**(2012) 05 DEL CK 0409**

**In the Delhi High Court**

**Case No :** MAC. App. 217 of 2012

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Jugal Kishore and Others RESPONDENT

**Date of Decision :** 15-05-2012

**Acts Referred:**

**Citation :** (2012) 05 DEL CK 0409

**Hon'ble Judges :** G.P. Mittal, J

**Bench :** Single Bench

**Advocate :** Rameeza Hakeem and Mr. Rajat Barar, for the Appellant; Basaut Gupta, Advocate for R-1 and R-2, for the Respondent

**Final Decision :** Dismissed

## Judgement

G.P. Mittal, J.—The Appeal is for deduction of compensation of amount of Rs. 10,41,248/- for the death of Asha Prasad who died in an accident which occurred on 16th May, 2009. Before the Claims Tribunal it was alleged that the deceased was a graduate, she was doing the job of tailoring and stitching and was earning Rs. 7000/- per month. The Motor Accident Claims Tribunal (The Claims Tribunal) did not find any evidence as to the actual work performed by the deceased and therefore it took the minimum wages of a graduate, made addition of 50% on account of inflation to compute the loss of dependency as Rs. 9,01,248/-. The Claims Tribunal added a sum of Rs. 25,000/- towards funeral charges, Rs. 1,00,000/- towards love and affection, Rs. 10,000/- towards loss of consortium and Rs. 5000/- towards loss of estate and in total awarded a sum of Rs. 10,41,248/-.

2. The following contentions are raised on behalf of the Appellant Insurance Company:-

1. There was no evidence that the deceased was doing tailoring and stitching work even if it was so minimum wages of a graduate could not have been taken into consideration for award of loss of dependency;

II. There was no evidence of future prospects, addition of 50% made by the Claims Tribunal was not justified;

III. Award of compensation of Rs.1,00,000/- towards love and affection is exorbitant and excessive.

3. I have perused the Trial Court record. There was no cogent evidence that the deceased was doing work of tailoring and stitching. Even then the deceased Asha Prasad was a housewife and therefore the Respondents No.1 and 2 should have been awarded compensation for loss of services rendered by a housewife.

4. This case is covered by the judgment of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors., MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(ii) National Insurance Company Limited v. Deepika & Ors., 2010 (4) ACJ 2221,

(iii) Amar Singh Thukral v. Sandeed Chhatwal, ILR (2004) 2 Del 1,

(iv) Lata Wadhwa and Others Vs. State of Bihar and Others,

(v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,

(vi) A. Rajam Vs. M. Manikya Reddy and Another

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband''s remarriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

5. It is established from the record that the deceased Asha Prasad was a graduate and was aged 33 years. On the basis of the principles extracted from Master Manmeet Singh & Others (Supra) the Court has to take the salary of a graduate and make an addition of 25% (considering the age). The loss of dependency comes to Rs. 11,26,560/- (4694 + 25 % X 16).

6. Thus the compensation of Rs. 10,41,248/- awarded by the Claims Tribunal cannot be said to be exorbitant or excessive, rather it is just and reasonable.

7. The Appeal is devoid of any merit; the same is accordingly

dismissed.

8. The award amount shall be released in favour of Respondents. The compensation awarded shall be disbursed/held in a fixed deposit in the name of the First Respondent in terms of the order passed by the Claims Tribunal.

9. The Statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The Appeal is dismissed in above terms. No costs.