7. Thus, there is no manner of doubt that the deceased's entire income was to be used by him for himself as well as for the members of his family. In this view of the matter, there is no manner of doubt that the deceased's entire income i.e. Rs. 18,34,391/- was to be considered for computation of dependency less income tax.”

13. In view of the above, I do not find any discrepancy in the order passed by the learned Tribunal qua the issue of salary, therefore, I confirm the same.

14. As regards the issue of dependency, the claimants have claimed that parents were dependents upon the income of deceased. The appellant/Insurance Company has not led any evidence contrary to that. The appellant even failed to cross-examine the witnesses on this issue. Moreover, respondent No.4, Kumari Drishti Negi, lost her father when she was in womb itself. She born fatherless, therefore, she could not get love and affection of her father.

15. So far as the issue of future prospects is concerned, undisputedly, the deceased was aged 34 years at the time of the accident and the learned

Tribunal has added 40% of the income towards future prospects. The deceased was working with the employer noted above, since 2005. It is a matter of record that he graduated in the year 1998. He also completed Diploma in Film and T.V. in 2002. It is also on record that deceased was with Broadcast Engineering Consultants India Ltd. (A Govt. Organization) as Lightning Assistant for the project operation and maintenance of Doordarshan News Channel for some time. The claimants have produced the details of his salary right from year 2005 to 2008, which shows that in ZEE News Limited itself, the deceased exhibited growth of salary from Rs.14,000 (on 01.04.2005) to Rs.22,000/- (on 01.04.2007) and eventually to Rs.25,300/- (on 01.04.2008). Therefore, in consideration of the educational qualification and job profile of the deceased, the learned Tribunal has added only 40% of the income of the deceased towards future prospects, which is rather less in my considered opinion keeping in mind the dictum of the Apex Court in the case of *Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*, which has been followed by this Court in the case bearing **MAC.APP. No. 846/2011** titled as '*ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.*', decided on 30.09.2013.

16. It is pertinent to mention here that vide MAC. APP. No.538/2013, the appellants/claimants while seeking enhancement of the compensation amount, have raised one of the issue that the learned Tribunal has wrongly added 40% towards future prospects instead of 50%.

17. Therefore, keeping in view the aforementioned discussion, settled position of law and the age of the deceased, i.e., 34 years at the time of the accident, this Court increases the future prospects from 40% to 50%.

18. Learned counsel appearing on behalf of the appellants/claimants in the appeal noted above has argued that the compensation awarded by the learned Tribunal towards non-pecuniary damages is on a very lower side. Deceased Jagdev Singh Negi died in the accident in question on 06.07.2008 leaving behind his wife, a daughter in womb and parents. Vide award dated 07.01.2013, the learned Tribunal has granted a sum of Rs.35,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses but no amount has been awarded for loss of consortium and for loss of estate.

19. Admittedly, the deceased died in the accident on 06.07.2008. The appellants/claimants filed the claim petition on 01.09.2008, which was allowed by the learned Tribunal vide impugned award dated 07.01.2013. However, the learned Tribunal failed to grant any compensation towards loss of consortium and loss of estate.

20. Keeping in view the facts and circumstances of the case, the age of the deceased as 34 years on the date of the accident and the dependants left behind, this Court grants compensation for a sum of Rs.1,00,000/- towards loss of consortium and Rs.10,000/- for loss of estate.

21. In view of the aforesaid discussion, I am of the considered view that the compensation granted by the learned Tribunal towards loss of love and affection as Rs.35,000/- and towards funeral expenses as Rs. 10,000/- is on lower side. Therefore, keeping in view the facts and circumstances of the case, this Court enhances the compensation to Rs. 1,00,000/- on account of loss of love and affection and Rs.25,000/- towards loss of funeral expenses.

22. Consequently, the compensation amount comes as under:-

Sr. No.	Heads	Calculation as per MACT	Calculation as per this Court
1.	Loss of dependency	42,86,064.00	52,48,800
2.	For loss of love and affection and loss of consortium	35,000.00	1,00,000.00
3.	Funeral expenses	10,000.00	25,000.00
4.	Loss of consortium	Nil	1,00,000.00
5.	Loss of Estate	Nil	10,000.00
	Total	43,31,064.00	54,83,800/-

Resultantly, the enhanced compensation comes to Rs.11,52,734/- (Rs.54,83,800- Rs.43,31,066.00).

23. The enhanced compensation amount shall also carry interest @ 7.5% *per annum* from the date of filing of the claim petition till its realization.

24. In view of the above discussion, appeal bearing MAC. APP. No. 538/2013 is allowed and appeal bearing MAC. APP. No. 819/2013 is accordingly dismissed.

25. Consequently, the Registry of this Court is directed to release the statutory deposit of Rs.25,000/- to the Insurance Company and remaining compensation amount in favour of the claimants in terms of the award dated 07.01.2013 in MAC. APP. No.819/2013.

26. The Insurance Company is directed to deposit the enhanced compensation amount in MAC. APP. No.538/2013 alongwith interest with the Registrar General of this Court within a period of five weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

27. On deposit, the Registrar General is directed to release the amount in favour of the appellants/claimants in terms of the impugned award dated 07.01.2013 passed by the learned Tribunal on taking necessary steps by them except the share of appellant/claimant No.4/Kumari Drishti Negi, which shall be kept in the form of FDR for a period of three years to be renewed automatically till she attains the age of majority.

SURESH KAIT, J.

JANUARY 08, 2014

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