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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18th February, 2015

+ MAC.APP. 1142/2013

SAROJNI DEVI SATI & ANR. Appellants

Through: Nemo.

versus

HEM LAL PANTHI & ANR. Respondents

Through: Mr. Navneet Kumar, Adv. for
R-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 for enhancement of compensation of ₹3,04,500/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants (the Claimant) for the death of Rohit Prasad Sati, who died in a motor vehicular accident which occurred on 22.01.2012 involving a motorcycle bearing registration no.DL-3S-BS-4263 which was being driven by one Jeevan at the time of the accident. Said Jeevan also expired in the accident. The number of other vehicle involved in

the accident could not be known. The evidence produced by the Appellants that Jeevan was driving the vehicle at the time of the accident could not be assailed by the Respondents and hence, the compensation as stated above was awarded.

2. The short submission raised on behalf of the Appellants is that in a petition under Section 163-A of the Motor Vehicles Act, 1988 (the M.V.Act), the compensation should have been awarded strictly in accordance with the structural formula.
3. I do agree with the Appellants.
4. It is well settled that compensation in a petition under Section 163-A of the M.V. Act should be given strictly in accordance with the Second Schedule attached to the M.V. Act. The deduction will be $\frac{1}{3}^{\text{rd}}$ and the multiplier will be as per the age of the deceased as given in the Schedule. This question was dealt with in great detail by this Court in *New India Assurance Co. Ltd. v. Pitamber & Ors.*, MAC.APP. 304/2009 decided on 23.01.2012. This Court referred to the decisions in *Oriental Insurance Company Limited v. Smt. Pataso & Ors.*, MAC

APP.962/2005 decided on 01.09.2008; Oriental Insurance Company Limited v. Om Prakash & Ors., 1 (2009) ACC 148; Jagdish & Anr. v. Madhav Raj Mishra and Anr. MAC APP.190/2011 decided on 19.04.2011; Oriental Insurance Company Limited v. Anita Devi & Ors., 2011 (5) AD (Delhi) 138, decided on 10.05.2011; Oriental Insurance Company v. Hansrajbhai v. Kodala, (2001) 5 SCC 175 and Deepal Girishbhai Soni v. United India Insurance Company Limited, (2004) 5 SCC 385 and held that in a petition under Section 163-A of the Motor Vehicle Act, there is a cap of ₹40,000/- on the annual income and the compensation including non-pecuniary damages have to be awarded as per the Second Schedule.

5. The income of the deceased was claimed to be ₹40,000/- per annum as an employee with Tarun Sood, who was doing business in the name and style of Sood Properties. However, there is no proof of the same. On the other hand, the minimum wages of an unskilled worker at that time was ₹6,656/- per month which would make annual income as ₹79,872/-. In view of this, the claim of income of ₹40,000/- per annum cannot be

said to be excessive as the same was less than the annual minimum wages. The loss of dependency therefore, comes to ₹4,26,666/- (40,000/- x 2/3 x 16) rounded off @ ₹4,26,700/-

6. In addition, the Appellants are entitled to a sum of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss to estate. The overall compensation thus comes to ₹4,31,200/-.
7. The compensation is hence, enhanced by ₹1,26,700/- which shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition till its payment.
8. Respondent no.2 Insurance Company is directed to deposit the enhanced compensation along with proportionate interest within four weeks, failing which the Appellants would be entitled to interest @ 12% per annum from the date of this judgment.
9. 70% of the enhanced compensation shall be paid to Appellant no.1 and rest 30% shall be paid to Appellant no.2.
10. 50% of the enhanced compensation along with proportionate interest shall be held in fixed deposit for a period of one year. Rest to be released on deposit.

11. The appeal is allowed in above terms.
12. Pending applications also stand disposed of.
13. *Dasti.*

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2015
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