$~R-135

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

Date of Decision: 02.06.2016

\+ **MAC.APP. 106/2008**

LAXMI & ORS. ..... Appellants

Through: Ms. Prachi Johri, Adv.

versus

RAKESH & ORS. ..... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dinesh Kumar, 34 years old, employed as Junior Assistant – Catering with Escorts Heart Institute and Research Centre, Okhla Road, New Delhi, suffered injuries in a motor vehicular accident that occurred on 13.10.2004 involving negligent driving of truck bearing No. HR 38C 8880 (the offending vehicle), and died in the consequence. His dependent family members (appellants) instituted an accident claim case (Suit No. 658/2004) on 22.12.2004, seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on the averment that the accident had occurred because the motorcycle bearing No. UAO 7F 9783 (the motorcycle) driven by the deceased had been hit by the offending vehicle which had been driven, in turn, by Rakesh (first respondent) in negligent manner.

2. The tribunal held inquiry and, by judgment dated 29.10.2007, upheld the case about death having occurred due to negligent driving of the truck by the driver and, thus, holding him as the principle tort-feasor. It was also found that the offending vehicle was owned on the relevant date by Paramjit Singh (second respondent) and insured with National Insurance Company Ltd. (third respondent) each of whom was also held liable, the former on account of vicarious responsibility and the latter on account of contractual and statutory responsibility.

3. The tribunal, by the impugned judgment, awarded compensation in the sum of Rs. 7,06,980/- in favour of the claimants and directed the insurer to pay the same with interest at 7% per annum from the date of filing of the petition till realization, though accepting the plea about breach of terms and conditions of the insurance policy and on such basis also granting it recovery rights against the first and second respondents herein.

4. The appellants (claimants) have come up to this Court under Section 173 of MV Act with the appeal at hand submitting that the compensation and interest granted are inadequate. It is pointed that the tribunal had computed the loss of dependency on the income assessed at Rs. 5,055/- even though the evidence led on record which include appointment letter (Ex.PW2/1), letter of confirmation of service (Ex.PW2/2), pay slip (Ex.PW2/3) and salary slip for September, 2004 (Ex.PW2/4) showed higher salary and emoluments. The tribunal had computed the loss of dependency after deducting 1/3rd of the income towards personal and living expenses. Pointing out that the number of dependents was six, it is urged by the claimants that the loss of dependency be re-calculated after deduction of

$1/4^{th}$ only. The claimants had pleaded before the tribunal that the element of future prospects of increase be also considered. The tribunal, however, declined to calculate the compensation on such basis.

5. Having heard the counsel for the claimants and for the insurer, this Court finds merit in the grievances urged. The salary slip for September, 2004 (Ex.PW2/4) clearly showed the total emoluments to be Rs. 8703/-. This includes basic pay, dearness allowance, house rent allowance, conveyance allowance, professional pursuit allowance and city compensatory allowance. Since all the said allowances were part of the regular income, there is no reason why any allowance should be left out. Given the terms of engagement of the deceased, the element of progressive rise in income in future has to be granted. Thus, on the irrefutable evidence showing progressive rise in income, the loss of dependency on the multiplier of 16 is re-calculated as (8703 x 150 ÷ 100 x 3 ÷ 4 x 12 x 17) Rs. 18,79,848/-, rounded off to Rs. 18,80,000/-.

6. The tribunal had awarded Rs. 15,000/- towards loss of consortium and love & affection put together, Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate. Following the view taken in M*adhu Marwaha & Anr vs. Dal Chand & Anr., FAO 102/2001*, decided on 01.02.2016, award of Rs. 50,000/- each towards loss of love & affection and loss of consortium and Rs. 10,000/- each towards funeral expenses and loss to estate are added. In this view, the total compensation is computed as (18,80,000 + 1,20,000) Rs. 20,00,000/-.

7. Following the consistent view taken by this Court, the rate of interest is increased to 9% 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*.],

8. The award is modified accordingly.

9. It is noted that the tribunal had specified the amounts that would fall to the share of each claimants. In the given facts and circumstances, it is directed that the entire enhanced portion of the award including the amount payable on account of rate of interest shall fall to the share of the first appellant/claimant Laxmi (widow) alone. It shall, however be released to her after being invested in two equal fixed deposit receipts in a nationalized bank of her choice for a period of seven years with right to draw monthly interest.

10. The insurer is directed to satisfy the enhanced award with requisite deposit with the tribunal within 30 days of this judgment, making it available to be released, as above. Needless to add the recovery rights granted to the insurer shall inure to it even in respect of the enhanced award.

11. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

JUNE 02, 2016/nk