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

Date of Decision: 01st February, 2016

+ **FAO. 400/2001 & CM APP. 2982/2016**

SHABRIN & ORS.

..... Appellants

Through: Mr. Puran Chand, Adv. proxy
counsel for Mr. Sanjeev Mehta,
Adv.

versus

LEKHA PARSAD & ORS.

..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 18.01.1987, Abdul Rashid was travelling in a bus of the second respondent bearing registration no.DEF-7680 and while alighting at South Extension Part-I, he suffered injuries on account of fall due to forward movement of the bus by its driver (first respondent). On account of head injuries consequentially suffered, he died in the hospital two days later. His legal heirs (the appellants herein) brought a petition for compensation on the principle of fault liability before the motor accident claims tribunal (the tribunal). The bus was admittedly insured with third respondent herein against third party risk covering the relevant period, though the insurer's contention being that its liability was limited to ₹15,000/-. The tribunal, after inquiry, awarded a

compensation in the sum of ₹1,83,000/- with interest @ 9% per annum from the date of filing of the petition till realization. The contention of the insurance company that its liability was limited to ₹15,000/- only under the policy (Ex.RW1/1), was upheld but it was directed, with reference to the law laid down in *Oriental Insurance Company Ltd. vs. Cheruvakkara Nafessu & Ors.*, 2001 ACJ 1, which, in turn, had followed *New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanamal Aswani*, 1958-65 ACJ 559 (SCC), to indemnify the third party and granted recovery rights against the insured.

2. The claimants brought this appeal in August 2001 but failed to prosecute it diligently. For the delay in adjudication over the last almost 15 years, the claimants and their counsel will have to share most of the blame. Even today, a request was made on their behalf through Mr. Puran Chand, Advocate for adjournment on the ground that learned counsel are out of station. It is noted that there are two advocates who had been appearing on the earlier dates on behalf of the appellants. It is not explained as to why at least one of them could have been present to assist the court in adjudication upon this, one of the oldest appeals on the board of the court.

3. The first respondent (widow of the deceased) died on 27.11.2014. The death certificate has been submitted by the learned counsel for the appellant also representing the other appellants, by way of application (CM No.2982/2016), *inter-alia*, stating that no other legal heirs are to be brought on record as the legal heirs who have survived (appellants nos.2 to 6) are already on record.

4. The grievances of the claimants as to the computation of the compensation, in the facts and circumstances noted in the impugned judgment are found to be correct. The deceased was stated by the appellants to be 40 years old at the time of the death. But the postmortem report showed the age to be 45 years. Concededly, there was no formal documentary proof as to the date of birth adduced during the inquiry. In these circumstances, learned tribunal was correct in taking note of the age in the post-mortem report. But having regard to the said age, the multiplier of 12 as adopted by the tribunal was improper. Going by the dicta in *Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the loss of dependency needs to be worked out on the multiplier of 14.

5. The tribunal did not accept the evidence of first respondent (PW7) that the deceased was earning ₹1800-2000/- per month, in as much as R. L. Aggarwal (PW6) examined by the claimants themselves, proved his (deceased) income to be in the region of ₹1600/- per month which was correctly assumed to be the income on which the loss of dependency had to be worked out. The learned tribunal did not add the element of future prospects, and rightly so, as no periodic increase was proved.

6. In calculation of loss of dependency, the deduction on account of personal expenses was more what was appropriate. Since the number of dependants was six (claimants), deduction on that account should not have been more than one fourth. In these circumstances, the monthly loss of dependency works out to ₹1200/- per month. On the basis of multiplier of 14, the total loss of dependency is calculated as $(1200 \times 12 \times 14)$ ₹2,01,600/-.

7. The non-pecuniary damages on account of loss of estate, loss of love & affection and funeral expenses were added by a composite sum of ₹15,000/- which is highly deficient. Having regard to the date of the accident, and the facts and circumstances of this case noted above, non-pecuniary damages in the sum of ₹50,000/- on account of loss of consortium, ₹50,000/- on account of loss of love & affection, ₹10,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate are hereby added. The total compensation payable to the appellants, thus, is worked out to ₹3,21,600/-, rounded off to ₹3,22,000/- .

8. This court does not find the rate of interest (9% per annum) levied by the tribunal to be improper [*Municipal Corporation of Delhi, Delhi V. Association of Victims of Uphaar Tragedy and Ors.*, (2011) 14 SCC 481; *Surti Gupta V. United India Insurance Company and Ors.*, 2015 (3) SCALE 795; *Basappa V. T. Ramesh*, (2014) 10 SCC 789; *Kumari Kiran V. Sajjan Singh* (2015) 1 SCC 539 and *Syed Sadiq etc. V. Divisional Manager, United India Ins. Company* (2014) 2 SCC 735]. The grievance on this score is repelled.

9. Thus, the award is modified. The appellants are held entitled to receive ₹3,22,000/- as compensation with interest as levied by the tribunal. Having regard to the fact that the first respondent has already died, the enhanced portion shall be apportioned equally amongst the remaining appellants, to be deposited in fixed deposit receipts in their respective names for a period of three years each.

10. In view of above, it is found just and proper that the insurance company be asked to satisfy the award, but with liberty to get it

recovered from the registered owner by appropriate proceedings before the tribunal. Ordered accordingly.

11. The insurance company shall be liable to satisfy the award in terms of the above direction within 30 days of today by depositing appropriate instruments with the tribunal and shall have the recovery rights against the second respondent (registered owner of the vehicle).

12. Having regard to the conduct of the claimants as noted in the initial part of the judgment, the enhanced portion of compensation shall carry interest @ 6% per annum from the date of this judgment till realization.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 01, 2016/ssc