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

Decided on: 26th February, 2015

\+ **MAC.APP. 1050/2013**

THE NEW INDIA ASSURANE CO. LTD. ..... Appellant
Through: Mr.Pankaj Seth, Advocate

versus

SH ANIL KAUSHIK AND ORS. ..... Respondents
Through: Mr. Amit Kumar Pandey, Advocate for Respondents no.1 & 2.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 27.09.2013 whereby compensation of Rs.14,45,000/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Nitish Kaushik who died in a motor vehicular accident which occurred on 15.04.2009 at about 2:30 p.m.

2. There is twin challenge to the judgment. First, that negligence

on the part of the driver of TATA 407 no.DL-1LG-7686 was not proved and second, that the Claims Tribunal erred in taking the potential income of a student pursuing LLB course to be Rs.15,000/- per month, particularly when he was just a Ist Year student pursuing five years course.

NEGLIGENCE:

3. The Respondents examined Gajender Kaushik(PW-2) as an eye witness to the accident. He deposed that offending TATA tempo dashed against the motorcycle from behind. It is urged by the learned counsel for the Appellant that the FIR reveals that there was no eye witness to the incident. It has now been explained by the Respondents as to wherefrom Gajender Kaushik surfaced as an eye witness. I have the Trial Court record before me. I have perused the Affidavit and cross-examination of Gajender Kaushik. Gajender Kaushik has described the manner of accident. Nothing could be elicited in the cross-examination of this witness to discredit his testimony. The driver of the offending TATA tempo has not come forward to give his version of the incident. In view of this, the

testimony of this witness has remained unchallenged and unrebutted. Negligence under Section 166 of the Motor Vehicles Act, 1988 is sufficiently established.

<u>Compensation</u>

4. As far as grant of compensation for a student pursuing professional course is concerned, it is well settled that potential income of a student can be taken into consideration. In the case of *Haji Zainullah Khan (Dead) by LRs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667,* death of a young boy aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology) and the compensation of Rs.1,46,900/- was increased and rounded off to Rs.1,50,000/- by the Hon'ble Apex Court.

5. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008,* decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded MBBS degree in a short time, the Tribunal awarded a compensation of Rs.

9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of Rs.5,000/- per month at the time of his death in the accident, he would have ultimately joined as a doctor at a salary ranging between Rs.16,000/- per month to Rs.25,000/- per month. Thus, the average monthly income of the deceased was taken as Rs.18,000/- and after adding 50% towards future prospects, the compensation was enhanced to Rs. 21,36,000/-.

6. In this case, the accident occurred on 15.04.2009. The Claims Tribunal adopted the potential income of the deceased who was going to be a lawyer, as Rs.15,000/- per month, which, to my mind, cannot be considered to be excessive. The computation of compensation and grant of non-pecuniary damages awarded by the Claims Tribunal is in consonance with *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* and *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54* except compensation for the loss of gratuitous services. The amount of Rs.50,000/- awarded towards loss of gratuitous services was not permissible. At the same time, considering the

peculiar circumstances of the case that the deceased was the only son, I am not inclined to interfere with the impugned judgment.

7. The appeal is accordingly dismissed.

8. The amount deposited shall be released to the Respondents (claimants) in terms of the orders passed by the Claims Tribunal. The claimants shall be at liberty to approach the Claims Tribunal for pre-mature withdrawal of the compensation on satisfying need for the same.

9. The appeal is disposed of in above terms.

10. Pending applications, if any, also stand disposed of.

11. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 26, 2015
pst