

**Deepak Kumar Vs. Iffco Tokio General Insurance Co. Ltd.and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1172280](http://sooperkanoon.com/1172280)

**Court :** Delhi

**Decided On :** Nov-26-2014

**Judge :** Jayant Nath

**Appellant :** Deepak Kumar

**Respondent :** iffco Tokio General Insurance Co. Ltd.and ors

**Advocate for Def. :** Mr. Pankaj Seth

**Advocate for Pet/Ap. :** Mr. Sanjiv Gupta

**Judgement :**

\$~22 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of decision:

26. 11.2014 MAC.APP. 1012/2012 DEEPAK KUMAR Through: ..... Appellant Mr. Sanjiv Gupta, Advocate versus IFFCO TOKIO GENERAL INSURANCE CO. LTD.& ORS ..... Respondents Through: Mr. Pankaj Seth, Advocate for R-1. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH (ORAL) 1. By the present appeal the appellant seeks enhancement of the compensation amount granted as per award dated 03.04.2012.

2. The brief facts giving rise to the claim petition before the Tribunal are that the deceased namely Rajmani was going on a motorcycle on 03.10.2010 which was driven by Mr. Deepak Kumar, the appellant. When they reached at Ring Road, Sarojini Nagar Flyover, opposite CNG station, one TSR which was being driven by

respondent no.2 in a rash, careless and negligent manner and at very high, fast and violent speed took a sharp turn without giving any indication & hit the motorcycle on which the deceased was a pillion rider.

3. Based on the evidence on record the Tribunal held that the accident took place due to the rash and negligent driving of the TSR. The Tribunal awarded the total compensation of Rs.85,000/- . For loss of dependency Rs.50,000/- has been awarded. For love and affection Rs.25,000/- and Rs.10,000/- for Funeral Expenses have been awarded, making a total compensation of Rs.85,000/-.

4. Learned counsel compensation awarded appearing for the appellant submits that is inadequate. He submits that the Tribunal has wrongly awarded Rs.50,000/- for loss of dependency. He relies upon the judgment of this High Court in Royal Sundaram Alliance versus Manmeet Singh 2012 ACJ721 He submits that loss of dependency has to be calculated based on the minimum wages applicable to the deceased.

5. It is lastly submitted that compensation for non pecuniary benefits was on the lower side.

6. In Royal Sundaram versus Manmeet Singh (supra) this court has for computing loss of dependency stated as follows:Para 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 re-marriage. 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 ` 25,000/- (on present scale of the money value) towards loss of love and affection and ` 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.

7. The issue that now arises is as to what were the educational qualifications of the deceased. Learned counsel for the appellant submits that the deceased was a non-matriculate. However a perusal of the record shows that there is nothing on record regarding the educational qualification of the deceased. The evidence of PW1 and the claim petition are silent about the educational qualification of the deceased.

8. This Court in Royal Sundaram case has held that for the services rendered by a housewife the minimum wages as applicable to non- matriculate are to be used where the deceased is non-matriculate or matriculate. The minimum wages for non-matriculate in October, 2010 were Rs.5850/-. Hence the income of the deceased is assessed at the said figure. The deceased was 54 years old. Accordingly, as per the said judgment no enhancement could be there for the future prospect. No deduction as per the said judgment is there for personal expenses. Hence, accordingly loss of dependency would be Rs. 7,72,200 (5850 x12x 11).

9. As per the above noted judgment only Rs.25000/- is to be paid for love and affection. The Tribunal has already granted Rs.25,000/- towards love and affection and Rs.10,000/- towards funeral expenses. Compensation under these heads is in order. Hence total compensation comes to Rs.8,07,200/-.

10. The respondent No.1 would deposit the additional compensation amount along with interest @7.5% per annum from the date of filing of the present petition till

deposit in this Court. On receipt of the said amount by the Registrar General of this Court, 50% of the amount shall be released to the appellant and 50% amount be kept in an FDR for five years with UCO Bank, Delhi High Court Branch, New Delhi. The claimants shall be entitled to receive quarterly interest on the FDR in the same proportion as provided in the Award. On maturity the same shall be released to the appellants proportionately in the same proportion as done by the Tribunal.

11. The appeal stands disposed of. JAYANT NATH, J NOVEMBER26 2014 An

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