**(2014) 02 DEL CK 0037**

**In the Delhi High Court**

**Case No :** Mac. App. 1185 of 2012

HDFC ERGO General Insurance Company Ltd. APPELLANT

Vs

Parkash and Others RESPONDENT

**Date of Decision :** 11-02-2014

**Acts Referred:**

**Citation :** (2014) 1 ACC 750

**Hon'ble Judges :** Suresh Kait, J

**Bench :** Single Bench

**Advocate :** Neeraja Sachdeva, for the Appellant; Rupika Singh for Mr. Navneet Goyal, Advocate for Respondent Nos. 1 and 2, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Suresh Kait, J.

MAC. APP. 1185/2012

1. Vide the present appeal, the appellant/Insurance Company is assailing the impugned award dated 03.07.2012, whereby the learned Tribunal has granted compensation for a sum of Rs. 20,62,000/- with interest at the rate of 12% per annum from the date of filing the claim petition, i.e., 12.07.2011 till realization of the amount. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that the respondents/claimants have failed to prove that the deceased was in a permanent employment and that he was working with M/S. Garg Paper Converters and was drawing salary of Rs. 16,000/- per month. Therefore, in the absence thereof, while calculating the compensation, the learned Tribunal should not have added 50% of the actual income of the deceased towards future prospects.

2. To strengthen her arguments on this issue, learned counsel has relied upon a case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, which has been 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.'' delivered on 02.04.2013.

3. Learned counsel also relied upon the case of Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, and submitted that the claimants neither produced any material nor examined any witness to prove that there were chances of increase in the salary of the deceased and had he been alive, he would have earned more. Therefore, in the absence of the same, the learned Tribunal has wrongly added 50% of the actual income of the deceased towards future prospects.

4. Learned counsel further argued that the compensation granted by the learned Tribunal towards non-pecuniary benefits such as Rs. 1,50,000/- for loss of love and affection and Rs. 30,000/- for loss of estate is on higher side.

5. Learned counsel further argued that while awarding the compensation the learned Tribunal has awarded an exorbitant rate of interest as 12% per annum on the awarded amount from the date of filing the claim petition till realization of the amount. She submitted that normally the rate of interest awarded on the compensation amount varies from 7.5% to 9% and interest at the rate of 12%, as awarded by the learned Tribunal, is being awarded only in case of default of payment. However, there is no such default on the part of the appellant/ Insurance Company, therefore, the rate of interest may be reduced.

6. Though there is no straight jacket formula to allow the compensation towards non-pecuniary benefits as it differs in each case depending upon the facts and circumstances of the case.

7. In the present case, the deceased had died at the young age of 22 years. He left behind his parents. He was a bachelor. Recently, in the case of Rajesh and Others Vs. Rajbir Singh and Others, the Full Bench of the Apex Court has granted Rs. 1,00,000/- for loss of love and affection.

8. This Court has also followed the aforenoted dictum in the case bearing MACA No. 846/2011 titled as ''ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.'', decided on 30.09.2013.

9. Therefore, keeping in view the settled position of law and that the deceased was aged 22 years at the time of the accident, I do not find any discrepancy in the order of the learned Tribunal in adding 50% of the actual income of the deceased towards future prospects. However, keeping in mind the facts and circumstances of the case, I reduce the compensation for loss of love and affection etc. from Rs. 1,50,000/- to Rs. 1,00,000/- and for loss of estate from Rs. 30,000/- to Rs. 10,000/.

10. I note, in the present case, there is no such order of any default on the part of the appellant/Insurance Company, therefore, I am of the considered opinion that the rate of interest, i.e., 12% per annum awarded by the learned Tribunal is on higher side. Hence, the same is reduced to 9% per annum.

11. Learned counsel for the appellant/Insurance Company has also raised the

issue of lawyer''s fee and out of pocket expenses, i.e., Rs. 50,000/- + Rs. 7,000/- respectively awarded by the learned Tribunal while granting compensation.

12. On the issue of lawyer''s fee and out of pocket expenses, this Court has already given its opinion in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Kanti Devi & Ors., MAC. A. 645/2012 decided on 30.07.2012, whereby it is held that the Tribunal has no power to grant lawyer''s fee and out of pocket expenses.

13. Accordingly, impugned order dated 03.07.2012 passed by the learned Tribunal is hereby set aside qua the interest @ 12% per annum and lawyer''s fee and out of pocket expenses.

14. I note, the learned Tribunal has granted only Rs. 10,000/- for funeral charges. Whereas in the case of Rajesh & Ors., (supra), the Apex Court has granted Rs. 25,000/- for funeral expenses.

15. Therefore, while reducing the compensation towards loss of love and affection etc. and loss of estate, being on higher side, with a view to make the award just, fair and reasonable, I enhance the compensation from Rs. 10,000/- to Rs. 25,000/- for funeral charges.

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

Sr. No.

Heads of compensation

Compensation granted by the ld. Tribunal

Compensation granted by this Court.

1.

Funeral charges

Rs. 10,000/-

Rs. 25,000/-

2.

Loss of dependency

Rs. 18,72,000/-

Rs. 18,72,000/-

3.

Loss of love and affection

Rs. 1,50,000/-

 

Rs. 1,00,000/-

4.

Loss of estate

Rs. 30,000/-

Rs. 10,000/-

Total

Rs. 20,62,000/-

Rs. 20,07,000/-

Resultantly, this Court reduces the compensation amount to Rs. 55,000/-(Rs. 20,62,000-Rs. 20,07,000/- ).

17. Vide order dated 16.11.2012, while granting stay on the execution of the impugned award dated 03.07.2012, this Court directed the appellant/Insurance to deposit 50% of the awarded amount along with upto date interest with the learned Tribunal. Accordingly, the appellant deposited the 50% of the award with interest @ 12% per annum.

18. In view of the above, I direct the appellant/Insurance Company to deposit the balance compensation amount with upto date interest at the rate of 9% per annum after adjusting the sum of Rs. 55,000/-, being reduced by this order, and the excess interest amount deposited by the appellant/Insurance Company in pursuance of the aforesaid order dated 16.11.2012 as the rate of interest is reduced from 12% per annum to 9% per annum.

19. On deposit, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company. The appeal is partially allowed accordingly.

CM No. 19180/2012 (for stay)

With the disposal of the appeal itself, this application has become infructuous. The same is accordingly dismissed.