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

Date of Decision: 09.05.2016

\+   MAC.APP. 38/2013

M/s. UNITED INDIA INSURANCE COMPANY LTD. ... Appellant

Through: Mr. P.R. Sikka and Mr. Amit Sikka, Advocates

versus

SUBODH PODDAR & ORS. ..... Respondents

Through: Mr. Amit Kumar Pandey, Adv. for R-1 to 4

Mr. Manoj Kumar for Ms. Arati Mahajan Shedha, Advocates for R-5 & 6

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first to fourth respondents (claimants) instituted an accident claim case (4/DAR/12) before the Motor Accident Claims Tribunal (tribunal) on 02.01.2012, in the wake of detailed accident report (DAR) submitted by the police in the context of the first information report (FIR) no.227/2011 PS Binda Pur respecting a motor vehicular accident that had occurred on 26.08.2011, wherein Radhey Kumar, 26 years old, a bachelor, had died due to collision between two motor vehicles including the motorcycle bearing

registration no.DL-4S-BU 6189 (motorcycle) driven by him on one hand and bus bearing no.DL-1PB- 6497 (bus) of Delhi Transport Corporation (DTC) on the other. The tribunal initially treated the DAR as a claim petition under Section 166(4) of the Motor Vehicles Act, 1988 (M.V. Act) but later, on the application moved on 16.08.2012, treated it as a petition under Section 163-A of the M.V. Act.

2. The tribunal held inquiry and on that basis, by judgment dated 17.10.2012, returned a finding that death of Radhe Kumar, had occurred in a motor vehicular accident on account of the use of the DTC bus. It awarded compensation in the sum of Rs.4,57,833/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization and called upon the insurer to pay. It must be added here that though the tribunal has assumed the income of the deceased as Rs.40,000/- p.a. on the basis of second schedule to the M.V. Act, in paragraph 30, it wrongly described the loss of dependency as 'Rs.26,668/- p.m.' but loss of dependency was eventually worked out in the sum of Rs.4,53,333/- calculated only on the basis of the said assumed income of Rs.40,000/- p.a., after deducting 1/3rd towards personal and living expenses on the multiplier of 17.

3. The insurer which was burdened with the liability to satisfy the award is in appeal to challenge the same on the grounds that the claim by the three brothers and sister of the deceased should not have been entertained beyond what would be available to them under the no-fault liability under Section 140 of the M.V. Act. Reliance is placed on the judgment passed in *Smt. Manjuri Bera V. Oriental Insurance Co. Ltd., AIR 2007 SC 1474*.

4. Given the fact that the claim petition was pressed by the claimants only under Section 163 A of the M.V. Act, the contentions raised by the insurer are found to be frivolous and thus, liable to be dismissed.

5. At the same time, it is noted that the tribunal fell into the error by applying the multiplier of 17. Given the fact that the deceased was aged 26 years, the multiplier of 18 would apply, in view of the prescription in second schedule to the M.V. Act. Therefore, the loss of dependency is recalculated as (₹40,000/- x 2 /3 x 18) ₹4,79,999/-, rounded off to ₹4,80,000/-. Adding the non-pecuniary damages of ₹4,500/- awarded by the tribunal, the total compensation comes to (₹4,80,000/- + 4,500/-) ₹4,84,500/-.

6. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

7. In view of the frivolous stand taken by the appellant, the appeal is disposed of with ₹25,000/- as costs, which shall also be paid to the claimants.

8. By order dated 14.01.2013, the insurance company had been directed to deposit the entire awarded amount with accrued interest with the UCO Bank, Delhi High Court Branch, New Delhi, which was initially kept in fixed deposit receipt, though, by subsequent order dated 29.08.2013, 60% was released to the claimants. The Registrar

General shall now take steps to release the balance in deposit. The insurance company is directed to deposit the balance of its liability inclusive on account of cost with the tribunal under the modified award within 30 days. The amount thus deposited shall also be released to the claimants.

9. The statutory amount shall be refunded only after the award has been satisfied.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 09, 2016
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