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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd March, 2015

+ **MAC.APP. 386/2007**

UNITED INDIA INSURANCE CO.LTD. Appellant

Through: Mr. K.L.Nandwani, Adv.

versus

MADHU SACHDEVA & ORS.

.... Respondents

Through: Nemo.

+ **MAC.APP. /2015**

MADHU SACHDEVA & ORS.

.... Appellants

Through: Nemo

versus

UNITED INDIA INSURANCE CO.LTD.

.... Respondents

Through: Mr. K.L.Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

CM APPL.13390/2009 (cross-objections) in MAC.APP. 386/2007

1. These are cross-objections to the appeal. Let it be registered as MAC APP_____/2015.
2. Application stands disposed of.

MAC.APP. 386/2007

MAC.APP _____/2015 (to be numbered)

3. These two appeals arise out of common judgment dated 01.05.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹4,00,000/- was awarded in favour of Respondents No. 1 to 3 in MAC.APP. 386/2007 for the death of S.K. Sachdeva, who suffered fatal injuries in a motor vehicular accident which occurred on 14.08.1996.
4. For the sake of convenience, Appellant in MAC APP.386/2007 shall be referred to as the Insurance Company whereas Appellants in cross-appeal being MAC APP._____/2015 shall be referred to as the Claimants.
5. Following contentions are raised on behalf of the Insurance Company:-
 - (i) Negligence on the part of the driver of bus no.DEP 5741 involved in the accident was not proved; and
 - (ii) Deceased's widow had re-married and therefore, she was not dependant upon the deceased.
6. None has appeared on behalf of the Claimants.
7. I have perused the impugned judgment and the Trial Court record.

NEGLIGENCE

8. By an order dated 15.01.2010 passed by this court, additional evidence was ordered to be recorded. Testimony of Sunil Taneja, who was an eye witness in the criminal case was recorded in this Court on 23.03.2010 and 04.05.2010. PW Sunil Taneja categorically stated that the bus was being driven in a rash and negligent manner and at fast speed.
9. It is well settled that in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act), negligence is required to be proved on the touchstone of preponderance of probabilities. (*Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530).
10. The evidence of PW Sunil Taneja was not discredited either by examining the driver of the offending bus or by any other evidence. Thus, it is sufficiently established that there was negligence on the part of the driver of the bus bearing registration no.DEP-5741 and the Claimants are hence, entitled to compensation.

COMPENSATION

11. The salary certificate of deceased S.K. Sachdeva was proved as Ex.PW3/1 which shows that the deceased was getting a gross salary of

Rs.6409/- per month. The deceased was working as an Accounts Officer with Jubilant Organosys Ltd. The allowances in the shape of House Rent Allowance, Special Allowance, Medical Allowance, Leave Travel Allowance, Provident Fund and Gratuity were also for the benefit of the family.

12. At the most, a sum of ₹1900/- could have been taken as an allowance incidental to employment being used only for the purpose of carrying out the duties. Thus, ₹4509/- shall have to be considered as the salary of deceased S.K.Sachdeva for computation of loss of dependency.
13. Once the amounts of HRA, Provident Fund and Gratuity are taken as non-taxable, the salary of the deceased would be less than ₹40,000/- per annum; hence, it was not taxable.
14. Deceased S.K. Sachdeva was in settled employment in a large company earning increments. Thus, the Claimants would be entitled to addition of 50% towards future prospects.
15. There were three dependants. Even if dependency of Claimant No.1 is not taken after her re-marriage, there were still two dependents. By deducting $\frac{1}{3}^{\text{rd}}$ towards personal and living expenses and applying the multiplier of 15, the loss of dependency will come to Rs.8,11,620/- $(4509/- \times 12 + 50\% \times \frac{2}{3} \times 15)$.

16. Since the accident relates to the year 1996, I tend to award a sum of ₹25,000/- each towards loss of love and affection and loss of consortium and ₹10,000/- each towards funeral expenses and loss to estate.
17. The overall compensation thus, comes to ₹ 8,81,620/-.
18. The Claimants will be entitled to interest on the amount awarded by the Claims Tribunal @ 6% per annum from the date of filing of the petition till the deposit of the amount, less the period from 22.01.2003 when the petition was dismissed in default till 17.01.2005, when the claim petition was restored to its original number.
19. The Claimants will be further entitled to interest on the enhanced amount from the date of filing of the petition till its payment, less the period from 22.01.2003 to 17.01.2005 where 6% per annum interest is awarded by the Claims Tribunal.
20. The Claimants will also be entitled to interest @ 7.5% per annum on the enhanced amount of ₹4,81,620/- from the date of filing of the appeal till its payment.
21. The enhanced compensation along with interest as stated above, shall be deposited by the Insurance Company with UCO Bank, Delhi High Court Branch, New Delhi within eight weeks.

22. Since the widow had re-married and has not come forward to contest the appeal or cross appeal, 75% of the enhanced compensation along with interest shall be payable to Claimant/Respondent No.3 (daughter of the deceased) and rest 25% shall be paid to Respondent No.1 (mother of the deceased).
23. 50% of the amount awarded to Claimant/Respondent No.3 shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.
24. Both the appeals are disposed of in above terms.
25. The statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company after the enhanced amount is deposited and a certificate to this effect is filed with the Registrar General of this Court.
26. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 23, 2015
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